

CAPE TOWN CONVENTION COMPLIANCE INDEX: METHODOLOGY

SUMMARY

The Cape Town Convention Compliance Index (the **compliance index**) assesses compliance by contracting states to the Cape Town Convention and its Aircraft Protocol (**CTC**) with that treaty. ‘Compliance’, actual or anticipated, means when CTC is fully and effectively implemented, prevails over conflicting law, and is being interpreted and applied in accordance with its terms and intent.

This document sets out the methodology used to assign a score and a categorization to contracting states in the compliance index. It enables users of the compliance index and the contracting state scorecards to understand the data applicable to, and analytical process by which, the score was determined.

Each finalized scorecard is determined by the AWG secretariat based on a non-commercial, non-political, objective assessment of all applicable available data.

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

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 and should remain eligible for a ‘CTC discount’ under the OECD Aircraft Sector Understanding and whether it has been removed from such eligibility due to non-compliance with CTC

D is whether a country has designated a ‘communications 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 and protection of property rights

Precedent-Based Adjustment

Level I increases the weight of B by 0.6 and decreases the weights of each of E and F by 0.3 (low 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 (high predictive value)

FORMULA

The general formula used to calculate the compliance index score for a contracting state is as follows:

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

The scoring and categorization systems, and definitions for the variables, are set out on the previous page.

Final scores are rounded to the nearest half number, with a minimum score of 1 and a maximum score of 5 for each variable sub-score.

Variables A and B, taken together, constitute half of the final score. They assess legal action directly relating to CTC. Variables C through F, inclusive, constitute the other half. They assess additional items which are predictive of compliance. The 'precedent-based adjustment', where applicable, establishes a link between variables B, E and F. It reflects the greater weight given to CTC experience in the compliance index.

Variables A (25%) assesses the legal implementation of CTC. It captures the state of *de jure*, black letter laws and regulations which provide the basis for application of CTC in transactions governed by CTC as applied by reference to its declarations.

Variable B (25%) examines *de facto* how such laws are applied and whether such application leads to outcomes that are substantially compliant with CTC terms and intent.

Variable C (12.5%) addresses whether a contracting state is and should remain eligible for the OECD discount and whether it has been removed from such eligibility due to non-compliance with CTC. This variable is relevant as inclusion on the OECD list confers both financial and reputational benefits, thereby increasing the incentive for countries to comply with CTC and cost of non-compliance.

Variable D (12.5%) is based on an AWG initiative to establish a communications channel with the government of each contracting state to address and resolve CTC compliance issues. This variable is an indicator of anticipated compliance based on past AWG practice, where an open line of communication has proven highly constructive. The establishment of an effective communications channel demonstrates an intent and effort by the applicable government to be in compliance with its CTC obligations and is crucial to the forward-looking nature of the compliance index.

Variable E (12.5%) is a proxy for legal norms and practices that courts in a particular contracting state are likely to apply when interpreting CTC. This variable identifies indicators of existing law and practice which are suggestive of whether gap-filling measures and interpretive techniques are expected to comply with CTC, including indicators of legal protectionism, strict enforcement of contractual terms, strict enforcement of new commercial laws, and repossession inside and outside of insolvency.

Variable F (12.5%) is a rule of law and political risk indicator, which is included to reflect the fact that legal systems exist within broader political and institutional frameworks that are materially relevant to enforcement of existing law, in this case CTC. This variable assesses a country's practice of enforcing laws consistently and impartially, and, more generally, its overall political and economic stability.

Variables B, E, and F in the formula are potentially subject to an adjustment of their relative weighing (see **PRECEDENT-BASED ADJUSTMENT** section) on the basis that, where CTC requirements have been tested and applied (as reflected in variable B), whether correctly or incorrectly, such experience should hold greater weight than the proxies for anticipated compliance that are variables E and F. The precedent-based adjustment is assessed on a continuum of predictive value, from low predictive value to medium to high taking into account a number of factors.

DEFINED TERMS

CAA means the civil aviation authority of a contracting state.

compliance means when CTC is fully and effectively implemented, prevails over conflicting law, and is being interpreted and applied in accordance with its terms and intent. For purposes of the foregoing (a) ‘conflicting law’ means any law, rule, regulation, or regulatory practice that conflicts with, conditions, qualifies, or imposes a cost on CTC rights or remedies (beyond that expressly permitted by CTC), and (b) the ‘terms and intent’ of CTC shall take into account the Official Commentary (4th edition) and annotations thereto issued by the CTC academic project.

completeness means that all legislation, rules and regulations required to fully enact CTC, with all declarations made by the relevant contracting state, have been promulgated and implemented, with no existing regulatory gaps or inaccuracies which may adversely impact application.

communications channel means one or more senior officials in a contracting state’s government designated as the primary point of contact for AWG regarding CTC compliance matters.

OECD discount means the reduction of minimum premium rates available to eligible contracting states under the Organization for Economic Co-operation and Development’s Aircraft Sector Understanding. An evergreen list is available at <http://www.oecd.org/tad/xcred/ctc.htm>.

predictive value means the level of authority, influence or deference a judicial decision or administrative action is expected to be given in future cases with similar facts.

primacy means that CTC, with all declarations made by the relevant contracting state, prevails over conflicting national law.

qualifying declarations means the declarations required to be made to be eligible for the OECD discount.

RANJA means reports on administrative and non-judicial activity in contracting states published by the Cape Town Convention Academic Project. Such analyses are posted in conjunction with the underlying reported cases of RANJA.

rules means any guidance, instructions, or confirmed practices which prescribe action relating to CTC compliance.

VARIABLES

Variable A¹

Variable A is a measure of the legal implementation of CTC in a contracting state, comprised of (i) primacy, and (ii) completeness. Greater weight is assigned to primacy than to completeness because primacy, even in the absence of completeness, theoretically places all of CTC as the prevailing law in a contracting state. In contrast, without primacy, there is greater uncertainty with respect to national law that may conflict with, and prevail over, CTC requirements. Completeness assesses whether practical legal rules are in place, such as civil aviation regulations, as well as whether regulations that have been introduced may have the effect of undermining certain CTC provisions. For example, where IDERA regulations expressly require the provision of documents within an air operator's exclusive control, such as an original certificate of registration, prior to deregistration, such a requirement will negatively impact the score of variable A. Where regulations exist but are ambiguous and require additional substantive interpretation by relevant actors (i.e. IDERA regulations that permit a CAA to require "any other documentation", or are silent as to whether such requirements are permitted, prior to acting upon an IDERA), a penalty to variable A may be applied unless written confirmation is provided by the relevant authority that it will comply strictly with CTC requirements for CTC-related matters within its jurisdiction. Variable A is also not a fixed variable, in that further penalties may be applied if subsequent interpretation and practice reveals weaknesses or gaps in the existing regulation.

Primacy carries a maximum base score of 3 and completeness carries a maximum base score of 2. Primacy without completeness may be adjusted upwards by (i) up to 1 point (that is, to a score of up to 4) if there is a high level of confidence that CTC will be complied with despite the absence of relevant regulations; and (ii) up to 2 points (that is, to a score of up to 5) if there is a high confidence level **and** the relevant CAA has provided written confirmation to AWG that it will comply with CTC requirements. Completeness without primacy may be adjusted upwards by up to 1 point (that is, to a score of 3) if there is a high level of confidence that CTC will be complied with despite the absence of primacy. If CTC is translated into the official language of a contracting state, and such local language version is the controlling version, reported gaps and inaccuracies in such translations may also lead to an adjustment downward of up to 1 point. Variable A scores are adjusted in increments of 0.5.

This variable is based on legal elements rather than actual practice and whether the relevant institutions (courts and CAAs) in a country have enforced or will enforce the legal rule. The latter is a matter of practical experience with CTC, which is addressed by variable B. The most pertinent question considered by variable A is whether, in a rightly-decided case or enforcement action, a court or administrative body in the

¹ Variable A does not address any per se non-compliance arising from an ineffective expansion of liens and detention rights made under a contracting state's Article 39(1) declarations. AWG will seek revised declarations in each such case, but the compliance index does not factor this into the variable A scoring.



relevant contracting state would be legally required to apply CTC in accordance with its terms and intent.

Variable B

Variable B is comprised of (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, as advised by legal or industry experts, in applying and enforcing CTC. Precedent carries relatively and often substantially more weight than advised experience. See the sections on **DATA SOURCES** and **ANALYTICAL PROCESS** below for an explanation of the process by which the score is determined for each contracting state.

Where judicial decisions exist or administrative action has been taken, the score is assigned based on an assessment of how compliant the outcome of such is with CTC terms and intent, in increments of 0.5, from a minimum of 1 to a maximum of 5. Consideration is given to the totality of jurisprudence in a contracting state, unless excluded as described below in connection with appropriate legislative corrective action, as well as the relative authority of such precedent(s). Greater value is assigned to precedent addressing enforcement-related provisions and issues. Thus, a well-reasoned precedent that does not address enforcement would generally support a score of 4 and may, on a case-by-case basis, justify a score of 4.5. In assessing negative precedents leading to outcomes that are substantially non-compliant with CTC, consideration is given to the legal arguments presented before the decisionmaker, whether judicial or administrative.

Where no judicial decisions exist or administrative action has been taken, the baseline score is dependent on a country's Variable A score. Where a country's Variable A score is 4 or higher, a baseline score of 3 is assigned. Where a country's Variable A score is lower than 4, a baseline score of 2.5 is assigned. This baseline score is then adjusted upwards or downwards by up to 1 point (that is, to a score of up to 4 or 3.5, as applicable, (increase) or down to 2 or 1.5, as applicable, (decrease)) in accordance with relevant lower level experience (such as a pattern of administrative practice) or government signalling. In such contracting states, the score is adjusted based on advised experience. As examples, a contracting state's practice with respect to IDERA recordation, its CTC educational systems, and its issuance of official releases or positions may contribute to its Variable B score more significantly in the absence of reported precedent.

In the event that a country's Variable B score is negatively impacted due to reported precedent, the impact of such precedent will be neutralized in the event of legally authoritative corrective action that addresses the non-compliant precedent. Such legally authoritative corrective action must have a direct impact on the effect of the non-compliant precedent and correct such non-compliance going forward. If such non-compliant precedent is the only such CTC precedent in the country, Variable B's score will be reset to the default. If there are multiple precedents, the effect of the non-compliant precedent on the Variable B score and analysis will be excluded.

This variable may also be negatively impacted by past governmental actions, the effects of which have since lapsed, that raise concerns with respect to the likelihood of governmental action in the future that adversely impacts CTC primacy in a given contracting state. Such an assessment considers the chilling effect of governmental action that indicates a willingness to provide legislative relief non-compliant with CTC requirements.

Variable C

Variable C is based on whether a contracting state is eligible for the OECD discount. A score of 5 is assigned for contracting states that are so eligible. A score of 3 is assigned to those contracting states that (i) have never been added to the list due to lack of eligibility (i.e., a failure to make qualifying declarations and/or issues in implementation of CTC), (ii) have not yet been assessed for eligibility by the OECD, or (iii) remain eligible despite one or more instances of substantial non-compliance.² In the event a score of 3 is assigned pursuant to subclause (iii) in the preceding sentence, it may be increased to a 5 following subsequent corrective measures by such contracting state adequately addressing the relevant non-compliance.

A score of 1 is assigned to those contracting states that have previously been eligible for the OECD discount but have subsequently been removed from the list due to non-compliance with CTC. Such contracting states' Variable C scores would be increased to 5 if and when the OECD reinstates such contracting state to the list following subsequent corrective measures by such contracting state adequately addressing the relevant non-compliance.

Variable D

Variable D is based on whether the government of the applicable contracting state has designated a communications channel to consult with AWG on CTC compliance matters, generally and in specific instances. Establishment of such a communications channel is assigned a score of 3, with the score increasing by up to 2 points (that is, to a score of up to 5) where it proves to be effective. In the event a contracting state declines to establish a communications channel or does not respond to AWG's request for such establishment, a score of 1 will be assigned. Once established, the score may also decrease if the communications channel proves to be ineffective. Variable D scores are adjusted in increments of 1.

² The AWG recommends an initiation of review of eligibility upon the following: (a) a decrease in variable A below 4 or (b) a decrease in variable B below 3 (unless solely attributable to a one point deduction for negative practical experience, short of an affirmative repudiation of CTC rights and remedies, in the absence of precedent). These changes would indicate legal activity, either legislative (variable A) or judicial/administrative (variable B), that strongly negatively impacts the primacy of CTC provisions in such contracting state over national law or indicates that there is legal activity that is non-compliant with such contracting state's CTC obligations. Such non-compliance would meet the standard in article 43 of the Sector Understanding on Export Credits for Civil Aircraft (ASU) for removal of a state having 'taken actions that are inconsistent with, or failed to take actions required by virtue of, that state's CTC commitments'.

The increase in score for effectiveness is determined based on a number of factors, including timeliness of responses, actual or anticipated cooperation in addressing and resolving CTC compliance matters, and extant procedures to address compliance items. The most important factor in assessing effectiveness is whether the channel has successfully been utilized to address and resolve CTC compliance issues. Without active cooperation, which may include educational efforts and development of best practices guidance, the maximum score that can be assigned to a contracting state is 4 based on anticipated cooperation from positive signalling.

Variable E

Variable E is the result of a jurisdictional analysis of legal rules and practices, other than those covered by variables A and B, 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. Variable E scores are adjusted in increments of 0.5.

Variable E is calculated by first averaging the proposed sub-indicator scores from questionnaire responses (See **DATA SOURCES**). The five sub-indicators are: (1) legal protectionism; (2) strict enforcement of contractual terms; (3) strict enforcement of new commercial laws; (4) expected timing for repossession within the aviation industry (or analogous equipment lease/finance industries, such as in shipping) outside of insolvency; and (5) expected timing for repossession within the aviation industry (or analogous equipment lease/finance industries, such as in shipping) inside of insolvency. Legal protectionism is further sub-divided into law and practice surrounding (i) foreign governing law clauses; (ii) exclusive jurisdiction of foreign courts; (iii) recognition and enforcement of foreign court judgements; and (iv) recognition and enforcement of foreign arbitral awards. Local counsel are requested, on a consensus basis, to propose a score for each sub-indicator and to provide leading court decisions that support their recommendation.

The sub-score proposed by the questionnaire responses – following detailed follow-up, including questions and requests for further information and rationale – is used as the starting point for the Variable E sub-score and may be further informed and supplemented by additional sources. (See **DATA SOURCES** and **ANALYTICAL PROCESS**).

Variable F

Variable F is an equal weighing of the following four rule of law and political risk indices, which were chosen with a primary emphasis on enforcement of law indicators, and a secondary emphasis on political and economic stability, rather than measurements relating to the form or creditworthiness of the applicable government. Indices primarily measuring institutions or indicators of participatory democracy are also excluded to the extent identifiable and severable (such as in the focus on relevant sub-factors in the World Justice Project Rule of Law Index and the Heritage Foundation Index of Economic

Freedom). The four indices were selected to represent a balanced and diversified approach to the political risk variable.

Marsh Political Risk Map

The Marsh Political Risk Map, based on data and findings from BMI Research, is an annual index that measures political and economic stability. Intended primarily for multinational companies operating in many different jurisdictions as a way to better understand political risk, the Marsh index considers short-term political risk as well, taking into account ‘a government’s ability to propose and implement policy, social stability, immediate threats to the government’s ability to rule, the risks of a coup, and more’.

Economist Intelligence Unit (EIU) – Operational Risk Model

The EIU’s Operational Risk Model assesses a country’s overall business operating risk, combining political and economic analysis with an evaluation of ground-level business conditions. The EIU relies on both qualitative and quantitative indicators to make forward-looking risk projections that extrapolate from present trends. It comprises of expert analysts working in regional teams as well as open source data from numerous international and governmental publications.

The methodology for this index is available at: http://viewswire.eiu.com/index.asp?layout=RKArticleVW3&article_id=485802032&country_id=1510000351&refm=rkCtry&page_title=Latest%20alerts.

World Justice Project Rule of Law Index – Regulatory Enforcement

The WJP Rule of Law Index is a measure of rule of law in 113 countries across eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. The compliance index uses *only the regulatory enforcement sub-factor score in the calculation of variable F in order to target the most relevant sub-factor for CTC compliance purposes*. This index engages local experts per country to respond to a detailed questionnaire as well as polling companies to conduct surveys of the general public in producing its final results.

The methodology for this index is available at: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018/methodology>.

Heritage Foundation Index of Economic Freedom – Property Rights

The Heritage Foundation’s Index of Economic Freedom measures principles of economic freedom based on 12 factors, one of which is *property rights, the sub-score used in the variable F calculations*. The property rights factor ‘assesses the extent to which a country’s legal framework allows individuals to accumulate private property freely, secured by clear laws that the government enforces effectively’ through independent experts, survey data, and open source data. Since one of the core tenets of CTC is the

recognition of various types of property rights and interests, as a measure of the extent and effectiveness of property rights, this index is relevant to the anticipated likelihood of compliance with CTC terms and intent within a particular contracting state, particularly in the absence of applicable direct precedent.

The methodology for this index is available at: <https://www.heritage.org/index/book/methodology#rule-of-law>.

Where a country was excluded from any of the above indices, the calculation of the variable F score for such country is made without reference to the missing index. Variable F scores are rounded to the nearest whole number, rounding up for any count ending in 0.5.

PRECEDENT-BASED ADJUSTMENT

A precedent-based adjustment (**PBA**) is applied to variables B, E and F when there are court cases or reported administrative action in a contracting state relating to CTC compliance, whether positively or negatively. The PBA decreases the weight (co-efficient) of variables E and F each by either 0.3, 0.5, or 0.7 and, concurrently, increases the weight (co-efficient) of variable B by either 0.6, 1, or 1.4 (each, an **PBA weight**). The PBA weights reflect the fact that the predictive value of judicial and administrative action are along a continuum, from low to high, depending on the legal rules and traditions of a contracting state and the nature and number of the decisions or actions, as more specifically noted below.

While variable B is a measure of whether existing judicial decisions and administrative action in a contracting state is compliant with CTC requirements and the degree of such compliance, the PBA weights are a measure of such decision or action's predictive value. Recognizing that there are significant differences between legal systems on the treatment and authority of judicial decisions, questionnaire respondents were asked to consider the authority and weight given to prior judicial decisions or administrative actions, including actions by the CAA as well as insolvency proceedings, in a contracting state, including the requirements for, or practice of, whether or not such decisions or actions constitute binding or persuasive precedent.

As the compliance index is forward-looking in addition to providing an accurate summary of CTC in the applicable contracting state historically, a central focus of the PBA weight consideration is on the question of how much predictive value the existing court cases and administrative practice has for determining the outcome of similar cases in the future. Factors that may affect the predictive value include (i) the doctrinal relevance of precedents in the legal system, (ii) the level of the courts rendering such precedents, (iii) whether any such cases, orders or administrative actions were reasoned, (iv) whether courts and/or administrative authorities reference prior cases and/or practice in reaching conclusions in a current case even if such prior cases and/or practice is not binding on them, and (v) the number of judicial or administrative actions.

An PBA weight of (i) 0.7/1.4 (**level III**) has been assigned in cases where the variable B precedents have a high predictive value; (ii) 0.5/1 (**level II**) has been assigned in cases where the variable B precedents have a medium predictive value; and (iii) 0.3/0.6 (**level I**) has been assigned in cases where the variable B precedents have a low predictive value.

CATEGORY OVERRIDE

In exceptional cases, the overall analysis of CTC compliance in a contracting state may not be accurately reflected in the final score calculated by the formula and the AWG secretariat reserves the right to override the categorization of such contracting state. This inaccuracy may arise as a result of variable F, which is ‘fixed’ by third party sources, or as a result of a mismatch between legal implementation (variable A) and reported precedent and experience (variable B).

Where the AWG secretariat concludes that such an inaccuracy exists, an override will be applied to the categorization of the applicable contracting state which differs from the score calculated by the formula. Such an adjustment will be expressly noted in the ‘select explanatory comments’ section of the scorecard and so noted on the public version of the compliance index.

DATA SOURCES

For the three variables that require legal facts and analysis – variables A, B, and E – the AWG secretariat developed a questionnaire, the template of which is available to users of the proprietary scorecard version, and requested *consensus responses* from multiple law firms involved in aviation finance in each contracting state. To the extent possible, the foremost legal experts in the field of aviation law in each country were selected, drawing from recommendations from experienced industry leaders in both aviation finance and aircraft leasing. In [32] countries, AWG relied on the national contact groups that it has established.

There are [11] countries for which AWG was unable to locate or secure sufficient local expertise. These contracting states will remain unscored until responses are secured from at least two firms meeting high expertise requirements in the subject area.

Other sources of data considered are (1) AWG’s direct experience, and those of its members, in working with CAAs and other government offices in connection with the exercise of CTC rights and remedies, (2) the views of the Executive Committee of its Legal Advisory Panel, (3) Pillsbury’s World Aircraft Repossession Index, (4) surveys of existing literature, and (5) other input from legal practitioners.

AWG assessed all of the above data and information objectively, without consideration of commercial or political factors.



ANALYTICAL PROCESS

For variables A, B and E, questionnaire responses were rigorously reviewed at multiple levels, including in follow-up calls with respondents seeking clarification or elaboration on the written responses. AWG also conducted reviews of cited primary source materials to the extent possible, subject to practical linguistic limitations. Data on experience with CTC compliance in contracting states were also solicited from and shared by leading actors in the aviation finance and leasing industries.

For variable D, the AWG secretariat sent a formal letter to the director of each contracting state's CAA explaining the compliance index and requesting the establishment of a communications channel. The template for that letter is available to users of the proprietary scorecard version. All contracting states that positively responded to the request were given a provisional score of 3, and, in the months prior to the initial publication of the compliance index, AWG maintained communications in order to further refine the variable D score based on effectiveness of the communications channel established. AWG will continue to monitor and utilize such communications channels and adjust scoring, positively or negatively.

After critical examination of the questionnaire responses and other data sources, the AWG secretariat created a draft scorecard for each contracting state for which data meeting AWG's standards was available. Such drafts were shared for review by, and reasoned comment from, AWG membership and the Executive Committee of AWG's Legal Advisory Panel.

SEMI-ANNUAL UPDATES

Updates to the compliance index will be published semi-annually in February and August. The February update will also contain updated calculation for variable F based on the annual update schedule for each of the underlying indices. A shortened form of the initial questionnaire will be sent those completing this initial questionnaire, requesting the confirmation of the existing information and/or updates to reflect changes since the previous update or interim adjusted scoring. The semi-annual updates will review and potentially adjust all six variables. The analysis and assessment process will be the same as the one followed for the initial questionnaire, as set forth above.

INTERIM MATERIAL DEVELOPMENTS: CTC COMPLIANCE WATCH LIST AND ADJUSTED SCORING



In addition to the semi-annual updates, the compliance index will be kept current through the use of a CTC Compliance Watch List and, eventually, adjusted or confirmed scoring issued when material developments lead to a re-assessment of variables A, B, C, D or E. This could be due to a change in law (variable A), a new judicial or administrative action (variable B), a contracting state being added or removed from the OECD discount list (variable C), a contracting state establishing a communications channel (variable D) or a material change in relevant jurisprudence outside of CTC (variable E). Once the material development has been reported to AWG (in the cases of variables A, B and E) or has occurred (in the cases of variables C and D), the applicable contracting state will be placed on the CTC Compliance Watch List, which will signal to users of all versions of the compliance index that the stated compliance index score does not reflect ongoing material developments and should therefore be viewed with additional caution. An initial notice that a contracting state has been placed on the CTC Compliance Watch List will also provide an outlook on CTC compliance based on the most recent relevant material developments (i.e., if a non-compliant court order has been issued, but is being appealed, a contracting state will be placed on the CTC Compliance Watch List with a negative outlook).

Once a contracting state is placed on the CTC Compliance Watch List, AWG will closely monitor ongoing developments and issue reports on a bi-weekly basis with fact-based, events-driven updates for such bi-weekly period. Such bi-weekly reports will only be available to users with access to the proprietary scorecards. While a contracting state is on the CTC Compliance Watch List, its score will remain static until such AWG makes a final determination regarding the impact of the totality of the developments on scoring. Once AWG has sufficient information such that a scoring determination can be determined, either by way of adjustment or confirmation, the analysis and assessment will follow the process set forth above and either a notice of score adjustment or score confirmation will be issued. Upon such score adjustment or score confirmation, the contracting state will be removed from the CTC Compliance Watch List and its adjusted or confirmed score will be reflected in all versions of the compliance index.



DISCLAIMER

The compliance index is based on information made available to the Aviation Working Group by counsel in contracting states. No responsibility, duty, or liability is accepted by the Aviation Working Group (or any of its members or its legal counsel) or any such counsel to any person regarding this summary or the information provided herein or omitted, which may contain errors. No person is permitted to rely on any part of the compliance index. Instead, parties should retain their own counsel.

The compliance index assumes the applicability of CTC to relevant transactions in contracting states and does not reflect the effects of unfavourable declarations by a contracting state or risks that may be introduced by way of contractual agreement among contract parties. Please see the Aviation Working Group's national implementation summaries for additional information on declarations by contracting states, available on the Aviation Working Group website.

READING THE SCORECARD – SAMPLE SCORECARD & COMPONENTS



CTC Compliance Index – Country XYZ Scorecard

Final Score, rounded to the nearest half number

MADE QUALIFYING DECLARATIONS:

Whether OECD qualifying declarations have been made

YES

SCORE

72.5

CATEGORY

MEDIUM

PRECEDENT-BASED ADJUSTMENT
(increasing the weight of variable B, and decreasing the weights of variables E and F, at levels I, II, or III* based on the predictive value of court cases or reported administrative action)

Whether, and which, PBA weight has been applied

YES – level II

VARIABLE RESULTS BREAKDOWN

A	B	C	D	E	F
3.5	4	3	5	3	2.5

Likelihood of compliance with CTC obligations. May be subject to an override

Select explanatory comments:

CTC prevails over conflicting national law; however, additional rules and regulations are required to comprehensively implement CTC or enhance clarity and predictability. There is precedent with outcomes that are substantially compliant with the terms and intent of CTC and such precedent has medium predictive value for the outcome of future cases with similar facts. The CAA has established a communications channel with AWG, and work on CTC issues has been effective and efficient.

Explanatory comments on variables A, B, C and D (see attached glossary)

Practical actions that increase would score:

Enact IDERA recordation and enforcement regulations.

Sub-scores for each variable

* / Level I corresponds to a low predictive value; Level II corresponds to a medium predictive value; Level III corresponds to a high 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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Suggested practical actions, if any, that the contracting state can take to increase its overall score

READING THE SCORECARD – GLOSSARY OF EXPLANATORY COMMENTS PHRASES

‘CTC prevails over conflicting national law and is comprehensively implemented through legislation, rules and regulations.’

Denotes that both primacy and completeness are satisfied. This requires both that CTC obligations takes precedence over any and all conflicting national laws, whether by way of express legislation or other legal principles, and that the rules and regulations, particularly within the CAA, conform to CTC requirements to avoid non-compliant outcomes as a result of regulatory gaps or ambiguity. If CTC is translated into the official language of the contracting state, this comment would also indicate that such translation is accurate and complete. This comment corresponds to a score of 5 for variable A.

‘CTC prevails over conflicting national law and [specific areas where regulations have been enacted] regulations have been enacted but questions remain as to its clarity and predictability.’

Denotes that primacy is satisfied, but certain rules and regulations are sufficiently ambiguous so as to require additional interpretation and/or developed practice in order to assess degree of completeness satisfaction. As such additional interpretation or practice is developed and applied by relevant governmental entities, an assessment of the same will be undertaken and the variable A score increased or decreased according to the level and consistency of CTC compliance. This comment corresponds to a score of 4.5 for variable A.

‘CTC prevails over conflicting national law but there are translation errors in the implementing legislation or regulations that may negatively impact CTC compliance.’

Denotes that primacy is satisfied, but completeness is impaired by errors in translation. This comment corresponds to a score of between 4 to 4.5 for variable A depending on the substantive impact of the mistranslation.

‘CTC prevails over conflicting national law; however, additional rules and regulations [are][may be] required to comprehensively implement CTC or enhance clarity and predictability.’

Denotes that primacy is satisfied, but gaps exist in completeness of implementing rules and regulations. This indicates that, while primacy is achieved, there are regulatory gaps or ambiguities that may lead to lack of consistent compliance with CTC (for example, gaps or inconsistencies in export regulations that require the

	<p>importer of record to be involved in the export process). This comment corresponds to a score of between 3 to 4.5 for variable A.</p>
<p>‘CTC [does][may] not prevail over conflicting national law. Such conflicts do not exist for [specific areas where regulations have been enacted] as [Contracting State] has enacted the required civil aviation rules and regulations, but are present in other areas, [name key areas where conflicts continue to exist].’</p>	<p>Denotes that primacy is not satisfied or that there is considerable ambiguity about whether primacy is satisfied, but completeness is partially satisfied. Identifies areas where completeness exists and key areas where completeness does not. This comment indicates that CTC obligations do not take full precedence over conflicting national laws and notes areas where legislation or regulations exist, such that in those specific areas, CTC would prevail. It also notes specific, key areas where CTC obligations are weakened or rendered ineffective by conflicting national laws. This comment corresponds to a score of between 1.5 to 3 for variable A.</p>
<p>‘CTC [does][may] not prevail over conflicting national law. Legislation, rules and regulations are required to properly implement CTC in all aspects.’</p>	<p>Denotes that neither primacy nor completeness are satisfied. CTC compliance may be severely impeded by conflicting national laws. This comment corresponds to a score of 1 for variable A.</p>
<p>‘The remedy of deregistration [and export] requires documents in the exclusive control of the airline.’</p>	<p>Denotes that the IDERA enforcement regulations stipulate a requirement for one or more documents (such as an original certificate of registration) that is typically within the sole control of the airline and the airline is not required by law to provide such documents. This may be problematic in a default scenario where the lessee is unwilling or unable to cooperate with the IDERA holder in the exercise of the IDERA and is not compliant with CTC’s IDERA provision. This comment corresponds to a decrease of up to 1 in the scoring for variable A.</p>
<p>‘There is [judicial][administrative] precedent with outcomes that are substantially compliant with the terms and intent of CTC ([Case Citation]).’</p>	<p>Denotes the existence of precedent correctly applying CTC, leading to substantially compliant outcomes. This can include, without limitation, judicial decisions, action by the CAA, or action in bankruptcy proceedings by appointed bankruptcy</p>

trustees/receivers. This does not mean that all aspects of CTC have been tested in court or administrative proceedings (i.e. if there are cases of IDERA enforcement that are CTC-compliant, this comment would apply, even in the absence of cases having to do with other key aspects of CTC such as Alternative A or liens and detention rights). Where judicial or administrative precedent is specified, only the specified type of precedent exists. Where it is not specified, both types of precedent exist. This comment corresponds to a score of between 4 to 5 for variable B.

‘There is [judicial][administrative] precedent with outcomes that are substantially compliant with the terms and intent of CTC ([Case Citation]) but not in all cases ([Case Citation]).’

Denotes the existence of inconsistent precedents in the enforcement and application of CTC. This comment is used where judicial and/or administrative precedents are inconsistent in their compliance with CTC. This may arise where there are conflicting outcomes on the same CTC requirement (such as IDERA enforcement) or where there are substantially compliant outcomes in one area (i.e. IDERA enforcement) but non-compliant outcomes in another area (i.e. liens and detention rights). Where judicial or administrative precedent is specified, only the specified type of precedent exists. Where it is not specified, both types of precedent exist. This comment corresponds to a score of between 1.5 to 4 for variable B.

‘There is [judicial][administrative] precedent with outcomes that have mixed results relating to compliance with the terms and intent of CTC ([Case Citation]).’

Denotes the existence of precedents which are inconsistent in their compliance with CTC. This may arise where a case correctly applies CTC on one or more issues but not others, so that some outcomes are substantially compliant with CTC terms and intent and others are not. An example may be applying repossession or de-registration, but not export, rules in accordance with CTC. Where judicial or administrative precedent is specified, only the specified type of precedent exists. Where it is not specified, both types of precedent exist. This comment corresponds to a score of between 1.5 to 4 for variable B, based on the overall outcome.

<p>‘There is [judicial][administrative] precedent with outcomes that are substantially non-compliant with the terms and intent of CTC ([Case Citation]).’</p>	<p>Denotes the existence of precedent incorrectly applying CTC, leading to substantially non-compliant outcomes. Where judicial or administrative precedent is specified, only the specified type of precedent exists. Where it is not specified, both types of precedent exist. This comment corresponds to a score of between 1 to 3 for variable B.</p>
<p>‘such precedent has high predictive value for the outcome of future cases with similar facts.’</p>	<p>Denotes that the existing precedent has high predictive value, based on an assessment of predictive value factors.</p>
<p>‘such precedent has medium predictive value for the outcome of future cases with similar facts.’</p>	<p>Denotes that the existing precedent has medium predictive value, based on an assessment of predictive value factors.</p>
<p>‘such precedent has low predictive value for the outcome of future cases with similar facts.’</p>	<p>Denotes that the existing precedent has low predictive value, based on an assessment of predictive value factors.</p>
<p>‘There is no precedent addressing CTC-related matters. There has been positive practical experience on CTC issues.’</p>	<p>Denotes a lack of precedent on CTC matters and reported positive practical experience. This experience can include, without limitation, CAA staff who are knowledgeable about CTC requirements and open to working constructively to resolve any compliance-related issues. This can also include signalling from other relevant governmental entities that they are knowledgeable about and willing to comply with CTC requirements. This comment corresponds to a score of between 3 to 4 for variable B.</p>
<p>‘There is no precedent addressing CTC-related matters. There has been negative practical experience on CTC issues.’</p>	<p>Denotes a lack of precedent on CTC matters and reported negative practical experience. This experience can include, without limitation, CAA staff who are unfamiliar with CTC requirements and uninterested in working constructively to resolve any compliance-related issues. This can also include signalling from other relevant governmental entities that they may not be willing</p>

	to fully comply with CTC requirements. This comment corresponds to a score of between 1.5 to 2.5 for variable B.
'[Country] is and should remain eligible for the OECD discount.'	Denotes that the country is currently eligible for the OECD discount and there has not been a case of substantial non-compliance with CTC that would warrant a review of such country's eligibility. This comment corresponds to a score of 5 for variable C.
'[Country] is eligible for the OECD discount, after taking subsequent corrective action following one or more instances of substantial non-compliance.'	Denotes that the country is currently eligible for the OECD discount and that there has been one or more cases of substantial non-compliance with CTC warranting review of eligibility that has since been rectified by subsequent corrective action. This comment corresponds to a score of 5 for variable C.
'[Country] is eligible for the OECD discount, having been reinstated after taking subsequent corrective action following one or more instances of substantial non-compliance.'	Denotes that the country is currently eligible for the OECD discount after having been reinstated after removal for one or more cases of substantial non-compliance with CTC due to subsequent corrective action. This comment corresponds to a score of 5 for variable C.
'[Country] is eligible for the OECD discount, but further action is required to fully implement CTC.'	Denotes that the country is currently eligible for the OECD discount, but certain gaps have been identified that may negatively impact upon CTC compliance (such as a lack of comprehensive or clear regulations). This comment corresponds to a score of 5 for variable C but flags that the score may be re-evaluated if no action is taken.
'[Country] is not eligible for the OECD discount as it has not made the qualifying declarations.'	Denotes that the country is not currently eligible for the OECD discount because it has not made the qualifying declarations. This comment corresponds to a score of 3 for variable C.

<p>'[Country] is not eligible for the OECD discount due to certain issues in its implementation of CTC.'</p>	<p>Denotes that the country is not currently eligible for the OECD discount despite having made the qualifying declarations because of issues in implementation. This comment corresponds to a score of 3 for variable C.</p>
<p>'[Country] is not eligible for the OECD discount as it is awaiting initial review by the OECD.'</p>	<p>Denotes that the country is not currently eligible for the OECD discount, but it has made the qualifying declarations and is awaiting initial OECD review. This comment corresponds to a score of 3 for variable C.</p>
<p>'[Country] remains eligible for the OECD discount despite one or more instances of substantial non-compliance with CTC.'</p>	<p>Denotes that the country is currently eligible for the OECD discount, but has 'taken actions that are inconsistent with, or failed to take actions required by virtue of, that state's CTC commitments' per article 43 of the Sector Understanding on Export Credits for Civil Aircraft (ASU). This comment corresponds to a score of 3 for variable C.</p>
<p>'[Country] has been removed from eligibility for the OECD discount due to one or more instances of substantial non-compliance with CTC.'</p>	<p>Denotes that the country is not currently eligible for the OECD discount because it has been removed from such eligibility due to one or more cases of substantial non-compliance with CTC. This comment corresponds to a score of 1 for variable C.</p>
<p>'The government has established a communications channel with AWG.'</p>	<p>Denotes the establishment of a communications channel, which has not yet been tested for efficacy. This comment corresponds to a score of 3 for variable D.</p>
<p>'The government has established a communications channel with AWG, and work on CTC issues has been effective and efficient.'</p>	<p>Denotes the establishment of a communications channel, which has proven effective and efficient at addressing and resolving CTC issues. This comment corresponds to a score of 4 or 5 for variable D.</p>
<p>'The government has established a communications channel with AWG, but</p>	<p>Denotes the establishment of a communications channel, which has not proven effective and efficient at addressing and resolving</p>

<p>work on CTC issues has not been effective and efficient.’</p>	<p>CTC issues. This comment corresponds to a score of 2 for variable D.</p>
<p>‘The government has not established a communications channel with AWG.’</p>	<p>Denotes the lack of a communications channel, where the government has not responded to the AWG request or has declined to establish a communications channel per such request. This comment corresponds to a score of 1 for variable D.</p>
<p>‘A category override has been applied.’</p>	<p>Denotes the application of an override to the category due to a mismatch between the overall analysis of CTC compliance and the calculated score. The final score will remain untouched to give users the most amount of information while still signalling AWG’s overall determination on the most appropriate categorization for the contracting state.</p>
