



## ASSEMBLY — 41ST SESSION

### LEGAL COMMISSION

#### Agenda Item 43: Other issues to be considered by the Legal Commission

#### COMPETENCY FRAMEWORK FOR CIVIL AVIATION LEGAL ADVISERS

(Presented by Singapore and co-sponsored by the Member States of the African Civil Aviation Commission<sup>1</sup>, Australia, Bahamas, Brazil, Finland, Guyana, North Macedonia, Oman)

#### EXECUTIVE SUMMARY

The competency framework is designed to assist civil aviation authorities and their equivalents in the recruitment, training and professional development of civil aviation legal advisers so as to strengthen and enhance their competencies, capabilities and capacities for supporting their organizations and States in carrying out regulatory and other functions, in particular, in the areas of aviation safety and security oversight, aviation environmental protection, the implementation of air law treaty obligations and the updating of national laws and regulations.

**Action:** The Assembly is invited to:

- a) note the competency framework introduced in this paper and set out in the **Appendix**;
- b) encourage States to consider the competency framework set out in the **Appendix** for the recruitment, training and professional development of their civil aviation legal advisers and their equivalents.

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal and External Relations Services.
<i>Financial implications:</i>	None.
<i>References:</i>	Doc 10132, <i>Assembly 40th Session, Montréal, 24 September – 4 October 2019, Plenary Meetings Minutes</i> Doc 10140, <i>Assembly Resolutions in Force</i> (as of 4 October 2019) (A40-28: Consolidated statement of continuing ICAO policies in the legal field (Appendix G))

<sup>1</sup> Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

## 1. BACKGROUND

1.1 At the 40th Session of the ICAO Assembly (Montréal, 24 September to 4 October 2019), the Assembly adopted a resolution on “Enhancing the capacity and effectiveness of States to implement air law treaties and update national laws and regulations”.

1.2 In this resolution, the Assembly:

- a) recalled the important role of law (especially air law) for the achievement by ICAO of its aims and objectives and for ICAO, Member States and the aviation industry to respond effectively to new and emerging opportunities, challenges and threats to the development of international civil aviation;
- b) recognized that Member States must ensure that appropriate legislation and regulations are formulated to implement, and are applied in accordance with, the Chicago Convention, relevant air law instruments and ICAO provisions;
- c) affirmed the important role that civil aviation legal advisers and air law practitioners play in supporting their States and Organizations to implement air law treaties, to formulate and update national laws and regulations to give effect to national policies and regulatory requirements, and to contribute to adherence to the rule of law;
- d) considered that legal advisers must continuously update and enhance their competencies, capabilities and capacities to effectively carry out their responsibilities; and
- e) requested the Secretary General to assist Member States in achieving and maintaining the appropriate competency of civil aviation legal advisers including through developing a competency framework for strengthening their role.

1.3 Since the 40th Session of the Assembly, the civil aviation legal advisers of Member States have been called upon to, and have given priority and devoted efforts to the support of their States and organizations to develop and implement policies and measures to address the COVID-19 pandemic and to protect the health and safety of crew, airport staff/workers, passengers and the aviation community. Many of these legal advisers have shared and exchanged information on the developments and related issues and challenges faced through an informal virtual Civil Aviation Legal Advisers Exchange (CALEx).

1.4 In 2022, a number of these legal advisers met informally to share and develop the competency framework for enhancing their competencies, capabilities and capacities to effectively carry out their responsibilities in support of their States and organizations.

## 2. COMPETENCY FRAMEWORK

2.1 In developing the competency framework, the legal advisers took various considerations into account, including the following:

- a) the more common functions and responsibilities of civil aviation authorities (CAAs) and their equivalents, such as aviation safety and security oversight and regulation, air services negotiations and air traffic rights allocation, formulation and updating of national laws and regulations to give effect to ICAO Standards and

Recommended Practices (SARPs) and national policies and regulatory requirements, regulatory enforcement, implementation of air law treaties and representing their respective State and/or organization and participating in the ICAO Legal Committee and/or its sub-committees, working groups or other groups and other fora at international, regional or national level on work in the legal field;

- b) the additional functions and responsibilities of some CAAs and their equivalents, such as airline and airport economic regulation (including slots and competition regulation), airport development, management and operation, air navigation services provision, aviation related environmental protection regulation, aircraft accident and incident safety investigation, consumer protection and civil aviation training;
- c) in order to be able to support their States and organizations to implement air law treaties, to formulate and update national laws and regulations, to support regulatory oversight activities and to contribute to adherence to the rule of law, it is essential that each legal adviser must be a qualified lawyer, holding a law degree (which need not be an aviation law degree) or equivalent professional qualification and acquires relevant and sufficient knowledge and competencies in air law and other relevant laws, including through on-the-job training, research and work and attending ICAO seminars and workshops, the ICAO International Air Law Course, the Civil Aviation Legal Advisers Forum (CALAF) and other similar events and courses; and
- d) it is essential for the legal advisers to not only know the relevant law and treaties and/or be able to acquire such knowledge and the related experience but also the various aviation regulatory and operational domain areas and contexts.

2.2 The proposed competency framework discussed to date is set out in the **Appendix**. This proposal offers a practical start on collaboratively enhancing the competencies, capabilities and capacities of civil aviation legal advisers so that they may more effectively support their States and organizations to implement air law treaties, to formulate and update national laws and regulations to give effect to national policies and regulatory and compliance requirements, and to contribute to adherence to the rule of law as mentioned above. Gathering of best practices on identifying, developing and/or implementing the competency requirements as practised in various States will continue. The framework may be reviewed and updated at appropriate junctures (at relevant editions of the CALAF or Sessions of the ICAO Legal Committee) to remain relevant and current through efforts which may be led by the Chair- and Vice-Chair persons of the ICAO Legal Committee, with such support as may be available from the ICAO Legal Affairs and External Relations Bureau.

### 3. CONCLUSION

3.1 The competency framework is designed to assist CAAs and their equivalents in the recruitment, training and professional development of civil aviation legal advisers so as to strengthen and enhance their competencies, capabilities and capacities for supporting their organizations and States in carrying out regulatory and other functions, in particular, in the areas of aviation safety and security oversight, the implementation of air law treaty obligations and the updating of national laws and regulations. To this end, the Assembly is invited to encourage States to consider the competency framework set out in the **Appendix**.

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**APPENDIX**

**COMPETENCY FRAMEWORK  
For Civil Aviation Legal Advisers**

<b>Objective</b>	To assist civil aviation authorities and their equivalents in the recruitment, training and professional development of civil aviation legal advisers so as to strengthen and enhance their competencies, capabilities and capacities for supporting their organizations and States in carrying out regulatory and other functions, in particular, in the areas of aviation safety and security oversight, aviation environmental protection, the implementation of air law treaty obligations and the updating of national laws and regulations.
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**Part I**

<b>KNOWLEDGE COMPETENCIES IN MORE COMMON CAA AREAS OF RESPONSIBILITY</b>		
<b>AREAS OF RESPONSIBILITY</b>	<b>LEGAL KNOWLEDGE</b>	<b>CONTEXT KNOWLEDGE (NOT SPECIFICALLY LEGAL)</b>
Aviation Safety Oversight and Regulation	Chicago Convention (CC) All CC Annexes (except Annexes 9 and 17) National/State safety oversight legislation	ICAO Safety Oversight System ICAO Universal Safety Oversight Audit Programme (USOAP) and Continuous Monitoring Approach (CMA) ICAO State Safety Programme Implementation Assessment (SSPIA) State Safety Programme (SSP) Accident & Incident Investigation
Aviation Security Oversight and Regulation	Chicago Convention (CC) CC Annexes 9 and 17 Aviation Security Treaties National aviation security oversight legislation	ICAO Security Oversight System ICAO Universal Security Audit Programme (USAP) and Continuous Monitoring Approach (CMA) ICAO Facilitation Guidance
Air Services Negotiations and Air Traffic Rights Allocation	Chicago Convention (CC) International Air Services Transit Agreement International Air Transport Agreement	ICAO Policy on the Economic Regulation of International Air Transport

	Air Services Agreements National legislation (on air traffic rights and slots allocations etc)	National Policies on Air Traffic Rights and Airport Slots Allocations
Aviation Economic Regulatory Responsibility	Chicago Convention (CC) ICAO Compendium on Competition Laws and Regulations National & other relevant legislation	ICAO Policy on the Economic Regulation of International Air Transport
Aviation Environmental Regulatory Responsibility	Chicago Convention (CC) CC Annex16	ICAO Policies on Climate Change and Aviation Emissions, CORSIA, Aircraft Noise, Local Air Quality
National Legislation to give effect to ICAO Standards and Recommended Practices (SARPs) and National Regulatory Requirements	Chicago Convention (CC) All CC Annexes National Constitution and Other Laws National Law-Making Norms and Processes	National Legislation-Making Processes National Constitutional Processes (as relevant)
Regulatory Enforcement, including criminal enforcement and administrative sanction processes (as appropriate)	Regulatory and Criminal Investigation Enforcement Legislation and Processes	Administrative Law Process Criminal Process Appeal Process
Air Law Treaties, including - Treaty-Making - Implementation	All ICAO Treaties Vienna Convention on the Law of Treaties ICAO Legal Committee ICAO Treaty-Making Process Accession / Ratification Process National Constitution and Other Laws	ICAO's Organisational Set-Up ICAO's Treaty Depository Processes National Accession / Ratification processes
Representing State and CAA - at ICAO, including Legal Committee - at other International, Regional or National Level Forum	Chicago Convention ICAO Treaties Regional and National Treaty-Making Process ICAO Assembly Rules of Procedure ICAO Legal Committee Constitution & Rules of Procedure	ICAO's Organisational Set-Up at HQ and Regional Office (as relevant) Relevant Regional & National Bodies' Structures and Functions

Civil Aviation Authority (CAA) Internal Governance & Legal Compliance	Delegation of Statutory Powers Conflict of Interest Management	Relevant CAA Guidance / Standard Operating Procedures CAA's Mission, Vision and Values
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**Part II**

<b>KNOWLEDGE COMPETENCIES IN SOME ADDITIONAL AREAS OF RESPONSIBILITY</b>		
<b>AREAS OF RESPONSIBILITY</b>	<b>LEGAL KNOWLEDGE</b>	<b>CONTEXT (<i>NOT SPECIFICALLY LEGAL</i>) KNOWLEDGE</b>
Aerodrome Operation (Service Provider)	Chicago Convention (CC) CC Annexes 9, 14 and 17 National legislation Aerodrome Certification	Aerodrome Manual Aerodrome Operations Aerodrome Safety Facilitation Airport Security
Air Navigation Services (ANS) Provision (Service Provider)	Chicago Convention (CC) CC Annexes 1, 3, 4, 10, 11, 12 and 15	ICAO PANS-ATM, PANS-AO and Regional Supplementary Procedures ANS Infrastructure, Systems, Operations and Management, and related Procurement and Maintenance Flight Information Region(s) Relevant Manuals
Search and Rescue (SAR) Coordination	Chicago Convention (CC) CC Annexes 9 and 12 National legislation	IAMSAR Manuals ICAO SAR Region(s)
Aircraft Accident & Incident Investigation	Chicago Convention (CC) CC Annex 13 National legislation	ICAO Guidance
Competition Regulation	National Competition Laws Applicable Regional Competition Regulations	ICAO Compendium on Competition Laws and Regulations

**Part III**

<b>KEY LEGAL SKILLS COMPETENCIES</b>	
<b>CATEGORY / TYPE</b>	<b>EXAMPLES</b>
Legal Drafting	<ul style="list-style-type: none"> <li>• Drafting opinions / advice and other legal documents for carrying out the CAA’s responsibilities which include —               <ul style="list-style-type: none"> <li>▪ Legislation or regulations</li> <li>▪ Regulatory instruments such as licences and directives</li> <li>▪ Multilateral/Bilateral treaties, agreements or MOUs</li> <li>▪ Documentation for hearings, trials or other regulatory proceedings</li> </ul> </li> </ul>
Legal Research and Analysis	<ul style="list-style-type: none"> <li>• Identifying legal issues and/or decision(s)</li> <li>• Applying laws and/or treaties (and/or case law / precedent decisions)</li> <li>• Statutory and/or treaty interpretation and application</li> <li>• Identifying and analysing legal solutions and options</li> <li>• Factoring in legal risks and compliance requirements (where relevant)</li> </ul>
Treaty Negotiation	<ul style="list-style-type: none"> <li>• Advocacy and Negotiation</li> <li>• Diplomacy and Engagement</li> <li>• Application of Rules of Procedure of relevant forum (where relevant)</li> </ul>
Advocacy (in hearings, trials or other regulatory proceedings)	<ul style="list-style-type: none"> <li>• Assembling evidence and relevant documentation</li> <li>• Witness preparation</li> <li>• Preparing submissions &amp; experts</li> <li>• Presenting of case in court / before a tribunal</li> </ul>
Dispute Resolution	<ul style="list-style-type: none"> <li>• Assessing dispute resolution options</li> <li>• Dispute negotiation</li> <li>• Dispute settlement</li> <li>• Related public communications (where relevant)</li> </ul>