

HFW



HFW & AsBAA SURVEY: ILLEGAL CHARTER
ARE ILLEGAL CHARTERS HARMING ASIA PACIFIC BUSINESS AVIATION?

HFW AND AsBAA

HFW and the Asian Business Aviation Association (AsBAA) have partnered to conduct a survey of the AsBAA membership in relation to the illegal charter of business jets across the Asia Pacific region.

HFW is a sector focused international law firm with a pre-eminent global specialist aviation practice, having been at the forefront of legal developments in this sector for nearly four decades. Our clients are drawn from all spheres of the aerospace industry and our team is one of the largest and most dedicated to the sector of any international law firm. This prominent position is widely recognised by the independent legal directories (Chambers and Legal 500), who routinely rank us as a top tier Aviation practice.

AsBAA is a non-profit association representing business and general aviation entities based in Asia and around the world. AsBAA members include: major operators, aircraft manufacturers, aviation service providers, finance and insurance providers. AsBAA's members obtain support with operational challenges and in turn, also support the greater advancement and development of the business and general aviation industry in Asia.

We hope that you find our survey findings of interest, and we look forward to receiving any comments which you may have on the results.



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EXECUTIVE SUMMARY

In this survey we focus on illegal charters in Asia Pacific (APAC), the damage they may be causing to the industry, as well as the response to the issue from the regulators. Similar surveys have been conducted previously, such as in the United States by the National Air Transportation Association (NATA); but this survey represents the first attempt to capture industry opinion and perception in the APAC region.

The clear view from our respondents is that illegal charters are causing significant damage to the industry, and that regulators could be doing more to prevent them. This is evidenced by 71% of respondents stating that their business has

been negatively impacted by illegal charter operations and 90% believing that local regulators are not doing enough to address the issue.

Significant problems are perceived in relation to reporting illegal charters, with no mechanism for reporting existing in many jurisdictions. Respondents also felt that it was sometimes difficult to prove with evidence that a flight was being operated illegally despite suspicions existing. Barriers do, therefore, exist in relation to fixing the problem of illegal charter in APAC. Worryingly the majority of respondents believe that illegal charters will increase due to the impact of COVID-19 on business jet operations.



BACKGROUND

What is an illegal charter?

Although the detail of the regulations relating to public and private flights is complicated and varies according to jurisdiction, in general terms the basic rule is straightforward. If an aircraft is operated privately, it should not be used for commercial (public transport) flights, unless an exemption applies. Accordingly, subject to any relevant exemptions, if a passenger provides valuable consideration (whether by paying money or providing some other benefit) to fly on an aircraft, that constitutes public transport and the operator needs an air operator's certificate (AOC), or a Part 135 certificate under the US Federal Aviation Regulations. Failure to do so results in an illegal charter, and may either be deliberate or inadvertent.

Illegal operators face a number of substantial exposures. These include regulatory penalties, damage to reputation, and possible repossession of the aircraft by a finance lessor for breach of covenant. In addition, in the event of an incident or serious accident, insurance cover will very likely be invalidated by the illegal activity, and the operator will be directly exposed to significant damages for death, personal injury or ground damage.

Why are illegal charters harming the industry?

The clear loser as a result of illegal charter operations are those legitimate operators who have invested significant time and resources in obtaining an AOC or Part 135 certificate. Illegal charter distorts the market, as it evades the high regulatory compliance costs of legal air operations, including proper training and insurance. It also exposes legitimate charter operators to reputational risks, being tarred by the same brush when it comes to negative coverage of accidents or enforcement action incurred by illegal operators.

In recent years, the question of illegal charter (whether in breach of regulations or simply facilitating criminal purposes) has been at the forefront of some serious and high profile incidents.

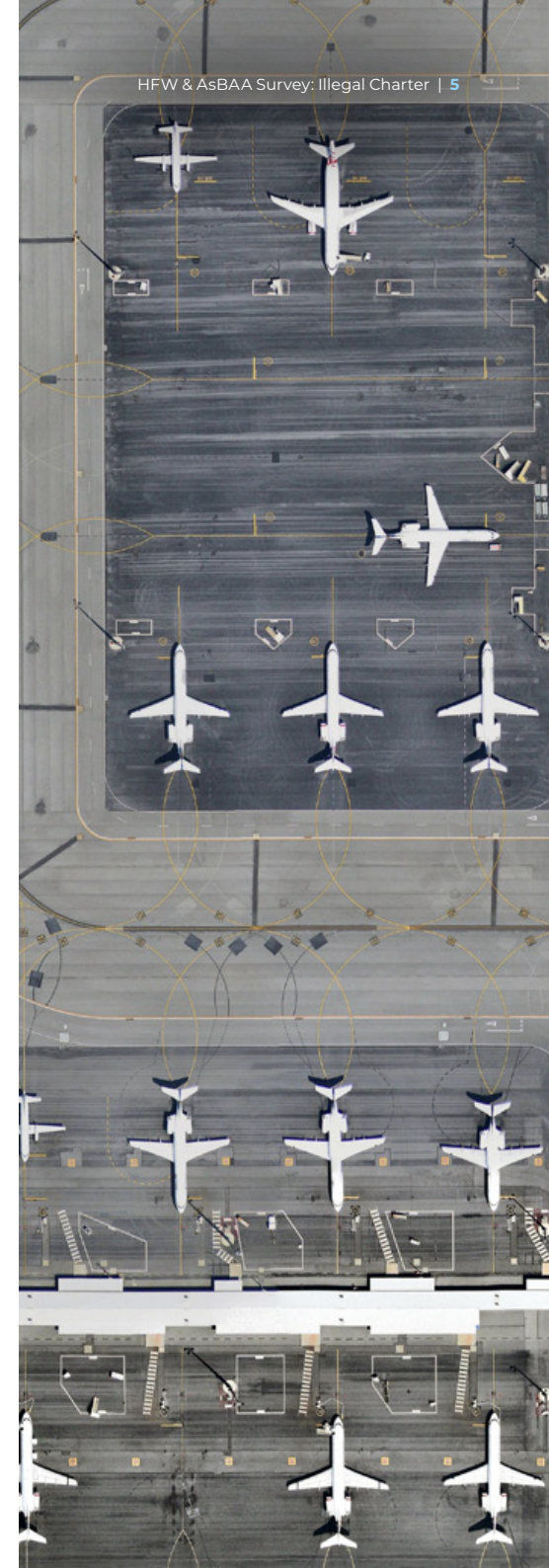
In less dramatic instances, illegal charters affect the bottom-line of legitimate operators who comply with regulations and who have incurred expenses to ensure compliance and to apply for the appropriate licenses and certification. Operators who are flying illegally impact the financial viability of the entire industry.

From a passenger perspective, flights conducted by the holder of an AOC or Part 135 certificate provide an additional level of operational safety, such as more stringent training requirements for pilots, and stricter maintenance standards. Illegal charter operators may not meet those standards, and will likely have far less safety oversight. This emphasises the need for passengers to undertake proper due diligence on the operator, or to use a professional air charter broker.

Insufficient regulatory attention

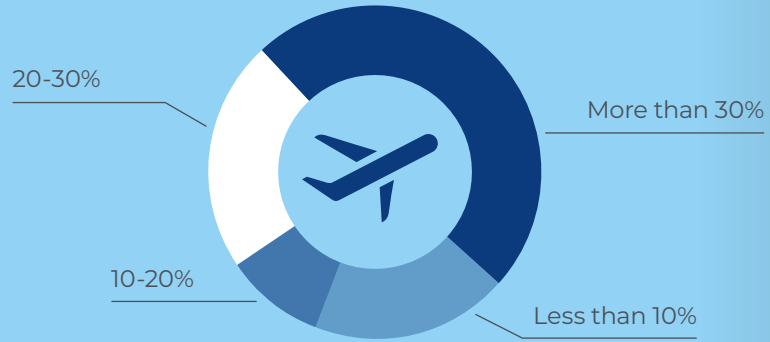
Almost universally, respondents to the survey said that local aviation regulators are not doing enough to combat illegal charter.

While some regulators are now actively involved in combating illegal operations, more could certainly be done by others, particularly in Asia. This not only requires sufficient resources, but also priority and effort. Three quarters of respondents felt that the existing penalties for illegal charter are insufficient. They need to be genuinely punitive if they are to act as a deterrent. Other measures may also need to be taken, such as revoking the licences of pilots involved in illegal charter, or reporting illegal operations to tax authorities for prosecution of non-payment of taxes and possible seizure and sale of the aircraft.

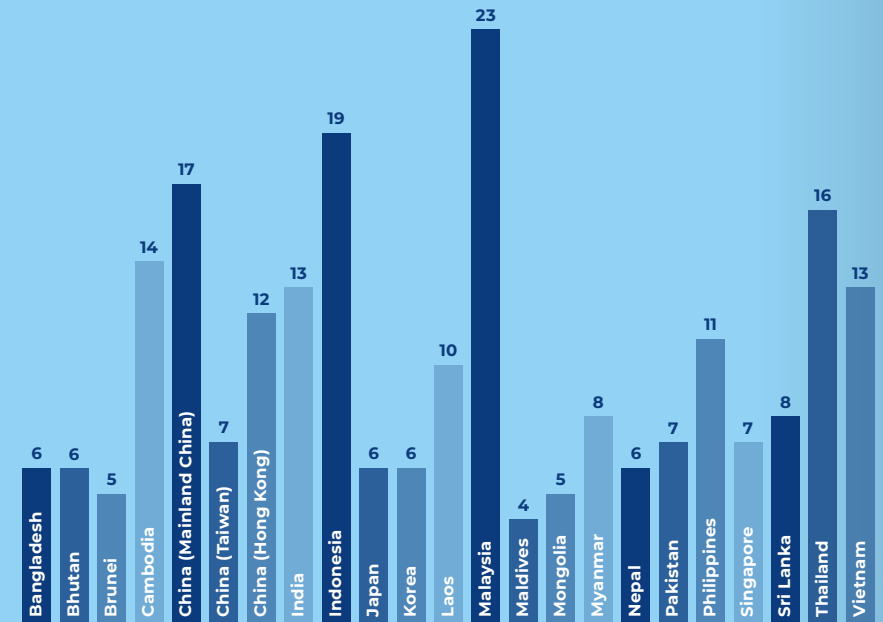


THE RESULTS IN DETAIL

Within the Asia-Pacific region, what proportion of charter flights do you think are illegal?



In which country or countries within the Asia Pacific regions do you think illegal charter activity is happening?

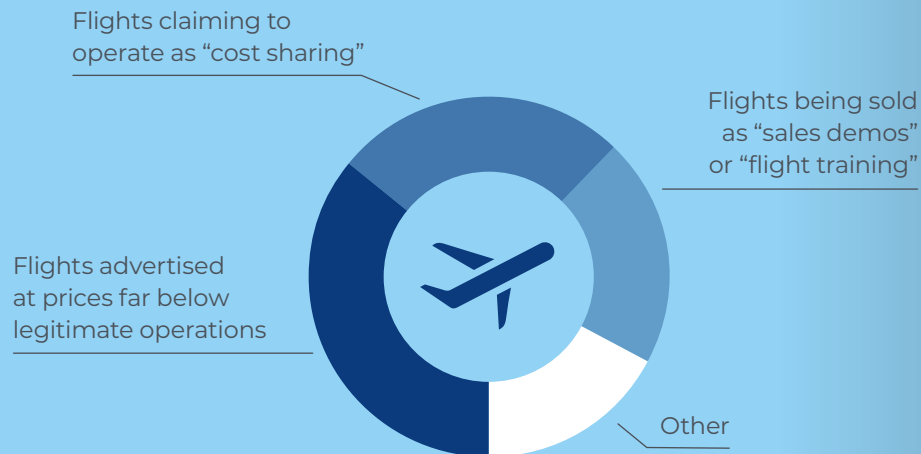


PREVALENCE AND IMPACT

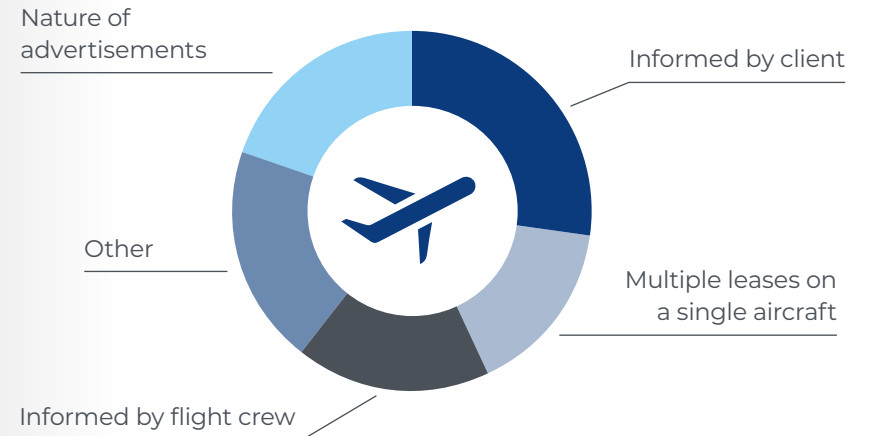
Does your company hold a Part 135 certificate?



What examples of illegal charter activities have you seen?

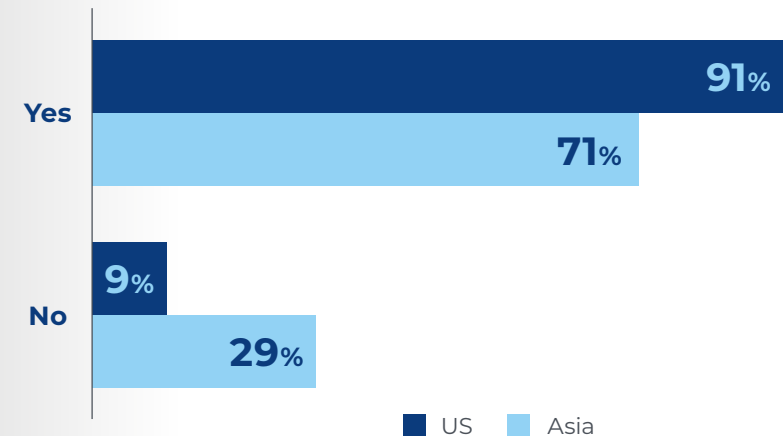


How did you determine that charter activity may be illegal?



Has your business been negatively impacted by competition from illegal charter operations?

Comparison between Asia and US positions¹

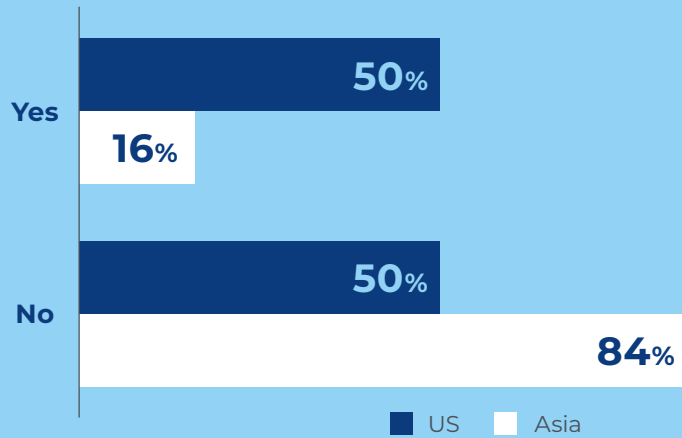


¹ NATA's 2019 Illegal Charter Survey

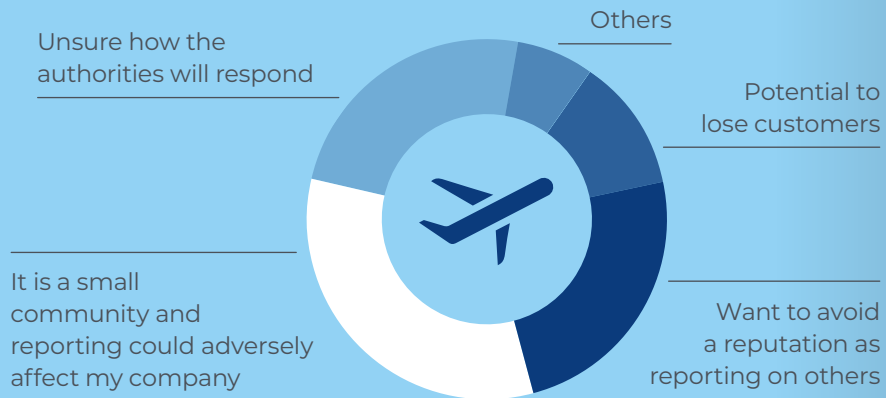
REPORTING AND REGULATORY CHALLENGES

Did you report the illegal charter activity to the local regulator?

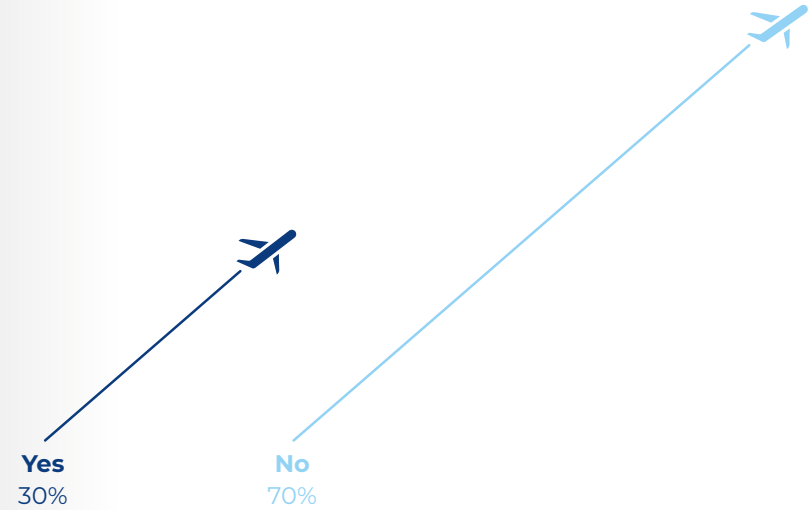
Comparison between Asia and US positions²



What are the barriers to reporting illegal charter?



Do the regulators have a sufficient understanding of illegal charter?



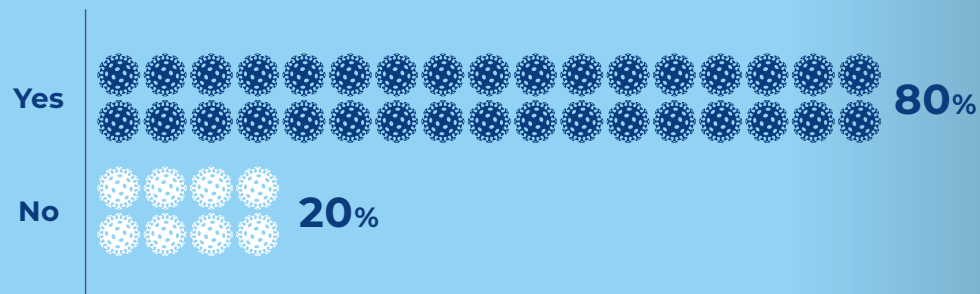
Are local aviation regulators doing enough to combat illegal charter?



Are the penalties for illegal charter a sufficient deterrent in the Asia Pacific region?



Is Illegal charter likely to get worse as a result of Covid-19?



We hope that you found our Report helpful, for more information on the Report please contact its authors or your usual HFW adviser.



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