

HFW

Aero



In conversation with...

Barbara van Koppen, General Counsel,
KLM Royal Dutch Airlines

Legal news round-up

Significant global developments

Sustainable financing in aviation

Green shoots or just greenwash?

Illegal charter activity across Asia Pacific

Our joint survey with the AsBAA



HFW has been at the forefront of legal developments in the aerospace sector for over four decades.

Our clients are drawn from all spheres of the industry and our global team is one of the largest and dedicated to the sector of any international law firm. We have one of the fastest growing international networks, with a team of over 80 specialist aviation lawyers, positioned in offices around the world.

Our lawyers are able to advise on all forms of dispute resolution, competition and anti-trust issues as well as a complete range of commercial transactions, from mergers and acquisitions and aircraft sales, to purchases, leases and financing. We provide services to the aviation industry, aviation insurers and their brokers and all major stakeholders. We bring our experience, market insight, true sector knowledge and passion for what we do.

It's this continued service to the industry that has been recognised time and again in the legal and business rankings, and most importantly, by our clients.



To give any feedback on our publication please contact the editor of **HFW Aero**:

ASHLEIGH OVLAND

T +44 (0)20 7264 8311

E ashleigh.ovland@hfw.com

www.hfw.com/aerospace

Americas | Europe | Middle East | Asia Pacific

Introduction



Welcome once again to HFW Aero, bringing you aviation news and insight with a focus on sustainability.

In this issue we are in conversation with Barbara van Koppen, General Counsel of KLM. To mark its 100th anniversary KLM took the bold step of asking its customers to think twice about whether they needed to fly at all. Two years on, Barbara tells us how the "Fly Responsibly" initiative has developed and why

upscaling the commercial production of sustainable aviation fuel is a cornerstone of KLM's sustainability strategy. She also explains the theory behind the striking "Flying V" aircraft that you see on the front cover.

KLM has been in the top three of the "airlines" category of the Dow Jones Sustainability Index for 16 years and counting. On page 10 we look at the evolution of sustainability benchmarking and how the aviation industry is positioning itself to take advantage of the growing availability and sophistication of "Green Finance" products.

In our news roundup we explain what happened when the use of drones by the French police to enforce Covid restrictions fell foul of data protection law, and consider whether governments in Latin America are doing enough to support the aviation industry.

We also present to you the results of our groundbreaking survey on illegal charters in Asia Pacific, conducted jointly with the Asian Business Aviation Association. The majority of respondents believe that illegal charter activity is on the increase and regulators in Asia are not doing enough to combat it.

We do hope that you enjoy reading. Please do get in touch if you'd like to talk to us more about any of the topics or issues that we have featured.

Giles

GILES KAVANAGH

Global Head of Aerospace

giles.kavanagh@hfw.com



Contents



4 Legal news round-up

Significant global developments



7 In conversation with...

Barbara van Koppen,
General Counsel,
KLM Royal Dutch Airlines



10 Sustainable financing in aviation

Green shoots or just greenwash?



13 Survey highlights illegal charter activity across asia pacific

Our joint survey with the Asian Business Aviation Association (AsBAA).



Legal news round-up

Consumer rights to the fore in Latin America

Airlines and consumer agencies have clashed in Latin America as carriers struggle to find the cash to reimburse passengers for flights cancelled due to Covid. In Colombia, an emergency law passed at the beginning of the pandemic had authorised the option of offering vouchers instead of cash refunds. A previous attempt to challenge the emergency law in the Constitutional Court had failed, but in January this year the Superintendence of Transportation shocked the industry by declaring that the issue of vouchers violated the passenger's consumer rights and fining an airline over US\$50,000 for doing so. The reasoning behind this concerning decision is explored in [our briefing](#), in which we questioned whether other challenges might follow.

This has indeed proved to be the case in Chile, where the National Consumer Service (SERNAC) has filed a Voluntary Collective Procedure (VCP) against a domestic carrier seeking to address the complaints of nearly 4,000 consumers, claiming that the airline failed to effectively reimburse the price

of their tickets following Covid-related cancellations. The VCP is a voluntary, expedited process which aims to achieve an amicable resolution to the dispute within up to six months. If no agreement is reached, SERNAC could decide to file a class action against the airline. SERNAC is also considering whether to make similar filings against other airlines.

Within the Latin American region, governments have offered very little financial support to their local carriers. The continuing trend for expanding passenger rights appears to be displacing any interest in protecting airlines in their time of need.

Ryanair challenges to EU State Aid rejected

Conversely, in Europe, government assistance has been more forthcoming, but this has created its own controversies.

The General Court of the EU has rejected challenges by Ryanair to government schemes extended to Swedish and French airlines in order to support them in the wake of the Covid-19 pandemic. These are the first to be decided of a total of 16 challenges by Ryanair to various state aid schemes benefitting, amongst others, Finnair,

KLM, Lufthansa and TAP Air Portugal.

Sweden made available a loan guarantee scheme to airlines holding a Swedish operating licence, while France agreed to defer the payment by French-licensed airlines of certain taxes on airline tickets due on a monthly basis during the period from March to December 2020.

State Aid is prohibited under EU law but the Commission may allow a scheme where it satisfies certain conditions. Both France and Sweden notified their schemes and were granted exemptions by the Commission. The Swedish Scheme was approved on the grounds that it was intended to remedy a serious disturbance in the economy of a Member State and the French tax deferral on the grounds that it constituted aid to make good the damage caused by natural disasters or exceptional occurrences.

Ryanair brought actions to annul both Commission decisions, on the grounds that the aid was discriminatory and undermined the EU's single market in air travel. They argued that the objective of general interest of compensating the airline sector for losses due to the Covid-19 pandemic in order to preserve

the structure of the sector did not make it necessary to help only airlines which held a particular national licence, given that the airlines operating in those Member States under a licence issued by another Member State are just as important for the structure of the aviation sector in the Member State and the entire European Union.

On the contrary, they argued, assisting national airlines leads to the fragmentation of the internal market and the elimination of competitors from other Member States, weakens competition, aggravates the damage caused by the Covid-19 crisis and ultimately harms the structure of the airline sector which the aid scheme at issue is supposed to preserve.

The General Court rejected the challenges and said that extending France's tax deferral to non-French companies "would not... have made it possible to achieve the objective of making good the economic damage suffered by the airlines operating in France in so precise a manner and without a risk of overcompensation." It held that the Swedish scheme was proportionate, appropriate and presumed to have been adopted in the interest of the European Union.

Ryanair has confirmed that it will appeal to the CJEU.

Use of drones for police surveillance in France

The use of drones to monitor the observance of the Covid-19-related lockdown in Paris has been successfully challenged by advocacy groups which promote digital and human rights. The Paris Préfet de Police used a fleet of surveillance drones to watch Paris citizens from the sky and provide air support to ground police units. The Administrative Court of Paris was asked to make an order that the surveillance be suspended, on the grounds that it infringed the right to private life/ privacy under Article 8 of the European Human Rights Convention and that it breached the GDPR.

The Administrative Court rejected the suspension request, holding that the use of drones was proportionate to the

purpose of the measure, i.e. protecting the population from the risks inherent to the pandemic. Therefore, there was no serious and unlawful infringement of a constitutional or conventional freedom. In relation to the GDPR, it held that the police were not processing data.

In response, the advocacy groups filed an accelerated appeal to the French Supreme Administrative Court, the Conseil d'Etat, which also rejected the anti-privacy arguments, provided that the drone use complied with Police manual, i.e. a flight height of at least 80-100 metres without the use of zoom lenses.

However, the Conseil d'Etat concluded that the images collected were personal data falling within the scope of the GDPR and that the collection of such images by the police was personal data processing. Such processing required a declaration and impact assessment to be filed with the Commission Nationale Informatique et Libertés (CNIL, the French equivalent to the UK ICO). As the police had not made such a filing they were ordered to immediately stop using drones to monitor Covid-19 restrictions in Paris.

Despite this ruling, the Préfet de Police reinstated the use of drones to monitor demonstrations and strikes in Paris in November 2020, once again without making the necessary declaration to the CNIL. A second ruling of the Conseil d'Etat on 22 December 2020 held once again that the police were in breach of the GDPR.

Finally, on 14 January 2021, the enforcement arm of the CNIL issued a statement condemning the Ministry of the Interior (under whose remit police activity falls) for the illegal use of drones and requiring it to cease immediately using drones to record images of the population unless in compliance with the applicable data regulations. Unlike the two Conseil d'Etat decisions, which were limited to their particular facts and locations, this order extends to the whole of France and to all use of drones by the police, regardless of their purpose. The evolution of these cases has shone a light on the social acceptability of drone use and the likely future approach to regulating them in France.

Sustainable Finance Disclosure Regulation now in force

On 10 March the Sustainable Finance Disclosure Regulation (SFDR) came into force in the EU. The SFDR is a key component of the EU's Green Deal and aims to address concerns about "greenwashing" - the practice of overstating the Environmental, Social and Governance (ESG) credentials of investments for commercial or PR reasons. The aim is to bolster confidence in the credibility of ESG claims by imposing discipline and increasing transparency. It is hoped that this will funnel more capital towards investment in sustainable activities.

The SFDR imposes obligations on asset managers to provide information about ESG risks across their entire portfolios, not just those which are badged as sustainable investments. Where enhanced ESG performance claims are made, these must be supported by more robust evidence than has been the case to date. The SFDR will not apply to UK firms, however the UK has separate plans to develop and implement more robust environmental disclosure standards. For more information on ESG benchmarking, see our article "Green shoots?" on page 10.

Fractional ownership regulation in Brazil

The Brazilian Agency of Civil Aviation (ANAC) has, at long last, finalised a new regulatory framework for the shared ownership of general aviation aircraft. The new scheme is expected to boost the Brazilian general aviation market which already accounts for one of the world's largest fleets.

Regulation RBAC 91 - Subpart 'K' has been amended to authorise the implementation of 'Fractional Aircraft Ownership programs', essentially adapting for Brazil the system used by the FAA in the United States. This move has been under discussion with Brazilian aeronautical community since 2015. It will come into force in August 2022, but it will be possible to apply to register sharing programs in advance of the "go live" date.

Compliance with RBAC 91 - Subpart 'K' will be mandatory when the 'sharing program' comprises two or more aircraft. The maximum shares allowed are 16 per plane and 32 per helicopter. The Administrator of the program must be registered with the Brazilian Aeronautical Registry (RAB) and will be responsible for complying with RBAC 91 as well as for the operational control and safety of the aircraft. ANAC is still finalising the details and will continue to issue supplementary regulations around documentation and inspections up until August 2021.

UK prepares to implement CORSIA

The UK Government is preparing legislation to implement **CORSIA**, the Carbon Offsetting and Reduction Scheme for International Aviation aimed at meeting ICAO's medium-term climate change goal of Carbon Neutral Growth from 2020. A **consultation document** published in January detailed the content of the legislation and invited comment on the proposed approach to the interaction between CORSIA and the new UK Emissions Trading Scheme (UK ETS) which covers flights within the UK, and flights from the UK to the EEA.

The guiding principle of UK ETS is the UK's obligation that post-Brexit carbon pricing should be at least as ambitious as the EU ETS.

A first statutory instrument (SI) will come into force by Spring 2021 covering the monitoring, reporting and verification processes and requirements of CORSIA and the enforcement action to which aircraft operators will be subject if they do not comply with their obligations under the scheme. It is proposed that failure to monitor or report emissions should carry a penalty of between £20,000 and £50,000.

The offsetting requirements under CORSIA will be dealt with in a second SI which should come into force in Spring 2022. The consultation outlined high-level options for implementing CORSIA alongside a UK ETS and invited initial views, with a view to a further, more detailed consultation early next year.

The government's concern is that CO₂ emissions above the CORSIA baseline from international flights departing from the UK to the European Economic Area (EEA) would incur obligations from both the UK ETS and CORSIA, leading to operators being charged twice for these emissions. The favoured approach is a 'supply-adjusted' hybrid scheme in which aircraft operators would be entitled to claim a reduction in their UK ETS obligations equivalent to their CORSIA CO₂ offsetting obligations on flights from the UK to EEA States covered by the EU ETS. In this option, for every tonne of CO₂ that is removed from the UK ETS obligations of an operator due to CORSIA, a tonne of CO₂ in UK ETS allowances would also be retired from the system. 5 alternative options were also presented. For further detail on UK ETS, see **our recent briefing**.

The consultation ended on 28 February but the results have not yet been published.

End of LIBOR moving closer

Financial markets have been preparing since 2017 for the London Interbank Offered Rate (LIBOR) to be phased out by the end of this year. LIBOR is the

benchmark rate that underpins loans, bonds and derivatives transactions and is the most common benchmark in aircraft finance transactions. It is also regularly used as a benchmark rate in contracts for calculating default interest for late payment.

On 5 March the UK Financial Conduct Authority (FCA) issued a **definitive statement** confirming the date for the cessation and loss of representativeness of the LIBOR benchmark settings. All but two will permanently cease as from 31 December 2021. The overnight and 12-month US Dollar settings will remain until June 2023. The Bank of England requires all new sterling lending to cease referencing LIBOR by the end of this month.

This announcement was expected and the date comes as no surprise, but is nonetheless an important step in the transition away from LIBOR as it will engage certain contractual triggers for post-LIBOR fallbacks which have been increasingly incorporated into contracts concluded since the initial announcement that LIBOR would be phased out. These triggers largely convert references to LIBOR into references to alternative "Risk Free Rates" (RFRs). However this is not a simple "find and replace" exercise because of the differing mechanics of LIBOR and RFRs. As lessors and financiers seeking to amend LIBOR-based aircraft finance documentation will know, the development and implementation of RFRs has been, and continues to be, a complex task led by various Working Groups across all the global financial markets. Activity is now stepping up to support a smooth transition in the 9 months that remain. For further information see our briefing, **here**.

Arbitrator impartiality

The UK Supreme Court has confirmed and clarified the obligation on arbitrators to make disclosures in overlapping multiple appointment situations to avoid doubts as to their impartiality, while highlighting and distinguishing the unique characteristics of sector focussed arbitration. For further details see our briefing on the case **here**.

In conversation with...

Barbara van Koppen

General Counsel,
KLM Royal Dutch Airlines



You've just announced the first of 25 new Embraer 195-E2 aircraft for the KLM Cityhopper fleet. These emit 31% less CO₂ per passenger than their predecessors. What other plans do you have to reduce the emissions of the KLM fleet?

We considered the arrival of the first Embraer 195-E2 as a source of inspiration. Covid-19 has hit the aviation sector hard and the crisis in our sector is unparalleled. Nevertheless, to be able to continue to invest in sustainability by renewing our fleet gives us hope for the future. Now, more than ever, we are committed to make our operation and sector more sustainable.

Fleet renewal is an important part of our sustainability strategy, but upscaling production and use of sustainable aviation fuel (SAF) is another cornerstone of our approach. There is a lot of discussion about what can be qualified as sustainable. This is why we work together with, for example, the World Economic Forum and the World Wildlife Fund to determine the criteria for

sustainable fuel. Our position is that the development of SAF should not affect biodiversity, should not result in deforestation and should not hinder food production. In addition to establishing sustainability criteria, we advocate affordable pricing of SAF in combination with requirements that are equal for all parties.

You've been operating aircraft on blended SAF for many years now and last month, in partnership with Shell, you operated the first ever commercial flight using synthetic kerosene. You're also collaborating with the Port of Amsterdam, Schiphol and SkyNRG in the construction of a synthetic kerosene plant. Do you see synthetic kerosene as more sustainable than other forms of SAF? What is your view on the introduction of Norway-style SAF blending mandates across the EU?

Regrettably, there is currently not enough SAF available and we have to help the supply base to upscale production. We cannot do this alone.

This first flight powered by synthetic kerosene is the next step forward. It is important to join hands within and beyond our own industry, in the Netherlands as well as Europe and the rest of the world, working towards an upscaling of production of SAF and a reduction of carbon emissions.

Profile

Barbara van Koppen is the Senior Vice President, Corporate Centre, and General Counsel at KLM Royal Dutch Airlines. The world's oldest airline, KLM is at the forefront of sustainability within the aviation industry. KLM is part of a consortium building the first European sustainable biofuel plant, and is working closely with a Dutch university to develop a new kind of sustainable aircraft. <https://Flyresponsibly.klm.com>

It is not a matter of choosing between biofuels or synthetic fuels. No single feedstock or production pathway will be practical in every geography or yield enough SAF to meet all demand. Therefore, KLM is actively involved in researching different SAF technologies, including synthetic fuel. This approach represents the next step and could present a structural solution to replacing fossil fuel. As such, it is an important pillar of KLM's CO2 reduction strategy, providing our sustainability requirements can be met.

Pressure from legislators is needed to boost the production of SAF. I expect a European blending obligation to be announced in the near future – probably even this year. We are not against this in itself, but there must also be incentives to increase production and to reduce the price gap with traditional fuel. Aviation is a global business, so we have to approach sustainability on a global level. That is why we are not a supporter of national Norway-style blending mandates.

The KLM “Fly Responsibly” initiative, introduced to coincide with your 100th anniversary in 2019, was ground breaking and got the aviation world talking. Two years on, with a pandemic thrown into the mix, has it delivered as you hoped?

With Fly Responsibly, we first focus on reducing the environmental impact of our own operation. Where reduction is no longer possible, we replace the fuel with a more sustainable alternative, for example. If replacement is not sufficient, we compensate. For these three steps, long-term investment and innovation is essential and we work and need to work with others to transform the aviation industry. We believe that only by working together we can achieve real change. And this is exactly what we are doing right now: with clients, industry partners and governments. Even in the current deep industry crisis due to Covid-19, we will not lose sight of the challenge that climate change poses and we remain fully committed to our Fly Responsibly initiative and sustainability ambitions.

Tell us more about the Flying-V project.

TU Delft and KLM announced the start of the design of the Flying-V – the energy-efficient aircraft of the future – during IATA 2019. After extensive wind tunnel tests and ground tests, the scale model of the Flying V flew for the first time in August 2020.

The Flying-V is a design for a very energy efficient long-haul aircraft. The design of the aircraft integrates the passenger cabin, cargo hold and fuel tanks in the wings, creating a spectacular V-shape. Computer calculations have predicted that the improved aerodynamic shape and reduced weight of the aircraft will lower fuel consumption by 20% compared to today's most advanced aircraft.

You've been with KLM almost 20 years and risen to a very senior position. KLM has pledged to increase female representation at senior levels. How well is KLM doing and what do you feel are the most important things that senior women can do to encourage and support their female colleagues?

At KLM, 28% of our managers and 18% of our executives are female. The numbers are growing, but we are certainly not there yet. Female representation is not just a number, but merely an important indicator for the level of diversity and inclusion that we need to reach. Being a big employer, this is of important societal value and meaning. Next to that, a more diverse workforce is also a business case: multiple research demonstrated that companies with diverse teams deliver better results. I believe that senior women – and their male counterparts as well – should embrace the responsibility, foster and promote to embed D&I as an integral part of the company's strategy. It starts with the dialogue and recognition that D&I is crucial for a company's future – senior women can and must take a lead in that.

For more insight from leading figures in the aviation sector, click [here](#) to read our interviews with easyJet and Rolls-Royce about the future of dispute resolution.

“It starts with the dialogue and recognition that D&I is crucial for a company's future – senior women can and must take a lead in that.”



Fly Responsibly

Sustainable financing in aviation

Green shoots or just greenwash?

The aviation industry has committed to carbon neutral growth from 2020.

Meanwhile, banks and other financial institutions are under increasing scrutiny and pressure to demonstrate their environmental, social and governance (ESG) credentials by building sustainable finance portfolios. The aviation financing and leasing community, as provider of the capital that will shore up the sector's post-pandemic recovery is in a strong position to encourage practices and environmental regulation that reduce climate impacts from aviation and contribute to its sustainable development – as lessor Avolon said in its [outlook paper for 2021](#) “lessors accelerate technology adoption”. With airlines accustomed to being held to account by passengers and shareholders for their environmental goals and already legally obliged to monitor, report and reduce emissions, they seem perfectly placed to access an ever-growing range of sustainable finance products. Is green finance a part of the future of aviation?

What is sustainable finance? Green loans vs Sustainability Linked Loans

Sustainable finance falls into two broad categories, with the Loan Market Association (LMA) taking the lead in seeking to create a set of global criteria. So-called “Green Loans”, as described in the LMA's Green Loan Principles document launched in 2018, are made available for projects with clear, measurable environmental benefits in key areas of environmental concern such as climate change, natural resources depletion, loss of biodiversity, and air, water and soil pollution.

The first Green Loan financing in the aviation sector was just over a year ago, when Singapore-based lessor Avation acquired three ATR 72-600 turboprop aircraft to lease to Swedish airline Braathens. In its press release the airline

said “By replacing parts of our existing fleet of regional jets with ATR 72-600 aircraft we will emit 7,500 fewer tonnes of CO2 per aircraft, per year.... we look forward to showing our passengers and the Swedish public at large that there is a sustainable way of flying.” while the lender, Deutsche Bank said “We're hopeful that this leads the way for more sustainable financing activity in aviation, and increased adoption of lower carbon emission aircraft across the industry, to help make flying more eco-responsible.”

Despite the fanfare, no similar Green Loan deals have been reported in the last twelve months. This is, however, more likely attributable to the economic impact of Covid-19 than a loss of confidence in the Green Loan concept. Indeed, one consequence of the pandemic is that it has brought forward the retirement of older aircraft, paving the way for the acquisition of less-polluting replacements. That said, the threshold for qualification for a Green Loan is likely to be higher than simply the purchase of two or three slightly more fuel efficient new aircraft, and will no doubt pivot towards acquisition of electric and hydrogen-powered aircraft in the longer term as these technologies become available. More likely candidates for Green Loan projects in the aviation sphere are investments in Sustainable Aviation Fuel production or electrification of ground support vehicles.

Unlike with Green Loans, there are no limitations on the use of the proceeds of Sustainability Linked Loans (SLLs). Rather, these link the margin and fees to the borrower's overall ESG credentials, usually by reference to a set of performance targets which trigger progressively more favourable terms if met. The LMA's SLL Principles promote a structure which motivates borrowers to make continual improvements to their sustainability profiles, stating that

the basis of the target-setting should be to “encourage ambitious, positive change through incentives”.

Airlines which have already committed to wholesale review of their sustainability objectives may be tempted by the collateral benefit of the availability of SLL financing, but for some the extra burden of additional reporting to lenders on ESG targets may not be offset by the relatively modest financial gain. Aviation, as a much-maligned carbon-emitting industry is also more vulnerable than many to allegations of “greenwashing” and may have to be held to even higher standards than other industries in order to rebut them.

Measuring and benchmarking ESG performance

There are no fixed criteria for ESG performance but the standard procedure for borrowers looking to access the SLL market is to obtain a rating from an independent ESG rating agency. Recent consolidation has seen two main players emerge in this arena – Vigeo Eiris (majority-owned by mainstream credit rating agency Moody's) and Sustainalytics, which should go some way to fostering a more uniform approach. Another key development is the EU's Taxonomy Regulation (EUTR), which they describe as “a tool to help investors, companies, issuers and project promoters navigate the transition to a low-carbon, resilient and resource-efficient economy” and is heralded as part of a global movement towards environmental performance reporting standardisation. The EUTR doesn't yet apply to the aviation sector but it does set an indicative benchmark against which borrowers and lenders can compare their green or sustainable loans. It is then up to borrower and lender to agree between them the

specific conditions of the financing, guided by a growing body of industry norms and precedents.

As to future express provision for aviation in the EUTR, this has indeed been recommended by the EU Technical Expert Group on sustainable finance. In anticipation of this step, the Aviation Working Group – an industry group formed by manufacturers, leasing companies and financial institutions with the aim of influencing law and policy relating to international aviation financing and leasing - has been developing a set of principles which they believe should be applied when setting the aviation criteria to be applied. AWG recently sent **an open letter** to the EU Commission setting out those principles. In it they highlight that electric and hydrogen propelled aircraft are still a long way in the future and that the use of SAF is subject to severe commercial constraints. They therefore encourage recognition of efforts to reduce emissions from fossil fuels and advocate measurement *“in terms of feasible and meaningful improvement, rather than the more rapid advances that might be technologically available and practical in other sectors.”* The other principles are outlined in **this executive summary**.

What next?

Major banks have made clear commitments to putting sustainability at the heart of their businesses, for example with Barclays pledging last March to *“align all of its financing activities with the goals and timelines of the Paris Agreement”*. The industry is at a crucial moment where its recovery and the ability to regain public confidence depend as much on it delivering on its sustainability commitments as upon the relaxation of pandemic-related travel bans. This creates the ideal context for sustainable finance to become the norm, driving the aviation industry along the path to decarbonisation.

CORSIA and the Green Deal

ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) is now in the initial monitoring stage and, as such, is the primary framework within which airlines audit and report their carbon emissions. However CORSIA ambition levels may fall short when viewed against the backdrop of the Green Deal and its goal for Europe's economy and society to become climate-neutral by 2050. As part of this, the EU has set a 2030 target of reducing its GHG emissions by 40% - this target includes the aviation sector where, across all EEA countries, about 151 Million Metric Tonnes (MT) would be the indicative target. However, currently the aviation sector is permitted, under the EU Emissions Trading Scheme (EUETS) to emit about 112.7 MT. Therefore, it is likely that changes to the EUETS will be required to address its 2030 target but since EEA flights are also covered by CORISA, it's not clear where the distribution of the additional reduction requirements will fall. The EU is expected to consider the relationship between the EUETS and CORSIA in the context of its EU 2030 target during 2021.



Survey highlights illegal charter activity across Asia Pacific

Our joint survey with the Asian Business Aviation Association (AsBAA) has found that more than 70% of respondents have been negatively affected by illegal charter activity across the Asia-Pacific region, with most people expecting the situation to get worse due to Covid-19.

Anecdotally, illegal charter activity occurs in many Asia Pacific countries, although the full extent of the problem has been difficult to establish. This survey is the first attempt to capture industry perception in the Asia-Pacific region.

When is a charter illegal? The detail of the regulations is complicated and varies according to jurisdiction, but 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.

Telltale signs of illegal charter activity include flights being advertised at prices far below legitimate operations, flights claiming to operate as “cost sharing”, and flights being sold as “sales demos” or “flight training”.

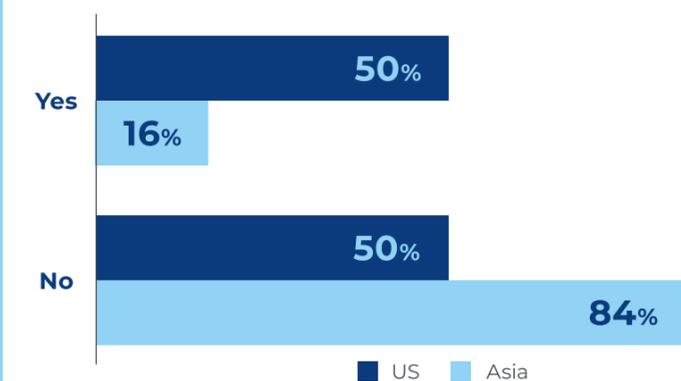
The survey results clearly show that illegal charter activity is a significant problem in many countries in the region. China, Malaysia and Indonesia were flagged as countries of particular concern. Almost half of the respondents believed that nearly 1 in 3 charter flights across Asia-Pacific are illegal, with three quarters of respondents expecting illegal charter activity within the region to increase as a result of the global pandemic.

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



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

Comparison between Asia and US positions¹



¹ NATA's 2019 Illegal Charter Survey



Contact us



GILES KAVANAGH

Partner, London
T +44 (0)7775 566205
E giles.kavanagh@hfw.com



PIERRE FRÜHLING

Partner, Brussels/Paris
T +33 6 27 61 41 60
E pierre.fruhling@hfw.com



RICHARD GIMBLETT

Partner, Dubai
T +971 50 451 3639
E richard.gimblett@hfw.com



MERT HIFZI

Partner, Singapore
T +65 8333 4101
E mert.hifzi@hfw.com



JULIO COSTA

Partner, CAL in cooperation with HFW, Brazil
T +55 (21) 97571 2658
E julio.costa@cal-law.com.br



PETER ZAMAN

Partner, Commodities, Singapore
T +65 6411 5305
E peter.zaman@hfw.com

Aircraft owners and operators impacted by Covid-19 may be tempted to look for creative – and potentially illegal – ways to generate revenue. New customers, attracted to business aviation by its flexibility and as a way to mitigate Covid-related health concerns, are also vulnerable to being exploited by unscrupulous operators.

Over 90% of survey respondents felt that local aviation regulators were not doing enough to combat illegal charter operations and 74% felt that the punishments were ineffective and not severe enough to act as an effective deterrent. However, 84% admitted that they did not report suspected illegal charter activity to the local regulator, citing as barriers the potential loss of customers and uncertainty over how the authorities would respond. By contrast a similar survey in the United States revealed that more than half would alert the authorities.

A newly-formed coalition, the Air Charter Safety Alliance, aims to address the problems faced by the industry by raising awareness amongst customers, operators and regulators of the dangers of illegal charter, promoting the safety of legitimate operations, and collaborating on best practice. An important aspect of the coalition's work will be to engage with aviation regulatory authorities

The clear losers are the 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. The position of passengers, too, is compromised – illegal charter flights are unlikely to provide the same level of operational safety (such as more stringent pilot training and maintenance standards) offered by legitimate operators.

The survey results emphasise that illegal charter is a significant issue across the Asia-Pacific region. Given the substantial impact on legitimate operators, more should be done to tackle the problem. The welcome launch of the Air Charter Safety Alliance provides a powerful platform to do so. Clearly, one of the key factors which impedes the reporting of illegal charter activity is the lack of any formal reporting mechanism. Until such a mechanism is established by regulators in the Asia Pacific region, it is likely that many illegal charter flights will continue to operate unchecked.

For more information, and the full results, [click here](#).

www.hfw.com | [LinkedIn](#) | [@hfw_law](#)