



Use of private charter and ensuing coverage issues

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Use of private charter and ensuing coverage issues

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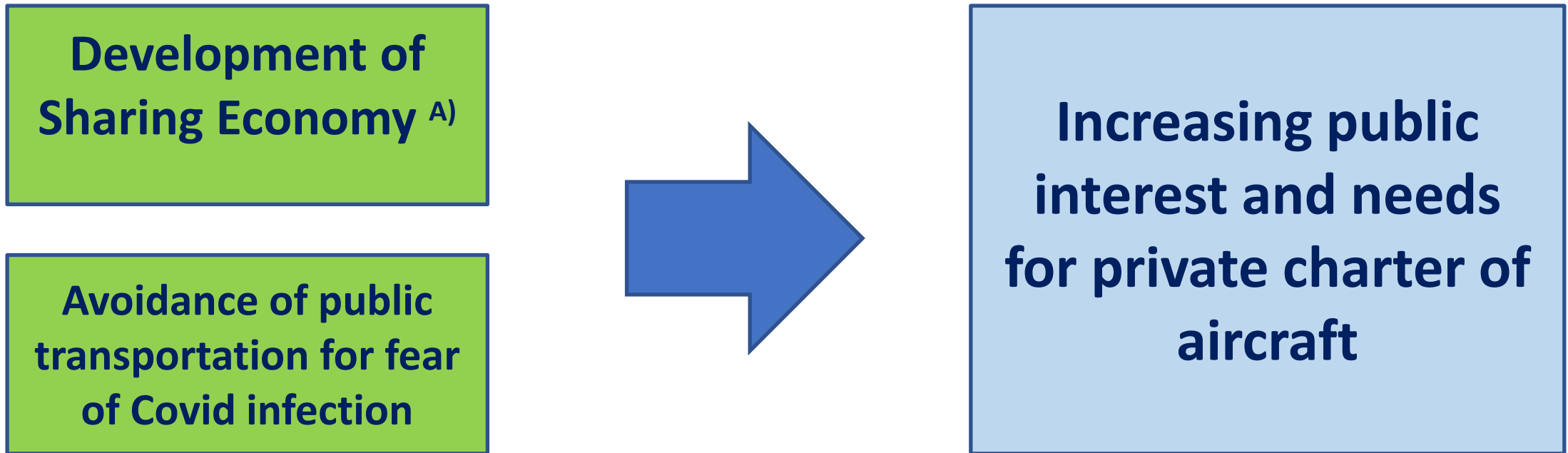
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1. New business model utilizing private aircraft

1) Background

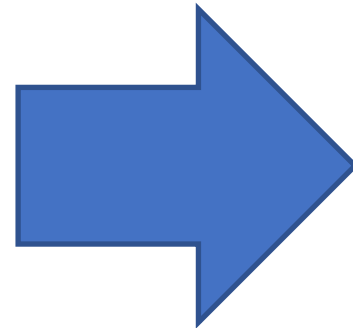


A) Sharing economy is an economic system based on the sharing of things that would otherwise be wasted. Unoccupied vehicles, including aircraft, are one of typical object for it.

1. New business model utilizing private aircraft

1) Background

**Needs for
tax avoidance
measures ^{B)} for wealthy
class/business owners**

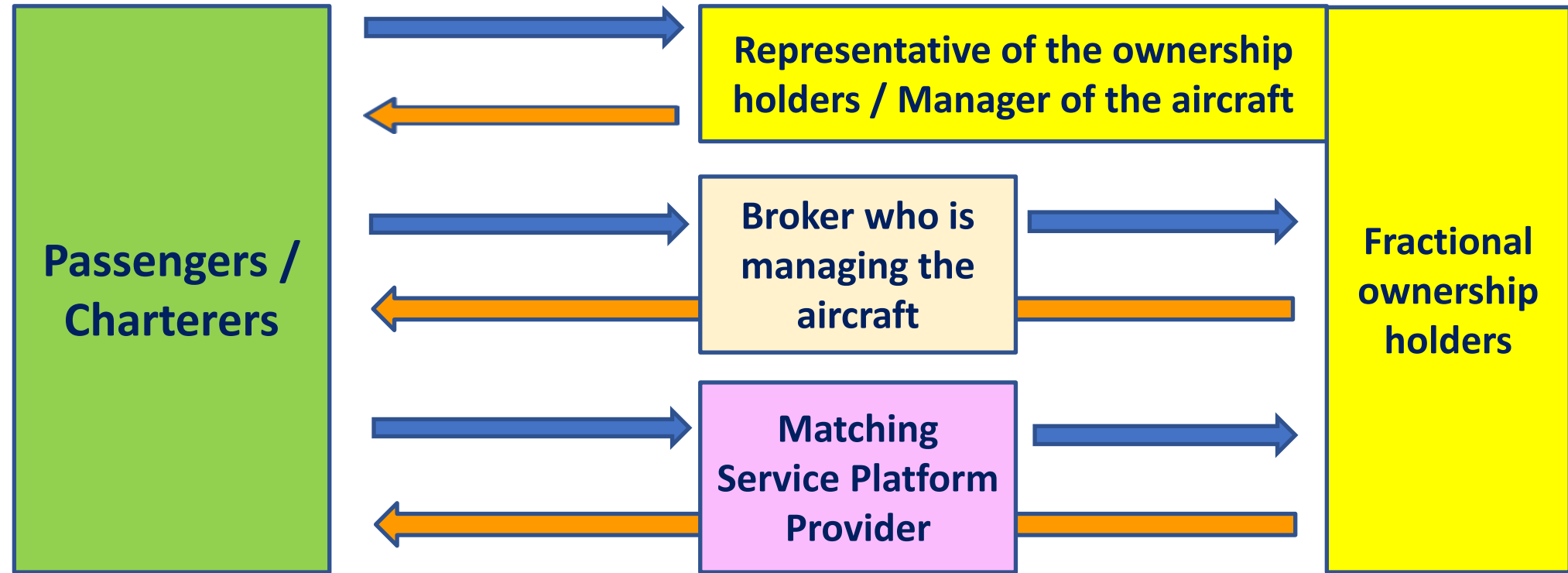


**Some aircraft brokers sell
fractional ownership of
an aircraft on condition
that the broker takes
care of maintenance and
operation**

B) Depreciation of asset can reduce taxable profit. In Japanese taxation law, helicopters can be amortized in 5 years.

1. New business model utilizing private aircraft

2) Recent business models of private charter



-Application for transport/ charter
- **Payment**

- Offering an available aircraft
- Providing transport service

2. Legality in certain jurisdictions

1) Potential problem of legality in the recent business models

1. Private aircraft is used for air transport for reward.
2. Sometimes, the pilot does not have commercial pilot license.
3. No air business license/certificate is retained by the owner(s) of the aircraft, the broker or the matching service.
4. Various title of payments are made from the charterer/passenger to the owners, brokers and/or matching service providers.
 - Charterage/Rental fee
 - Pilot fee
 - Fuel costs
 - Landing fee
 - Commission for the broker, User fee for the matching service platform
5. In most cases, no owner is on board when his aircraft is engaged in flight for others.

2. Legality in certain jurisdictions

2) General principle of civil aviation laws/regulations

Requirement of commercial pilot license

Private pilots must not operate aircraft in exchange for reward. Air transport services or aerial works other than air transport for reward can only be performed by commercial pilots.

Requirement of air business license

It is required to hold air business license to perform air transport or aerial works other than air transport for reward.

e.g. Any person who operates business using aircraft (a) to transport passengers or cargo or (b) other than for the transport of passengers or cargo for remuneration upon demand must obtain a license from the government (Articles 100 and 123 of Japanese Civil Aeronautical Law)



2. Legality in certain jurisdictions

3) Legality of the recent business models in certain jurisdictions

What is permitted without business license under civil aeronautical laws/regulations?

	Japan	UK	USA
Fractional / joint ownership of aircraft	OK	OK	OK
Receiving reward for flight	NG	NG	NG
Receiving direct costs for flight	NG	OK	NG ^{A)}
Matching service provider	Problematic ^{B) C)}	Problematic ^{C)}	OK

A) The owner may receive fuel cost.

B) Although some service providers advertise their legality, no official statement has been issued by JCAB. The private car sharing service platforms are currently considered as legal by Japanese DOT under the Road Transportation Act.

C) If the provider who knowingly arranges private aircraft for flight for reward will be deemed as illegal.

2. Legality in certain jurisdictions

3) Legality of the recent business models in certain jurisdictions

Do any payment of money, regardless of what it is nominally represented, make air transport “commercial” for which licenses of commercial pilot and air business are required?

Japan	UK	USA
<p>JCAB issued a leaflet saying that receiving any compensation* for flight can be deemed as commercial flight for which the business license is required if owner/operator has conducted such flight repeatedly and continuously.</p> <p>* Fuel cost, landing fee and any out-of-pocket expenses are included.</p>	<p>CAA states that cost sharing arrangement** is not regarded as commercial air transportation for which the relevant license is required.</p> <p>** Direct costs, such as fuel and landing fees, are shared between everyone on board.</p>	<p><u>FAR Part 91</u> Flight without commercial certificate will be illegal if it is done for compensation*** or for hire. In case of dry lease, the lessor do not need commercial flight license to lease his aircraft.</p> <p>*** Reimbursement of fuel costs may be an exception.</p>

3. Potential Coverage Issues

Policy Conditions

<Policy Wording Example>

[General Exclusion]

This Policy does not apply:

Whilst the Aircraft is being used for any illegal purpose¹⁾ or for any purpose other than those stated in Part 3 of the Schedule²⁾ and as defined in the Definitions.

(AVN1C)

[Condition Precedent]

The Insured shall comply with all air navigation and airworthiness orders and requirements³⁾ issued by any competent authority affecting the safe operation of the Aircraft... (AVN1C)



3. Potential Coverage Issues

1) Illegal purpose exclusion

- Performing commercial flight without required business license is a breach of civil aviation laws and such flight is deemed as “illegal”. Insurers can preclude policy liability for loss/damage whilst the insured aircraft is being used for illegal purpose even if the illegality did not cause the loss/damage.
- Traditionally, some courts in certain jurisdiction including Japan tend to hold that this exclusion only applies to (A) flight that can never be permitted in any case and it does not apply to (B) flight that will be permitted upon proper application.

e.g. (A) Smuggling of cocaine vs. (B) Failure of application for flying over restricted area
Performing flight for reward without business license

- However, if allowing an insurance claim for loss occurred during the type (B) flight will be contrary to the public interest, it is possible that courts will hold that the exclusion should apply.



3. Potential Coverage Issues

2) Other than declared purpose

- If the aircraft is declared as non-commercial purpose, e.g. “private pleasure”, performing flight regarded as commercial purpose without required business license may constitute breach of insured’s duty of disclosure/notification under the insurance policy.
- When the breach of the duty of disclosure caused the loss claimed or the breach of the duty of notification increased the risk, insurers can deny payment of the claim.
(In other words, if the breach of the duty did not take any part in the loss, insurers cannot deny their liability.)



3. Potential Coverage Issues

3) Condition precedent

- Performing commercial flight without required business license is a breach of civil aviation laws and it has an external shape of non-compliance with the condition precedent.
- If the condition precedent works as “warranty”, insurers can preclude policy coverage whether the illegal circumstances took part in occurrence of the loss/damage or not.
- In certain jurisdiction, insurance law puts a limitation on the condition precedent so that insurers cannot deny coverage where the breach of it was not capable of having any bearing on the loss claimed.



4. Takeaways

- It will be illegal for the owner of private aircraft to receive reward for flight without license/certificate for commercial flight.
- Cost sharing is not regarded as commercial purpose in certain jurisdiction. However, in other jurisdiction, it is regarded as “commercial” even if the owner receives some direct costs such as fuel cost or landing fee.
- If the owner of the aircraft makes an insurance claim for loss/damage occurred during the flight which is deemed as illegal, the insurer can deny policy coverage by reason that;
 - (a) the insured aircraft was used for illegal flight,
 - (b) it was used for other than declared purpose, and/or
 - (c) the insured violated the condition precedent of the policy.





Thank you !

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