



**Malaysian
Aviation Commission**
Suruhanjaya Penerbangan Malaysia

Proposed amendments to the Malaysian Aviation Consumer Protection Code 2016 - Consultation Paper

February 2018



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1.0 INTRODUCTION

The Malaysian Aviation Commission (hereafter referred to as “MAVCOM”) was established on 1 March 2016 under the Malaysian Aviation Commission Act 2015 [Act 771] to regulate the economic aspect of the civil aviation industry in Malaysia. MAVCOM is mandated amongst others to safeguard the rights of consumers in the aviation industry and to provide a mechanism for the protection of consumers.

In July 2016, MAVCOM had published the Malaysian Aviation Consumer Protection Code 2016 (“MACPC”). The MACPC ultimately provides for more transparency on aviation service providers’ obligations towards consumers and clearer guidance for consumers on their rights and interests as air travellers. It also gives consumers a platform to lodge their aviation-related complaints with MAVCOM.

As part of MAVCOM’s continuous efforts, MAVCOM has identified several areas within the MACPC which require further improvements and refinement in ensuring that the rights and interests of consumers are safeguarded. In addition to that, through the engagements with stakeholders and upon analysing the nature of complaints lodged with MAVCOM, gaps and issues that require addressing have been identified.

The proposed amendments to the MACPC will cover various rights and interests of consumers which will be further elaborated in Part 3.0 of this Consultation Paper. This Consultation Paper is prepared pursuant to Subsection 69(2) of Act 771 which requires MAVCOM to consult the stakeholders for any amendments to the MACPC.

We invite your feedback and views on the proposed amendments to the MACPC by 22 March 2018. Comments received may be considered in the amendments of the MACPC, which is intended to take effect in Quarter 3, 2018.



2.0 BACKGROUND

MAVCOM is empowered under Subsection 69(1) of Act 771 to prescribe a consumer code to be published in the *Gazette* which may include requirements on minimum policies and practices for –

- (a) reasonably meeting consumer requirements;
- (b) the handling of consumer complaints and compensation of consumers in case of a breach of the consumer code;
- (c) raising consumer awareness including the provision of information to consumers regarding aviation services, charges and minimum service levels and standards of performance;
- (d) the protection of consumer information;
- (e) the determination of fees or charges imposed on consumers by providers of aviation services; and
- (f) any other matters of concern to consumers.

The MACPC which came into operation on 1 July 2016 was formulated with the purpose to protect the rights and interests of consumers. The MACPC was drafted in line with the Convention for the Unification of Certain Rules for International Carriage by Air which is commonly known as the Montreal Convention 1999 as well as the ICAO Core Principles on Consumer Protection.

Essentially the MACPC covers –

- (a) **the minimum service levels and standards of performance for airlines and aerodrome operators** which amongst others include the requirement on full disclosure of air fare, disclosure of terms and conditions of contract of carriage and non-discrimination of persons with disability;
- (b) **air passenger's rights** which include entitlement to claims, compensation for flight delays and cancellations, compensation for lost, damaged or delayed baggage, and compensation for lost or damaged mobility equipment and assistive devices;



- (c) **consumer complaints** which include the manner in handling consumer complaints by airlines and aerodrome operators as well as complaints to MAVCOM; and
- (d) **consumer awareness** which includes the obligations of airlines and aerodrome operators to raise awareness of consumer rights and the complaint procedures.

Upon identifying the gaps and areas within the MACPC that require further improvements, MAVCOM, as part of its obligation under Subsection 69(2) of Act 771 had conducted initial consultations with various stakeholders in 2017. MAVCOM has factored in the stakeholders' views and feedback in formulating the amended proposal and is now seeking public feedback on the proposed amendments to the MACPC.



3.0 PROPOSED AMENDMENTS TO THE MACPC

The proposed amendments to the MACPC essentially include insertions of new provisions and enhancement of the existing provisions. The proposed amendments are further elaborated below.

PROPOSED NEW PROVISIONS

No.	Subject Matter	Description and Rationale
1.	Imposition of fees and charges by airlines	<p>At present, consumers are obliged to pay certain unavoidable and mandatory fees or charges that the consumers are not made aware at the first instance when an air fare is made known to them. These fees and charges include those listed below and are further illustrated in Appendix I of this Consultation Paper:</p> <ul style="list-style-type: none">(a) administrative fee;(b) processing fee;(c) fuel surcharge; and(d) klia2 fee. <p>The MACPC will be amended to include a provision for all unavoidable and mandatory fees or charges to be factored into the air fare. This also includes any transaction and/or processing related fees or charges.</p> <p>For the avoidance of doubt, fees, charges or taxes that are prescribed by any written law which include passenger service charge (“PSC”) and goods and services tax (“GST”) are not to be factored into the air fare but are permitted to be displayed separately.</p>



No.	Subject Matter	Description and Rationale
		<p>With the proposed amendments to the MACPC, airlines are required to display only the following:</p> <ul style="list-style-type: none"> (a) air fare; (b) charges in relation to optional / ancillary services by airlines that they opt for; and (c) fees, charges or taxes that are imposed by any written law.
2.	Fee for refund of PSC	<p>Most airlines have been charging consumers between RM15.00 to RM300.00 for the processing of PSC refunds, an amount which could be more than the prescribed PSC rate. MAVCOM is also aware that there are airlines that do not impose any fee for refunds of PSC.</p> <p>As consumers are entitled to a full refund of the PSC that they have paid if they do not proceed with their journey, a new provision will be inserted in the MACPC that prohibits aviation service providers from imposing any fee for the purpose of PSC refunds.</p>
3.	Fee for the provision of special assistance	<p>A new provision will be inserted in the MACPC to prohibit airlines from charging any fee for rendering special assistance to any passenger with disability or require special assistance, subject to the passenger producing any one of the following to the airline:</p> <ul style="list-style-type: none"> (a) Kad OKU; or (b) any substantiating document from a registered medical practitioner confirming the requirement for such assistance.



No.	Subject Matter	Description and Rationale
4.	Processing of refunds	<p>A new provision will be inserted in the MACPC requiring all refunds due to passengers to be remitted within 30 days from the date of the request by the consumers.</p> <p>If a ticket is purchased through an agent appointed by the Contracting Airlines such as a travel agent or any travel portal, and if the agent fails to comply with the said provision, the Contracting Airline will be held accountable.</p>
5.	Formal written notification pertaining to flight delay or cancellation to affected passengers	<p>Upon request by any passenger for a formal written notification by any airline on flight delay or cancellation, the airline shall be obligated to furnish a letter on its letterhead stating the details pertaining to the delay or cancellation within two (2) working days from the date of request by the said passenger. A new provision will be inserted in the MACPC to provide for the said obligation.</p>
6.	Scope of application	<p>The MACPC currently does not have any specific provision that stipulates to whom and in what circumstances it is applicable. The amendments to the MACPC will include a new provision that states where the non-compliance of the MACPC occurs throughout Malaysia, the MACPC will be applicable to the following:</p> <ul style="list-style-type: none"> (a) any person that holds a licence or permit issued by MAVCOM to operate any aviation service; (b) any person authorized under Act 771 to provide aviation service; and (c) any non-designated Malaysian commercial airline that has landed and the door of the aircraft opens at any aerodrome in Malaysia.



No.	Subject Matter	Description and Rationale
		The amendment will also include application of the MACPC to any person mentioned in paragraphs (a) and (b) above that have closed the aircraft doors and departed from any aerodrome outside Malaysia.
7.	The obligation of maintaining notices put up by MAVCOM	MAVCOM has put up notices and displayed information on consumer rights at the airports. A new provision will be inserted in the MACPC to impose an obligation on the aerodrome operators to maintain notices that are issued or displayed by MAVCOM.

ENHANCEMENT OF THE EXISTING PROVISIONS OF THE MACPC

No.	Subject Matter	Description and Rationale
1.	Disclosure of terms and conditions - Top five (5) key terms and conditions	Subparagraph 7(1) of the MACPC currently states that “ <i>an airline shall disclose all terms and conditions of the contract of carriage to the consumers before the purchase of a ticket by the consumers</i> ”. In complying with this requirement, with regard to online purchases, airlines have provided links to the contract of carriage, of which the consumers will have to click the link in order to view the terms and conditions. As such, there is a risk and possibility that the terms and conditions are overlooked by the consumers.



No.	Subject Matter	Description and Rationale
		<p>The MACPC will be amended to include a requirement for airlines to bring the following top five (5) terms and conditions to the attention of the consumers at the point of booking when the consumer opts for the preferred choice of flight:</p> <ul style="list-style-type: none"> (a) change fee / cancellation fee; (b) no-show fee; (c) whether the ticket has a refund value; (d) baggage allowance; and (e) requirement for passengers to ensure they have the necessary travel documents. <p>Some of the key terms and conditions in the proposed amendments have been put in practice by some airlines on their websites as reflected in Appendix II.</p> <p>If the tickets are purchased through agents, the agents are to inform the consumers on the above key terms and conditions at the point of booking. If the agent fails to comply with the requirement, the Contracting Airline will be held accountable.</p>
2.	<p>Communication of change in flight status – flights that are re-timed earlier than the scheduled time and flights cancelled due to route cessation</p>	<p>Pertaining to the obligation on communicating to the passengers on change in flight status, Subparagraph 8(1) currently states:</p> <p><i>“An operating airline shall provide to passengers and to the public information about any change in the status of a flight, as soon as practicable after the operating airline becomes aware of such change by means as may be determined by the Commission”.</i></p>



No.	Subject Matter	Description and Rationale
		<p>The term “<i>change in the status of a flight</i>” as defined in Subparagraph 8(3) means cancellation of a flight, a delay of thirty minutes or more in the scheduled operation of a flight or a diversion. It does not cover situations where the airlines change the flight to a time that is earlier than the scheduled time.</p> <p>There have also been instances where airlines cancel flights due to route cessations.</p> <p>In view of the above, the MACPC will be amended by inserting new provisions on the communication of change in flights that are re-timed earlier than the scheduled time and flights cancelled due to route cessation. The proposed timeline for notification to passengers are as follows:</p> <ul style="list-style-type: none"> (a) flights re-timed earlier than the scheduled time – passengers to be informed at least one (1) week in advance; and (b) flights cancelled due to route cessation – passengers to be informed at least one (1) month in advance.
3.	Clarification on the term “baggage” for the purpose of compensation for damaged baggage	Currently Paragraph 13 of the MACPC is not clear on whether some parts of checked baggage that are damaged should be compensated by the operating airlines. Therefore, for the purpose of compensation to damaged baggage, Paragraph 13 will be amended to clarify the term “baggage” to include handles, locks, wheels and all protruding parts.



No.	Subject Matter	Description and Rationale
4.	The obligation to ensure aviation service providers and any person who performs aviation services on behalf of the aviation service providers possess adequate knowledge of the MACPC	<p>Paragraph 19 of the MACPC provides:</p> <p><i>“A provider of aviation service shall make efforts to raise awareness of the consumer rights and the complaints procedure”</i></p> <p>The provision will be amended to extend the obligation of raising the consumer awareness to any person who performs aviation services on behalf of the aviation service providers. They must possess adequate knowledge on the MACPC to assist and facilitate consumers in exercising their rights.</p>
5.	Declaration by airlines in their websites on consumers’ rights	<p>Paragraph 20 of the MACPC currently requires the airlines to:</p> <ul style="list-style-type: none"> (a) prominently publish the minimum service levels and standards of performance within the contracts of carriage; (b) display signage at airports, of the minimum service levels and standards or performance as set in the MACPC; and (c) perform such other obligations as may be determined by the Commission to raise consumer awareness. <p>Paragraph 20 will be amended by including a requirement for airlines to insert a declaration on their website stating that consumers are entitled to all rights under the MACPC whether the consumers have purchased insurance or otherwise.</p>



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4.0 FEEDBACK

MAVCOM welcomes any feedback on the proposed amendments to the MACPC. All feedback and views must be in writing and must be delivered **before 5.00 p.m. on 22 March 2018** via one of the following options:

(i) by email to MACPC.consultation@mavcom.my

(ii) by post addressed to:

Malaysian Aviation Commission
Level 19, Menara 1 Sentrum
201, Jalan Tun Sambanthan
50470 Kuala Lumpur
Malaysia
Attention: Ms. Yong Su-N

(iii) by hand to the above address.

MAVCOM reserves the right not to consider any feedback or views received after the stipulated time and date.



APPENDIX I EXAMPLES OF FEES OR CHARGES THAT ARE CURRENTLY BEING CHARGED BY AIRLINES TO CONSUMERS

EXAMPLE 1

In Example 1 below for KUL – PEN – KUL sector, the airline has charged the consumer separately from the air fare, the following fees:

- (i) klia2 fee amounting to RM6.00 (RM3.00 per passenger departing from KUL); and
- (ii) credit card processing fee amounting to RM33.92 (RM8.00 per passenger per sector and 6% GST)

Booking details		Total fare inclusive processing fee 309.92 MYR	
Depart date 01 May 2018	Kuala Lumpur → Penang 10:35 - 11:40 1h 5m		
Depart total 138.00 MYR	Fare, taxes and fees		
	2x Guest	102.18 MYR	
	2x klia2 fee	6.00 MYR	
	2x Passenger Service Charge	22.00 MYR	
	2x GST	7.82 MYR	
	Add-ons (inclusive of GST)		
	John Anthony	No add-ons	
	Anne Anthony	No add-ons	
Return date 05 May 2018	Penang → Kuala Lumpur 15:30 - 16:35 1h 5m		
Return total 138.00 MYR	Fare, taxes and fees		
	2x Guest	108.18 MYR	
	2x Passenger Service Charge	22.00 MYR	
	2x GST	7.82 MYR	
	Add-ons (inclusive of GST)		
	John Anthony	No add-ons	
	Anne Anthony	No add-ons	
	Processing fee	33.92 MYR	

As a result of the imposition of the klia2 fee and the credit card processing fee by the airline, the consumer had to pay an additional RM20.00 per passenger, an amount that the consumer was not made aware of at the first instance when the air fare was made known to him. The consumer



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may not have opted for the flight if the overall cost was made known to him at the point he made his decision to purchase the ticket.



EXAMPLE 2

In Example 2 below for KUL – PEN – KUL sector, the airline has charged the consumer separately from the air fare, an admin fee amounting to RM160.00 (RM80.00 per passenger).

Booking Summary		
Departure Flight		
Depart: Tue, 01 May 2018		
Arrive: Tue, 01 May 2018		
KUL	10:35	PEN
		11:35
Return Flight		
Depart: Sat, 05 May 2018		
Arrive: Sat, 05 May 2018		
PEN	16:50	KUL
		17:50
Pricing Summary		
Adult(s)	MYR	2 x 48.00
Fare	MYR	96.00
Taxes & Fees	MYR	222.00
Admin Fee [YR]	MYR	160.00
Passenger Service Charge [MY]	MYR	44.00
Goods and Services Tax [D8]	MYR	18.00
Total Amount	MYR	318.00

The consumer in this instance had to pay an additional RM80.00 per passenger, as a result of the imposition of the admin fee by the airline, an amount that the consumer was not made aware of at the first instance when the air fare was made known to him.



EXAMPLE 3

In Example 3 below for SZB – PEN – SZB sector, the airline has charged the consumer separately from the air fare, an admin fee amounting to a total of RM140.00 (RM35.00 per passenger per sector).

Flight Details	
Going Out	
Tue, 01 May 2018	
Subang (SZB) to Penang (PEN)	
Time 7:20 AM to 8:20 AM	
Coming Back	
Sat, 05 May 2018	
Penang (PEN) to Subang (SZB)	
Time 6:05 PM to 7:05 PM	

Price Details	
SZB to PEN	
2 Guest(s) @ 124.95 MYR	249.90 MYR
Admin Fee	70.00 MYR
Airport Tax	22.00 MYR
GST	20.52 MYR
PEN to SZB	
2 Guest(s) @ 104.00 MYR	208.00 MYR
Admin Fee	70.00 MYR
Airport Tax	22.00 MYR
GST	18.00 MYR
TOTAL PRICE	680.42 MYR

At the point of choosing the flight of his choice, the consumer was not aware that he had to pay an additional RM35.00 for his journey from Subang to Penang and another RM35.00 for the journey back to Subang.

The consumer had to pay an additional RM70.00 for his 4-day trip to Penang and another RM70.00 for his guest. In total, an admin fee amounting to RM140.00 was payable, of which he could have made a decision not to proceed with choosing the flight if the full cost was made known to him when he was weighing his options.



APPENDIX II EXAMPLES OF AIRLINES HIGHLIGHTING KEY TERMS AND CONDITIONS TO CONSUMERS

EXAMPLE I

Kuala Lumpur > Total duration: 8h 5m
Doha
Thu, 22 Mar 2018

Economy Saver

Thu, 22 Mar 2018
02:05 KUL
Kuala Lumpur, Kuala Lumpur International Airport
Malaysia
QR 0853, Airbus A330-300

8h 5m

Thu, 22 Mar 2018
05:10 DOH
Doha, Hamad International Airport
Qatar
Operated by: Qatar Airways

Total duration: 8h 5m

Fare details Flight & Cabin features

- Changes **371.00 MYR**
- No show **1325.00 MYR**
- Cancellation **702.00 MYR**
- Hold booking for 24 hours **39.00 MYR**

Compare fares >

Thu, 22 Mar 2018
02:05 KUL
Kuala Lumpur, Kuala Lumpur International Airport
Malaysia
QR 0853, Airbus A330-300

8h 5m

Thu, 22 Mar 2018
05:10 DOH
Doha, Hamad International Airport
Qatar
Operated by: Qatar Airways

Total duration: 8h 5m

Fare details Flight & Cabin features

- Hand baggage
One piece, not to exceed 7 kg

Compare fares >



EXAMPLE 2

	KUL → DXB	DXB → KUL	Subtotal:
Services (per person) Compare all services	Saver <i>Lowest price</i>	Flex	Flex Plus
Checked baggage	✓ 30kg	✓ 30kg	✓ 35kg
Onboard Wi-Fi	✓ 20MB free	✓ 20MB free	✓ 20MB free
Regular seat selection	🔒 At a charge	✓ Complimentary	✓ Complimentary
Skywards Miles	✓ 1,050 Miles	✓ 2,625 Miles	✓ 3,500 Miles
Upgrade to Business	🔒 67,500 Miles	✓ 50,700 Miles	✓ 39,000 Miles
Change fees	🔒 MYR 400	🔒 MYR 250	✓ No charge
Refunds fees	🔒 Restricted	🔒 MYR 450	✓ No charge
	MYR 1,763.38	MYR 2,168.38	MYR 3,027.38
	Select	Select	Select