



**Malaysian
Aviation Commission**
Suruhanjaya Penerbangan Malaysia

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

October 2022



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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”). Subsequently, the MACPC was amended in 2019 to provide more transparency on aviation service providers’ obligations towards consumers and clearer guidance for consumers on their rights and interests as air travellers.

As part of MAVCOM’s continuous efforts to enhance consumer protection, 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, especially during the emergence of COVID-19 pandemic. There were many lessons obtained during the COVID-19 period to further enhance the consumer protection as well as feedbacks provided during the consumer protection International Webinar organised by MAVCOM on 28 June 2022.

In addition to that, gaps and issues that require addressing have been further identified through engagements with stakeholders and upon analysing the nature of complaints lodged with MAVCOM.

The proposed amendments to the MACPC covering various rights and interests of consumers 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 stakeholders for any amendments to the MACPC.

We invite your feedback and views on the proposed amendments to the MACPC by 07 November 2022 @5pm. Comments received may be considered in the amendments to the MACPC, which is intended to take effect in Quarter 1, 2023.



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, and amended in 2019, 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, redress during flight disruptions, compensation for mishandled 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 seeks to conduct initial consultations with various stakeholders and further seek 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 existing provisions. The proposed amendments are further elaborated below.

ENHANCEMENT AND ADDITION TO THE MACPC

| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|--|---|
| 1. | REFUND | <p>(i) Standardization of refund terminology and mode of refund.</p> <p>Under the current MACPC, airlines are required to provide reimbursement or refund to consumers. Currently, some airlines provide credit or travel voucher as a form of reimbursement or refund.</p> <p>For purposes of clarity, the term “reimbursement” is proposed to be replaced with “refund” in the original mode of payment unless a different form is otherwise agreed between the airlines and the consumer.</p> <p>(ii) Removal of non-obligation due to extraordinary circumstances.</p> <p>At present, the airlines have no obligation to provide care, refund or rerouting options to consumers for flight delay, cancellation, route cessation and planned flight rescheduling caused by extraordinary circumstances which could not have been avoided even if all reasonable</p> | Throughout |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|---|---|
| | | <p>measures had been taken. During the recent unprecedented COVID-19 global pandemic, consumers could not claim for refunds in the original mode of payment as airlines were not obliged to refund due to the extraordinary circumstances. As a gesture of an airline's goodwill, consumers were offered options of credit or travel vouchers to be utilised for their future travels.</p> <p>It is proposed that the MACPC is amended to include a provision for airlines to offer a refund in the original mode of payment. This will include flight disruption or service that is not rendered regardless of the reason. Any unrefunded sum by an airline should constitute as debt recoverable in court without the need of proof.</p> <p>(iii) Refund for flight delay of 2 hours or more.</p> <p>At present, passengers are offered free of charge, care during a flight delay of 2 hours or more including meals, refreshments, limited telephone calls and internet access. For flight delays exceeding 5 hours, passengers are further offered hotel accommodation if necessary, and transport between the airport and place of accommodation.</p> | <p>Paragraph 12(1), First Schedule</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|--|---|
| | | <p>It is proposed that the MACPC is amended to add a provision for airlines to offer the option of a refund in the original mode of payment where a flight is delayed for 2 hours and more.</p> <p>(iv) Refund for flight cancellations.</p> <p>Flight cancellation by an airline Currently in the MACPC, consumers are offered an option for rerouting to the final destination or reimbursement of the full cost of the ticket at which it was bought.</p> <p>Flight cancellation by consumers At present, refunds are based on the terms and conditions of either a refundable or non-refundable ticket held by the consumer.</p> <p>(a) Refundable ticket A processing fee, depending on the terms and conditions of the ticket, is charged for a refund. Airlines are not allowed to further charge any processing fee for refund of government-imposed taxes and fees.</p> <p>(b) Non-refundable ticket Consumers are only refunded government-imposed taxes and fees with a five-percent processing fee charged by the airline.</p> | <p>Paragraph 12(1), First Schedule</p> <p>Paragraph 7A(1)-(3)</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|--|---|
| | | <p>Proposed changes for a voluntary flight cancellation initiated by a consumer.</p> <p>(i) It is proposed that if a consumer voluntarily cancels a flight more than 7 days prior to the scheduled time and date of the departure, the consumer will be entitled for full refund. The airline may impose a cancellation fee of up to ten percent of the flight ticket.</p> <p>(ii) It is proposed that if a consumer cancels a flight within 7 days of the scheduled time and date of the departure, the terms and conditions of the ticket will apply.</p> <p>(iii) This proposed amendment will apply to all tickets including those purchased through airlines, travel agents, online travel agents, partners and any other associated booking platforms.</p> <p>(v) Refund of any charges imposed by airlines. Currently, fuel surcharge is imposed by airlines during high fuel price periods. The current paragraph 7A(1) does not reflect fuel surcharge as an element to be refunded by airlines to the consumers.</p> | <p>Paragraph 7A(1)</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|--|---|
| | | <p>The proposed amendment is to require airlines to refund fuel surcharges and any other fees or charges that might be imposed by airlines to consumers, for flight disruption or service that is not rendered regardless of the reason.</p> <p>The proposed amendment also will amend the existing paragraph 7(A)1 by removing the words “Subject to the terms and conditions of a ticket” to avoid contracting out MACPC provisions.</p> | |

| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|-------------------------------|---|---|
| 2. | PASSENGERS ENTITLEMENT | <p>Currently, passengers who are affected by flight delays of 5 hours or more, are entitled to hotel accommodation if necessary, and transport between the airport and place of accommodation.</p> <p>The proposed amendments are intended to clarify that passenger’s entitlements and rights are cumulative. For example, passengers who are affected by flight delays of 5 hours or more will also receive meals, refreshments and limited telephone calls as provided to passengers affected by a 2-hour flight delay.</p> | Paragraph 10(1), First Schedule |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------------|--|---|
| 3 | TRAVEL PASSES | <p>Apart from flight tickets, airlines are currently offering options such as travel passes to consumers. Travel pass is a scheme that allows the consumer to redeem unlimited flights within a stipulated period or region.</p> <p>The current MACPC does not clearly address the rights of consumers who have purchased travel passes.</p> <p>It is proposed that consumers holding an unutilised travel pass or any other travel schemes introduced by an airline for air travel, shall be entitled to the same rights of refunds as passengers holding a flight ticket.</p> <p>Consumers will be entitled to a full refund before the expiry date of an unutilised travel pass.</p> <p>However, once the unlimited travel pass is utilised for at least one time, then the terms and conditions of the travel pass will apply.</p> | NEW |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
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| 4. | COMPLAINTS | <p>(i) Property Irregularity Report (PIR) for mishandled baggage.</p> <p>In the current MACPC, there are no provisions for PIR to be accepted as a form of complaint for baggage-related complaints. Consumers are often confused by the different labelling of documents when lodging a complaint for mishandled baggage.</p> <p>It is proposed that any report or document, regardless of its label, submitted by consumers to the airline relating to mishandled baggage, be considered as an official complaint registered with the airline.</p> <p>(ii) Complaint channels of airlines and aerodrome operators.</p> <p>With the advancement of technology available to communicate with consumers, it is proposed that all communication channels made available to consumers shall be considered as an official channel for lodgement of complaints. This includes electronic or other web channels.</p> <p>(iii) Time limitation for lodgement of complaints.</p> <p>In the current MACPC, the time limitation for consumers to lodge complaints is one year from the date of incident.</p> <p>It is proposed that the time limitation to be extended to two years. This is to be in line with the time limitation stipulated in the Montreal Convention</p> | <p>Paragraph 13(7)</p> <p>Paragraph 17(1)</p> <p>Paragraph 18(2)</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
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| 5. | REMOVAL OF CANCELLED FLIGHTS FROM AIRLINES BOOKING SYSTEM | <p>1999, where Malaysia is a signatory and ratified.</p> <p>Currently, airlines inform passengers of any flight cancellations that occur from time to time. However, despite the flight cancellation, airlines continue to open the cancelled flight as available for sale.</p> <p>It is proposed that airlines be required to remove a cancelled flight from all booking systems, including travel agents, online travel agents, partners and any other associated booking platforms, when a flight is cancelled.</p> <p>It is further proposed that consumers should be allowed to choose their preferred mode of communication when being informed of flight cancellations or disruptions.</p> | Paragraph 12(4) |
| 6. | PROTECTING CONSUMERS DURING AIRLINES RESTRUCTURING AND LIQUIDATION WHEN AIRLINE IS UNABLE TO OPERATE AS USUAL | <p>Under the current MACPC, there are no provisions for consumers redress in the event of any change in the structure of an airline or when the airline is unable to operate according to its published schedule.</p> <p>It is proposed that a new provision be included in the MACPC to protect consumers who have paid moneys in advance for flight tickets or travel passes in the event an airline is unable to render services as promised. Where an airline anticipates that it may be unable to operate as usual due to suspension, revocation or failure to renew its air service licence or permit, or is involved in a debt restructuring exercise, liquidation, dissolution of a</p> | NEW |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------------|---|--|
| 7. | MISCELLANEOUS | <p>joint venture/merger or other insolvency proceedings, the airline is required to notify and submit a plan detailing consumer redress to MAVCOM for further directions.</p> <p>(i) Standardization of compensation and care terminology.</p> <p>Throughout the MACPC currently, what entails “compensation” and “care” is inconsistent with international definition and application.</p> <p>“Compensation” is usually compensatory payment made for time, discomfort, inconvenience endured by a consumer, and is monetary compensation above and on top of what a consumer has paid. Under the MACPC, compensation is available for mishandled baggage where the standard monetary sum to be paid is in accordance with SDR units prescribed by the Montreal Convention. In addition, MACPC compensates for lost or damage to mobility equipment and assistive devices.</p> <p>It is proposed that amendments be made throughout the MACPC for consistent usage of the terminologies.</p> <p>(ii) Lodging monies with the Registrar of Unclaimed Moneys.</p> <p>Currently, the MACPC only requires unrefunded taxes to be lodged with the Registrar of Unclaimed Moneys.</p> | <p>Throughout</p> <p>Paragraph 7A(6)</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|-----|----------------|--|--|
| | | <p>It is proposed that all monies paid by consumers to the airlines which are eligible for refund are to be lodged by the airlines with the Registrar of Unclaimed Moneys, pursuant to the Unclaimed Moneys Act 1965 as they constitute monies held on trust to be refunded where services are not rendered.</p> <p>(iii) SDR values as per Montreal Convention 99.</p> <p>Currently, the SDR rates in the MACPC are based on rates as of 30 December 2009.</p> <p>The proposed amendment is to update all SDR compensation rates provided in the MACPC to be in line with current SDR value rates, revised as of 28 December 2019 by ICAO, in the Montreal Convention 1999.</p> <p>(iv) Application of MACPC to travel agents</p> <p>At present, the MACPC does not govern tickets sold under travel agents or online travel agents' channels.</p> <p>The proposed amendments are to ensure that all tickets including those purchased through airlines, travel agents, online travel agents, partners and any other associated booking platforms comply with the requirements of the MACPC relating to full disclosure</p> | <p>Paragraphs 12(3), 13(2), 13(5) and 16</p> <p>Paragraphs 3,4 and 5</p> |



| No. | Subject Matter | Description and Rationale | Reference to current paragraph of MACPC |
|------------|-----------------------|--|--|
| | | of air fare, prohibition on post purchase increase and prohibition on automatically adding services. | |



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 07 November 2022** via one of the following options:

- (i) via our feedback form: <https://forms.office.com/r/HqgsJcECX7>
- (ii) by post addressed to:

Malaysian Aviation Commission
Level 19, Menara 1 Sentrum
201, Jalan Tun Sambanthan
50470 Kuala Lumpur
Malaysia
Attention: Consumer Affairs

- (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.



5.0 GLOSSARY

Malaysian Aviation Consumer Protection Code (MACPC) 2016

| Paragraph | Details |
|-----------|--|
| Para 3 | <p>3(1) For the purpose of advertisement of an air fare, an airline shall publish an all-inclusive price of the air fare which shall consist of—(a)the base fare, including all charges payable to the airline;(b) any government imposed taxes and fees;(c)any fees and charges prescribed under any written law; and(d)fuel surcharge.</p> <p>3(2) An airline shall disclose the final price of the air fare to be paid before the purchase of a ticket by a consumer which shall consist of—(a)the base fare, including all charges payable to the airline; (b)any government-imposed taxes and fees;(c)any fees and charges prescribed under any written law;(d)fuel surcharge; and charges for optional services purchased by a consumer on an opt-in basis.</p> <p>3(3) For the purpose of this paragraph, the Commission may require an airline to provide any information or document as the Commission may determine.</p> |
| Para 4 | <p>An airline shall not increase the final price of an air fare after the ticket has been purchased by the consumer”, unless—</p> <p>(a)such increase is due to government imposed taxes or fees, or fees or charges prescribed under any written law”; and</p> <p>(b)the consumer is given notice of the potential price increase and has consented in writing before completing the purchase.</p> |
| Para 5 | <p>5(1) An airline shall not automatically add on any optional services to a consumer’s purchase if the consumer takes no other action when making the purchase.</p> <p>5(2) Any optional services shall be communicated in a clear, transparent and unambiguous way at the start of any reservation process and acceptance to any of the optional services shall be made by the consumer on an opt-in basis.</p> |



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| Para 7A(1) | <p>Subject to the terms and conditions of a ticket, a contracting airline shall, upon a claim by a consumer, refund—</p> <ul style="list-style-type: none"> (a) the base fare, including all charges payable to the airline; (b) charges for optional services purchased by the consumer on an opt-in basis; (c) the government imposed taxes and fees; and (d) the fees and charges prescribed under any written law. |
| Para 7A(6) | <p>Any tax which is not refunded to the consumer shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [Act 370].</p> |
| Para 8(4) | <p>Notwithstanding subparagraph (1) –</p> <ul style="list-style-type: none"> (a) in the case of a route cessation, the operating airline shall provide to the passengers and the public the information about the cessation one month before the date of the cessation; and (b) in the case of a planned flight rescheduling of three hours and more before or after the scheduled time of departure, the operating airline shall provide to the passengers, information about the rescheduling within twelve hours to forty-eight hours from the scheduled time of departure. |
| Para 10(1) | <p>A passenger shall be entitled to claim compensation and care under this Code if the passenger—</p> <ul style="list-style-type: none"> (a) has a confirmed reservation on the flight concerned and, except in the case of cancellation under paragraph 12, presents himself for check-in at the time stipulated by the airline; or (b) has been transferred to another flight by an airline from the flight for which he held a reservation, irrespective of the reason. |
| Para 12(1) | <p>Where an operating airline reasonably expects a flight to be delayed for at least two hours in its scheduled time of departure or in the case where a flight is cancelled, the operating airline shall offer passengers the compensation and care as specified in the First Schedule.</p> |



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| Para 12(3) | The liability of an airline for damages under subparagraph (2) is limited to 4,694 Special Drawing Rights for each passenger. |
| Para 12(4) | The operating airline shall inform the passengers of the cancellation, and provide an explanation as to the reason for cancellation and possible alternative transport. |
| Para 12(5) | An operating airline shall not be obliged to pay compensation if it can prove that the delay or cancellation, as the case may be, is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. |
| Para 12A(2) | An operating airline shall not be obliged to provide the compensation and care if the operating airline can prove that the route cessation or planned flight rescheduling, as the case may be, is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. |
| Para 13(2) | The liability for baggage delay on a flight is limited to 1,131 Special Drawing Rights for each passenger. |
| Para 13(5) | The liability for lost or damaged baggage on a flight is limited to 1,131 Special Drawing Rights for each passenger |
| Para 13(7) | <p>If a baggage is delayed or damaged, the passenger shall write and complain to the airline within—</p> <p>(a) in the case of a delayed baggage, twenty-one days from the date on which the baggage was placed at the passenger’s disposal; or</p> <p>(b) in the case of a damaged baggage, seven days from the date on which the baggage was placed at the passenger’s disposal.</p> |
| Para 16 | For the purpose of converting the amount of money required to be paid under the Code from special drawing rights into Ringgit Malaysia, one special drawing right shall be treated as equal to a sum in Ringgit Malaysia as fixed by the International Monetary Fund as being the equivalent of one special drawing right for— |



| | |
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| | <p>(a) the day on which the order under subparagraph 18(8) is made by the Commission; or</p> <p>(b) if no sum of money has been so fixed for that day, the last day before that day for which a sum has been so fixed.</p> |
| Para 17(1) | An airline or an aerodrome operator shall make available the contact number, mailing address and e-mail or web address of the department in the airline or aerodrome operator with which a consumer may lodge a complaint pertaining to its services. |
| Para 18(2) | A complaint under subparagraph (1) shall not be lodged after the expiration of one year from the date the cause of complaint accrued. |