

CONSUMER PROTECTION IN THE AVIATION INDUSTRY IN MALAYSIA

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Introduction

The aviation industry is one of the most essential transportation networks for consumers by connecting passengers and carrying goods by air all over the world. An airport plays the role as a connector and service provider to airlines and aviation consumers in the aviation industry. The word aviation was taken from Latin word 'avis' means bird in coordinate with all that deals with flying in the air.

The airport functions as a service provider for airport consumers numbering up to 99,800 passengers per week in ground handling, cargo handling, inflight catering, aircraft maintenance and air freight services. Ground handling services includes handling passengers in check-in services, special care services for disabled passengers, passengers boarding bridge and baggage services. The cargo handling services are in charge of handling 3,600 tons of cargo per week including import, export, transfer, express, break bulk, HALAL cargo and special cargo. Besides that, airports also provide services in terms of safety by doing aircraft maintenance of up to 400 flights per week. Other than that, airports also provides air freight services of delivering cargo up to the maximum capacity of 18.5 tons of cargo to various destinations (KL Airport Services, 2017).

Air services by airports also enable global marketing of goods and services, providing a competitive transportation medium, especially for time-sensitive products and trade with distant markets. Over 80% of businesses reported that air services are important for their impact on sales, with almost 60% considering them either vital or very important and reported that on average, 25% of all sales are dependent on air services (Air Transport Action Group,

2014). Around 8.6 million passengers, \$17.5 billion of goods carried and 99,700 flights operated every day were conducted through air transportation globally (ATAG, 2014). Air transportation in Malaysia has recorded 81,577,190 passengers, an increment of 19%, and 940,774,595 kg cargo which is an increase of 5.7%, and 775,854 flights, an increment of 17.8% (Ministry of Transport, 2014) as compared to the year 2012. The amount of passengers, goods carried and flights operated are forecast to increase throughout the years.

Airport operations growth in the first 6 months of 2015 was driven primarily by non-aeronautical revenue, which has improved by 9.3% to RM613.5 million. This improvement was due to the increase in rental and retail revenue of 15.1% and 4.3% respectively. Aeronautical revenue increased by 3.8% to RM681.0 million in 2015, driven by higher aircraft movements and lower airline incentives compared to the previous corresponding period. Passenger movements at MAHB's 39 airports in Malaysia stood at 41.3 million passengers with domestic passenger movements growing by 1.8% to 21.7 million passengers while international passengers movement have fallen by 1.9% to 19.6 million passengers (MAHB News, 2015).

Airports also play a role in humanitarian assistance to countries facing disasters, famine and war, through cargo deliveries, refugee transfers or the evacuation/shelter of people trapped by disasters. Humanitarian assistance in such circumstances can only be delivered rapidly to those in need through the use of airports and air services. In certain circumstances when even the airports are damaged, 'air drops' are among the first response by aid agencies to stem a humanitarian crisis. Airport services will be interrupted if hazards happen in the airport terminal, such as fire hazards and terrorism with millions of passengers stranded at the airports, affected cargoes, medicine and aids couldn't be delivered and consequently result in a drop of economic losses to the country.

Airport Management

Malaysia has two types of airports; controlled airports and uncontrolled airports. A controlled airport has control tower operated by air traffic controller (ATC) and the uncontrolled airport does not have any operating control tower. In the controlled airport, air traffic control is responsible for the safety and orderly flow of air traffic at the airports. Pilots operating in controlled airports are required to maintain two-way communication with air controllers and adhere and accede to their instructions. The communication used by uncontrolled airports is by selection of correct common frequencies such as Common Traffic Advisory Frequency (CTAF), which is used to carry out the airport advisory practices. Airport types also can be subdivided into

three categories; private airports, military airports and civil airports. The military airports are operated by the military air force while civil airports are used for general public whereas private airports are used for private use only and are not open to the general public. Besides airports, there is another term for short takeoff and landing airport, which is called STOLport. STOLports are defined by the International Civil Aviation Organization (ICAO) as unique airports designed to have an exceptional short runway for small airplanes and small propeller aircrafts to land and takeoff. It normally has a short single runway in length less than 5,000 feet (1,524m). Usually the STOLport was built to connect remote areas, islands and tourism places that have no other modes of transportation and to shorten the travel time.

Throughout Malaysia, there are 13 military airports and 58 civil airports consisting of 36 airports located in East Malaysia (Sabah and Sarawak) and 22 airports located in Peninsula Malaysia. Malaysia has four international airports located in Peninsula Malaysia which are the Langkawi International Airport, Penang International Airport, Senai International Airport and Kuala Lumpur International Airport. The other two international airports are Kota Kinabalu International Airport and Kuching International Airport which are located in East Malaysia. Kuala Lumpur International Airports (KLIA) is the main airport functioning as the aviation hub for Malaysia Airlines, AirAsia, Firefly and AirAsia X.

After Malaysia's independence in 1957, airports in Malaysia were fully managed by the Department of Civil Aviation (DCA). Since 1991, the management of Malaysian airports was separated by decision of the Malaysian Parliament, into two different responsibilities. The Department of Civil Aviation (DCA) remains as the regulatory body for airports and the aviation industry in Malaysia while Malaysian Airports Holdings Berhad (MAHB) as a new entity responsible for the management, operation and maintenance of the airports. Malaysia Airports Holdings Berhad (MAHB) has been granted a license by the Minister of Transport Malaysia as the sole airport operator. Most of the civil airports are managed by Malaysian Airport Holding Sdn. Bhd. which operates 39 airports in Malaysia including 5 international, 16 domestic and 18 short take-off and landing ports (STOLport) (Malaysia Airports, 2015), except for Senai International Airport. The Senai International Airport is no longer managed by Malaysia Airports Holdings Berhad (MAHB) since 2003. Senai Airport Terminal Services Sdn. Bhd. has taken over the management of the airport since then. Most of the airports in Malaysia are civil airports and military airports except for Kerteh Airport which is owned and operated by Petroleum.

The Ministry of Transport (MOT) is responsible for industrial policy-making and spearheading bilateral or multilateral negotiations on traffic rights from

government-to-government discussions, while the DCA is to regulate technical and safety matters for Malaysia’s civil aviation industry. The Department of Civil Aviation (DCA) is divided into three sectors and seven divisions, which are the Airworthiness Sector, Air Traffic Management Sector and Flight Operations Sector. The other seven divisions are Airport Standards, Air Transport, Air Traffic Inspectorate, Aviation Security, Malaysia Aviation Academy, Management Services and including Legal Advisory. The Department of Civil Aviation have to comply with the acts and regulation stipulated by the ICAO, IATA and the Malaysian aviation regulations, the Malaysia Civil Aviation Regulations 1996, Civil Aviation Act 1969 and Aviation Offences Act 1984 (DCA, 2015).

Establishment of the Malaysian Aviation Commission (MAVCOM)

The issue of protecting consumers’ interests has attracted increasing attention. Due to that, the Malaysian Aviation Commission (MAVCOM) was initiated under the Malaysian Aviation Commission Act 2015 on 1 March 2016. The role of MAVCOM is different from the Ministry of Transport (MOT) and the Department of Civil Aviation (DCA) as in Figure 1.

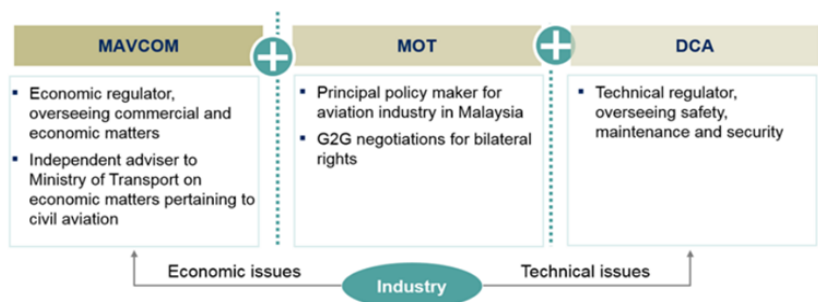


Figure 1: The role of Ministry of Transport (MOT), Department of Civil Aviation (DCA) and Malaysian Aviation Commission (MAVCOM)

Source: MAVCOM retrieved from <http://www.mavcom.my/en/who-we-are>

The objective of MAVCOM’s establishment is to commercially promote the civil aviation industry through consumer-oriented mechanisms and ensure a resilient civil aviation industry which in turn supports the nation’s economic growth. Besides that, MAVCOM acts as an independent entity to regulate economic and commercial matters related to civil aviation in Malaysia (MAVCOM, 2017a). Hence, the main objective of MAVCOM is to protect aviation consumer rights and interests. Previously, Malaysian passengers who travelled by air had no specific agency to protect their rights. Two important

features of consumer protection are (1) the regulation of Malaysian Aviation Consumer Protection Code (MACPC) and (2) consumer redress mechanism provided by MAVCOM.

Malaysian Aviation Consumer Protection Code (MACPC)

Among the main role of MAVCOM is to promote the Malaysian Aviation Consumer Protection Code (MACPC) to aviation consumers by setting up a specific consumer section on the MAVCOM website. The Malaysian Government has chosen to specifically regulate airline service standards by introducing the Malaysian Aviation Consumer Protection Code 2016 (“Code”) under the Malaysian Aviation Commission Act 2015, and removing it from the scope of the Consumer Protection Act 1999. The Code is the first in Malaysia’s aviation industry which came into effect on 1 July 2016. The aim of the Code is to afflict a right balance between the protection of aviation consumer and aviation industry competitiveness. Aviation consumers are protected under the national law when they travel by air whether in and from Malaysia through the Malaysian Aviation Consumer Protection Code 2016 (MACPC). Consumer protection laws have been in place globally and complied by Britain, Australia and Ireland. It was adapted from the Montreal Convention 1999 as international guidelines and from the Core Principles on Consumer Protection in the International Civil Aviation Organization (ICAO)’s (Malaysian Aviation Commission, 2017b) with vast engagement of relevant stakeholders which considers consumers as the main priority.

According to Malaysian Aviation Commission (MAVCOM), all aviation service providers of any airline operating in Malaysia and all airports are required by law to comply with the Malaysian Aviation Consumer Protection Code 2016. The MACPC consists of six Parts, whereby the core provisions are contained in Parts II to Parts IV. Part II consists of the minimum service levels and the standards of performance for airlines and aerodrome operators. Part III consists of passengers’ rights and Part IV deal with consumer complaints. Minimum service levels and standards are applied in the MACPC for airlines and airports to meet and fulfill the aviation consumers’ requirements in handling complaints and providing compensation, for instance, the airlines and airports are given 30 days to rectify the consumer complaints. Additionally, the protection of consumer rights include compensation and care for flight delays of two hours or more with specific protection. For instance, consumers are entitled to meals, limited phone calls and Internet access for flight delays of above two hours and also hotel accommodation if necessary and transport between the airport and hotel for delays above five hours, flight cancellations and lost or damaged luggage. The MACPC also provides for more transparency and clearer guidance on consumer rights and how to exercise these rights when it relates to flight

changes, pricing, baggage and various other matters (MAVCOM, 2017a).

MAVCOM provides video and details on aviation consumers' right on how to file complaints, FAQ and contact details of airlines and airports. The video is available in English and Malay languages which also contain the aviation consumers' right in flight delay, cancellation, denied boarding and mishandled baggage and also display "tv info" of the KLIA Express and KLIA Transit rail link. Besides that, MAVCOM also publicizes aviation consumer protection through various media, for instance with Bernama TV, conducts consumer education and awareness programs, provides information in Malaysia Airport Sdn. Bhd's airport magazine of. 'Convergence', distributes consumer rights pamphlets at MATTA Fairs and places notices at all check-in counters at airports in Malaysia. MAVCOM has involved many aviation players in their programs and has engaged with various consumer associations in Malaysia to solve the aviation consumer complaints and issues raised by the associations.

Consumer redress mechanism

Previously, all aviation consumer complaints or disputes were channeled to the Tribunal for Consumer Claim and various consumer associations' complaint handling channels but now there is only one redress mechanism in handling aviation related claims. MAVCOM has set up a system to handle consumer complaints called the Consumer Management System. The system came into effect on 5 May 2016 to ease the implementation of the MACPC. Firstly, the aviation consumer complaints has to go to the airlines or airports and if the resolution offered by the airline or airports are dissatisfied by consumers, then the consumer can lodge complaints through an online Complaints Management System by filling an e-Form in the MAVCOM website (MAVCOM, 2017b). Other alternative ways to complaint are through emails, telephone calls or walk-in to the office managed by MAVCOM. All the complaints will be investigated by MAVCOM, thus assisting consumers and aviation service providers to solve the disputes.

A total of 1,639 complaints were received from March 2016 to February 2017 where 1,632 were complaints concerning airlines and 7 complaints were about the services of airports in KLIA, KLIA2, Alor Setar and Kota Bharu (MAVCOM, 2017a). Among the most common consumer complaints were issues concerning refund, flight delays and cancellations, lost baggage and additional charges on their tickets (Figure 2). More than half of the complaints were regarding refund. This is consistent with a regulation set by Malaysia Aviation Commissioner (MAVCOM) on Passenger Service Charges (PSC) or "airport tax" and have been implemented at all airports in Malaysia. The PSC became an issue in the Malaysian aviation industry

especially for passengers. The PSC charges increased for domestic flights, flights to ASEAN countries and international flight for air travelers. Passengers should check their airlines tickets where the information of total cost of a flight, including all government and airline taxes including PSC and fees should be disclosed, according to the MACPC. The PSC will be fully refunded if the passengers did not travel on the flight upon the ticket they purchased. Out of 1,639 complaints lodged, MAVCOM has managed to solve 95% of the aviation consumer complaints registered with MAVCOM since its establishment (MAVCOM, 2017a). This shows a great effort played by MAVCOM.

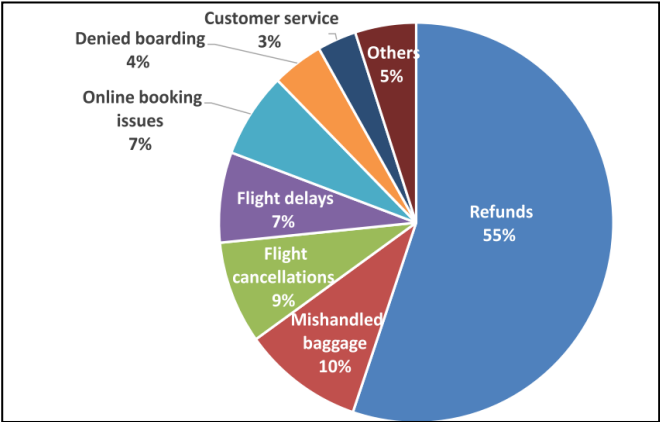


Figure 2: Consumer complaints by category from March 2016 to February 2017

Source: MAVCOM Consumer Report March 2016 to February 2017. Retrieved from <http://www.mavcom.my/wp-content/uploads/2017/04/170418-MAVCOM-Consumer-Report-March-2016-February-2017.pdf>

While complaints related to airports were about poor customer service and complaint handling as well as facilities at the airport (MAVCOM, 2017a) as demonstrated in Table 1. The number is small and therefore shows that the consumers are satisfied with the services provided by the airport providers as compared to the airlines.

Table 1: Consumer Complaints by Airport and Category from March 2016 to February 2017

Category / Airport	KLIA	KLIA2	Alor Setar	Kota Bahru	Total
Customer service	-	1	-	-	1
Complaints handling	1	-	1	-	2
Facilities	2	-	-	-	2
Others*	-	1	-	1	2
Grand Total	3	2	1	1	7

Source: MAVCOM Consumer Report March 2016 to February 2017- Retrieved from <http://www.mavcom.my/wp-content/uploads/2017/04/170418-MAVCOM-Consumer-Report-March-2016-February-2017.pdf>

Future Challenges of Airport and Aviation Consumers

Airports operation is most challenging in terms of the increasing number of air travel passengers. According to International Air Transport Association's (IATA) press release, the Association expected a double increase to the 3.8 million air passengers in 2016 for the incoming 20 years forecast, based on a 3.7% annual Compound Average Growth Rate (CAGR) (International Air Transport Association, 2016). Demand for air travel will also increase according to the rate. Thus, it gives a positive impact on the Gross Domestic Product (GDP) and the local economy. Besides that, airports' services tax to airlines will increase. With the increase of visitors, airport users, economic activity, employment and consumer behaviour changes will result in high impact on the standard level of airport services. The airport will struggle to cope with demand and pressured into upgrading airport infrastructure such as runways, terminals, security, baggage systems, air traffic control, and other elements need to be expanded due to the growing of passengers and aircrafts (Hoppe, 2011). The airlines have to impose a new surcharge or increase the existing fares, due to airport service tax and high cost of fuel petrol. The surcharge for checked baggage, changing reservation and making reservations at the counter services are charged to passengers. In the end, the passengers are the victims of the surcharges in the event of oversales, flight cancellations, and delays. Besides that, aviation consumers have difficulty in accessing accurate and adequate information when selecting flights which does not reveal the total cost of a flight, including all government and airline taxes and fees, and late response to customer complaints.

Airport safety and security are vital to keep the aviation consumers safe in the vicinity of the airport. It is to ensure the passengers are safe when they board the flight and during their waiting time, when there is a possibility of

terrorism criminal attack, or fire hazard at the airport terminal. The airport management is required to comply with the safety standard of the Safety, Health and Environment Management System (SHEMS) and Aerodrome Safety Management System (ASMS) (Malaysia Airports, n.d). Security queues have also been an issue for passenger safety because long waits can cause unfavourable incidents such as the criminal attack on King Jong-nam, half-brother of North Korean leader Kim Jong-un, whilst undergoing the security queue at KLIA2 on 13 February 2017 (Zolkepli, 2017).

Apart from that, in this century, climate change has a high impact on airports and aviation consumers. According to the Intergovernmental Panel of Climate Change (IPCC), climate changes are caused by human activities of releasing the greenhouse gas to the atmosphere. The phenomena expected to occur due to climate change are sea-level rise, temperature increases, increase in extreme weather and storms and changes of precipitation and induced flash flood or flood. The impact of climate change to airports is coming from the global sea-level rise, where the IPCC (2007) projected the rise of sea-level to be between 0.2 to 0.5 meters by the year 2100. The combination of sea-level rise and increase of storms can build up frequent storm surges and flooding especially in coastal areas. For example, the incident of extreme rainfall has occurred at Don Muang Airport, Bangkok in October 2011 and it may happen to other airports. On July 18, 2016, the Penang International Airport, located at a coastal area, was flooded because of a two-hour rainstorm and resulted in the delay of 10 inbound flights and four departing flights (Phuah, 2016). This incident can cause disruption to airport operations, flight suspensions, stranded passengers and evacuation to high ground.

Besides that, climate change can give a high impact of rising temperature. Consequently, the aircraft lift will be reduced and need longer time for take-off. As a result, the aircraft will need a longer runway and a longer time for take-off, which will in turn impact on the noise by the aircraft and emits air pollutions. Pollutions from aircraft noise may cause health problem to consumers and passengers, sleep disturbance to the airport communities and also might increase blood pressure and heart rate (Vallet *et al.*, 1983). Night time aircraft noise may cause vulnerability on endothelial dysfunction can significant increases in circulating adrenaline levels, decrease in sleep quality, increase in systolic blood pressure and release stress hormone (Schmidt *et al.*, 2013). A study by Eriksson *et al.* (2010) examined the effects of aircraft noise on hypertension in a population of over 4000 adults whose accommodations are close to the Stockholm Arlanda airport, and found that there is an increased risk in aircraft-noise causing hypertension. Greiser *et al.* (2011) research finding also indicated that there is an increased risk of cardiovascular diseases due to the impact of aircraft noise. Similarly, the Cologne-Bonn airport study shows that there was an increase in the amount

of cardiac medication with increasing of aircraft noise. While Perron *et al.* (2012) research shows the effect of aircraft noise in causing sleep disturbance. Therefore, all the studies showed a link between aircraft noise with sleep disturbances such as awakenings, decreased slow wave sleep time or the use of sleep medication, to blood pressure and hypertension. Therefore, it is common to find airports where night operations have been banned or restricted such as Zurich Airport's general ban on night operations from 11.30pm to 6.00am, and Frankfurt Airport from 11.00pm to 5.00am (Zurich Airport, n.d). Another technique is to charge higher fares for noisier planes with the aims to reduce the aircrafts noise.

Airport and aircraft emissions produce air contaminants such as NO_x (nitrogen oxides), HC (hydrocarbon) and fine particulate matter (PM). Aircrafts disseminate air contaminants through travel at great distance at difference level of altitude while airports disseminate them through airport ground activities, thus giving impact to the local, regional and global air quality (ICAO, 2011). These contaminant emissions can cause environmental issues at ground level such as to the ozone (O₃), acid rain, climate change, global warming and human health. Research on health impact has been done by Environmental Protection Agency (EPA) and medical research organization and found that PM is responsible for the majority of health risks resulting from aviation emissions and might impact the ozone as well. Primary particulate matter, which emit directly into the air, and secondary PM which interact with physical and chemical process in the atmosphere, can further travel thousands of miles and remain in the atmosphere for days to weeks (World Health Organization, 2006). The PM can also produce low visibility due to haze when fine particulates absorb and reflect light in the atmosphere. PM with a size of less than 2.5 micrometres can cause health impact to the respiratory system by traveling into the human lungs and bloodstream, resulting in cardiovascular effects and affecting neurological systems (Froines, 2006). People exposed to PM could be at risk of serious heart or lung diseases and are sensitive to it (Federal Aviation Administration, 2015).

Malaysia should also learn a lesson from the tragedy of September 11, 2001 in which it showed that the issue of safety and security is vital. The terrorists hijacked and took over four airplanes in the United States. Two of the planes crashed into the World Trade Center in New York City and the third plane was flown into the Pentagon, near Washington, D.C. Airlines security in the United States is the responsibility of the Federal Aviation Administration (FAA) and airlines. This incident happened because the airline failed to enforce their own existing security regulations in seizing the box cutter from the passenger at the security screener. The airlines' trade groups issued a manual listing for screener items which passengers could not carry past

airport checkpoints and have to comply with FAA regulations (Salant, 2002). However the FAA rules did not bar passengers from bringing any objects on planes unless the passengers carry blades of more than four inches long. The rules contradict between airlines security regulations and FAA security regulations, where both are responsible on security regulations. The FAA should be stricter with the screening standard for airlines to be complied with. As a result, the responsibility of airlines security was taken away from both FAA and the airlines, and later be replaced with Transportation Security Administration.

All these challenges pose lots of problems to consumers. More comprehensive law is important to address these issues and it requires full co-operation from all parties. The problems become more complex especially when it involves airlines from different countries all over the world. With the co-operation of MOT, DCA and MAVCOM, it is hoped that the abovementioned consumers' problems can be solved.

Conclusions

Aviation consumers' protection in Malaysia is carried out in a variety of ways which include the formulation, implementation and enforcement of new legislation as well as to conduct educational programs collaborated with aviation stakeholders and consumer organizations. The provisions of the MACPC is welcomed by Malaysian aviation consumers to protect aviation consumer rights and interests and are in line with the aviation consumers protection principles formulated by the International Air Transport Association (IATA). The IATA principles include that the regulations should be clear; passengers are always kept informed; procedures of handling complaint are efficient and established; and lastly, a passenger's entitlements are to be proportional in a situation of service breakdown. It is a myriad challenges to MAVCOM to implement new legislations, programs and initiatives and enforcement by MACPC and to keep pace with consumer demands. Airports and airlines should give top priority in providing excellent customer service by knowing how to keep pace with consumer demands due to their behavioural changes. Besides MAVCOM, airports and airlines have to be efficient in handling consumer complaints, respond quickly to queries about services and others that concern them, and thus properly address the matters by using the latest technology, especially in matters relating to environmental and security challenges.

Consumer protection law and regulations are essential to ensure good interaction between aviation service providers and aviation consumers so that the rights of consumers are unprejudiced. The existing redress mechanism channel is welcomed to settle consumers' dispute effectively. Aviation

consumers on the other hand should be aware of and understand their rights and protection which are available in the industry. The services rendered should satisfy the quality expected by consumers, protect consumers' life and property against any danger, hazard or difficulty occurring due to the failure. Safety information should be properly and adequately relayed to consumers through mass media communications, information counter, announcements and electronic media. The effort in creating resilient aviation consumers who are able to protect themselves by knowing their rights is essential and should be on-going. A mechanism to address more challenges and issues in the future regarding airports need to be sought.

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