



An Analysis on the Consumer Legal Protection in Umrah Package Travel Industry During Covid-19 Pandemic

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ABSTRACT

Umrah package travel has been recognized as one of the main contributors to the Malaysian tourism industry. Muslims in Malaysia travel by package to Mecca and Medina for their specific purpose: to perform religious duty (Umrah) to fulfill the unity of spirit, heart and soul. Recently, thousands of Umrah packages were cancelled by the local tour operators and travel agents due to the decision made by the government of Saudi Arabia who banned the entry to Mecca and Medina due to the fast spread of Covid-19. Consequently, tour operators and travel agents respond differently to this extraordinary circumstance which leads to tremendous loss to the consumers. Thus, this paper aims to investigate how the Malaysian legal system safeguards the rights and interests of Umrah package travelers in Malaysia in the event of extraordinary circumstance by analyzing the existing academic literature and relevant statutes including Consumer Protection Act 1999, Tourism Industry Act 1992 and MATTA Code of Ethics for Members. The results of the above analysis will define the adequacy of the existing legal framework and the mechanism that we still need to protect the welfare of Umrah package travelers.

Keywords: Umrah package travel, consumer, consumer protection, Covid-19.

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INTRODUCTION

The COVID-19 virus is an on-going global flu pandemic that has come to be considered as the worst post-World War II pandemic to affect the world, surpassing the outbreaks of severe acute respiratory syndrome (SARS) in 2003 and the Middle East respiratory syndrome (MERS) in 2012. After the World Health Organization (WHO)'s declaration of Covid-19 as a pandemic on March 11, many countries imposed Movement Control Order (MCO) or Temporary Entry Restriction Order (TERO) barring entry of international tourists as well as restricting the movement of local citizens to high risk countries. In March 2020, the Kingdom of Saudi Arabia (KSA) registered the first case of COVID-19. Since then, the number of infections has been increasing gradually on a daily basis. On 20 Sep 2020, the KSA reported 334,605 cases, with 319,154 recoveries and 4,768 deaths. The KSA has taken several measures to control the spread of COVID-19 including prohibiting any entry to Makah and Madinah until further notice. Umrah also ceased from March 2020 until further notice. As a result, this scenario has badly affected Umrah package travelers and they have suffered major economic, spiritual as well as emotional losses (the Star Online, 2017).

A few contracts of Umrah package travel would cater for such circumstances (Covid-19) by means of a 'force

majeure' clause and the rest are silent on this matter. There are tour operators and travel agents who claim that covid-19 is an extraordinary circumstance which does not confer absolute exemption to the carrier and service providers. Besides, there are consumers who are entitled to get a refund in the case where the contracts have been cancelled, whilst the rest are not. There is no standard practice that has been practiced by the local tour operators and travel agents in the case where there is a fundamental change of circumstance and affects the performance of the contract. Thus, it is vital to examine the existing legal measures that are available to protect the interests of Umrah package travelers as well as the tour operators and travel agents in Malaysia.

RESEARCH METHODOLOGY

The methodology to be employed for this study is primarily doctrinal study and content analysis. This legal study has collected relevant materials, data and information on Umrah service matters especially those involving pilgrims' protection issues. The concept of consumer, consumer protection and consumer protection measures are examined using a variety of sources, including library and online databases. The academic literature on consumer protection measures is reviewed and analyzed. The approach to be applied involves a content analysis of existing laws, regulations and guidelines on the legal protection of Umrah pilgrims as consumers in Umrah travel package service. This includes an examination

of relevant provisions of Consumer Protection Act 1999 as well as the MATTA Code of Ethics for Members.

1. THE CONCEPT OF UMRAH TRAVELER AS CONSUMER OF UMRAH PACKAGE TRAVEL

The term consumer can bring numerous things in different contexts (Howells and Wilhelmson, 2017). Generally, consumers by definition include all of us, because human beings are consumers by default and consumption is an essential requirement for human survival and endurance. Reifa and Julia (2009) claim that the term of consumer is inconsistent and not uniform. It ranges from individuals, groups of people or organizations who only buy products or services for a private purpose and may be consumed with dual purposes. Therefore, legally, many regulations define consumers in a particular manner that may be similar from country to country despite the notion of consumers being very different.

The question is, whether an Umrah package traveller is a consumer within the ambit of Consumer Protection Act (CPA) 1999? The main legislation which regulates consumer protection in Malaysia is the CPA 1999. In this Act, consumer is defined as a person who 'acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purposes, use or consumption; and does not acquire or use the goods or services, or hold himself out as acquiring or using the goods or services, primarily for the purpose of resupplying them in trade; consuming them in the course of a manufacturing process; or in the case of goods, repairing or treating, in trade, other goods or fixtures on land (section 3(1) Consumer Protection Act 1999). Consumers purchase goods or services for direct use or ownership rather than for resale. Therefore, it is possible to classify Umrah package travellers as people who purchase services (Umrah package travel) from local tour operators and travel agents for their religious and spiritual purposes. Accordingly, Umrah package travellers are consumers within the ambit of CPA 1999.

Umrah travel package is a common and regular service used by consumers particularly Muslims in Malaysia. The high demand for this service is contributed by better financial conditions and self-awareness of Muslims in Malaysia. In consequence, tour operators and travel agencies business is rapidly growing which offers a variety of assistance that includes accommodation, transportation, tickets, tour packages and others. In Malaysia, a travel agency is divided into two which are general travel agencies and Hajj and Umrah travel agencies. Umrah activity has been regulated by the Ministry of Tourism and Culture (MOTAC) under the Umrah Regulatory Council (Majlis Kawal Selia Umrah). Those travel agencies who want to sell Umrah packages need a special Umrah license issued by MOTAC.

2. THE CONCEPT OF CONSUMER PROTECTION

According to Maynes (1979), consumer protection consists of policies and actions, usually involving intervention by the government, designed to ensure that all consumers obtain what they would really want. Multiple studies done by Iain Ramsay (2021), Geraint Howells and Stephen Weatherill (2005) have been conducted on consumer protection. Consumer protection embraces all goods and services, either public or private. However, some take a narrower view of

consumer protection. For example, the United Nations Centre on Transnational Corporations, following the International Labour Organisation (ILO) defines consumer protection as efforts to ensure that consumers are not exposed to safety and health risks or unfair commercial practices against which they have no defence. Consumer protection is important because it allows a free market to operate effectively, ensure the vulnerable are protected, guard against unscrupulous traders and unfair activities as well as put consumers, businesses and local communities at the heart of regulatory decisions.

In a wider context, consumer protection applies to the laws and regulations that ensure fair transaction between service providers and consumers (Oya et al., 2011). Consumer protection aims to serve the needs of consumers and safeguard their interests. As such, it seeks to facilitate the industry's response to consumers' needs, consumers trust in the quality of service, the universal availability of services and the affordability of service through the establishment and implementation of consumer codes and standards, market dispute resolution, efficient rate control, and a system of universal service provision (Mohamad, 2014; Malaysian Communication and Multimedia Commission, 2018).

Three complementary effects are found in an efficient consumer protection system. First, it requires laws and regulations regulating the relationship between service providers and consumers to ensure equality, transparency and remedial rights. Second, an efficient mechanism for compliance is needed. Third, it entails fostering consumer self-awareness as a way of defending the interests of consumers. Malaysia's consumer protection is carried out in a number of ways. These include the formulation and implementation of national consumer protection policies, the implementation of consumer protection legislation as well as the development of regulatory bodies and consumer movements. In this paper, the Consumer Protection Act 1999, Tourism Industry Act 1992 and MATTA Code of Ethics for Members are the three main legislations that will be focused on.

3. MALAYSIAN LEGAL FRAMEWORK OF CONSUMER PROTECTION

On 27 October 1990, the Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC) was created to advocate and protect the interests of consumers in Malaysia (Azmah, 2014). This involves the creation of an ecosystem of consumers and businesses that, in line with the expectation of the people in a developed world, complement each other towards self-regulation (Official Portal Ministry of Domestic Trade and Consumer Affairs, 2018). It is hoped that it will be possible to build well-informed consumers, confident consumers as well as good ethical business practice, with the result of an economically and socially balanced nation.

In order to achieve its target of an empowered, aware and compassionate consumer society, the Ministry aims to provide an exposure to the consumer market at all levels of society across the world. To this end, a range of steps have been taken by the Ministry, including the formulation and implementation of national consumer protection policies; the compliance of existing legislations related to consumer protection; the formulation of new legislation and

amendments to old laws; conducting public education, school children and university students; encouraging school consumer clubs, conferences and conventions, granting grants, smart alliance and cooperative consumer associations; and redress mechanisms (Mohd, 2005).

Consumer Protection Act (CPA) 1999

By means of laws transplanted from the United Kingdom (UK), consumer protection laws have a long history in Malaysia. But Malaysia also has laws established domestically. The need for new legislation to provide protection for consumers has long been recognized. Some consumer protection regulations such as the Price Control Act 1946 and the Medicines Act 1956 were implemented by the colonial government prior to independence. Nonetheless, Josie M.Fernandez has argued that some consumer related laws, such as the sale of goods and provision of services that were implemented prior to 1999 failed to protect the interests of consumers based on caveat emptor. In consumer transactions, the concept of caveat emptor 'let the buyer beware' has triggered many unfair practices. Ong Tze Chin and Sakina Shaik Ahmad Yusoff (2016) argue that this general rule cannot be applicable in the current market economy because of the restricted awareness on the terms and conditions of consumer transactions drawn up in a sophisticated manner by the large business organization. As a result, CPA 1999 which entered into force on 15th November 1999 was implemented by the Malaysian government to protect consumers' rights and interests after prolonged years of struggle by the consumer movement.

The CPA 1999 marks a milestone in consumer protection in Malaysia, affected in one way or another by legal developments in the United Kingdom, Australia, New Zealand and Canada which solely provides regulation for consumer protection in relation to the supply of goods and services either offline or online (Elistina and Naemah, 2011; Roshalizawati and Naemah, 2015), claimed that. This Act is under the jurisdiction of the Minister who is responsible for domestic trade, cooperative and consumer affairs. Before the enactment of CPA 1999, there was no single Act which gives direct protection to the consumers. The CPA 1999 applies only to consumer transactions as specifically mentioned in Section 2(1) of CPA 1999;

"this Act shall apply in respect of all goods and services that are offered or supplied to one or more consumers in trade..."

i. The Scope of Protection by CPA 1999

The CPA 1999 consists of 14 parts and a total of 150 sections covering the core areas of consumer protection such as the provision of products, the provision of services, trade practices, product safety and liability and redress mechanism. The question is: does the CPA 1999 have any protection for the consumers who are buying Umrah package travels from the local tour operators and travel agents?

Umrah package travel is a form of service offered by local tour operators and travel agents combining accommodation, transport, itinerary and meal in a single package for the purpose of carrying out lesser pilgrimages to Mecca and Medina. According to section 3 of CPA 1999, the supply of services is defined as 'to provide, grant or confer any rights, benefit, privileges, or facilities that are under contract but does not include rights, benefits or privileges in the form of the

supply of goods or the performance of work under a contract of service'. From the aforementioned definition, it is apparent that the term 'service' is narrowly defined to include any contract excluding services that are merely incidental to the supply of goods as well as pure services controlled by their specific statutes such as the Architects Act 1967, the Legal Profession Act 1976 and the Medical Act 1971 (section 59, CPA 1999). There are two categories of services that are specifically beyond the framework of CPA 1999; services which produce tangible product such as a tailor who produces a dress and services associated by a skilled tradesman such as plumber, an electrician and a repairer, all of whom will use some material article in addition to the skill they exercise (Consumer Association of Penang, 2017). Considering the nature of a contract between the tour operator or travel agent and the Umrah travelers which is a contract for service, it should be within the ambit of CPA 1999 where the Umrah travelers deserve certain protection in this respect like the other consumers as defined by Section 2 of CPA 1999.

ii. Types of Protection Provided by CPA 1999 For Umrah Package Travellers

The CPA 1999 is the core legislation enacted to provide greater protection to the Malaysian consumers including Umrah package travelers, where the consumer rights granted by CPA 1999 cannot be removed from them, irrespective of the conditions in any agreement they have signed. This statute is applicable to both goods and services but previously, the laws regulating the service industry seems to be left behind compared to goods. This is the biggest loophole in the existing CPA 1999. Generally, this Act encompasses four major areas of consumer protection; the quality and safety of goods and services, marketing practices and consumer information, price and supply of goods and services as well as remedies.

As stated in Section 55 of the CPA 1999, there must be implied guarantees that services will be completed within a reasonable time where the time of the services is not predetermined. In other words, this provision explains to us that the sellers or service providers must complete their services within the time. A service guarantee is a promise that a service will meet certain consumer expectations or standards. However, the word 'guarantee' is not defined in this act. Part VIII of this act provides consumers with a right to receive services that are carried out with reasonable care and skill within reasonable time. Travel agents are expected to be knowledgeable about the service they provide. Their work must be at least as good as what a competent person with average skills and experience would provide. However, according to [38], the section does not elaborate on the degree of care and skill required. With regard to the current scenario of Covid-19, travel agents, tour operators and service providers agreed to perform the package travel contract within a specified period. A failure of the travel agent to provide Umrah services as stated in their brochure is a clear breach of the guarantee.

Due to Covid-19 outbreak, all Umrah travel packages need to be postponed to a new date or cancelled. By virtue of section 55 CPA 1999, the tour operators, travel agents and service providers will be able to perform their services within a reasonable amount depending on when Saudi Arabia opens their border and allow for Umrah activities as before. In other

words, this provision provides protection to the consumers, particularly the Umrah package travelers in terms of the performance of the Umrah activities. However, there were some tour operators and travel agents who decided to cancel the bookings that had been made by the consumers and refused to refund the payment that had been made earlier. There is no single provision in the CPA 1999 which regulates the performance of the services during extraordinary circumstances and remedies entitled by the consumers due to extraordinary circumstances. Undeniably, it results from uncertain circumstances and inconsistent decisions made by the tour operators, travel agencies and other service providers. Consequently, the Umrah pilgrims suffered tremendous financial and emotional loss when the tour operators and travel agents decided to cancel the contract and refuse to pay back money to their customers.

The act also provides pilgrims with procedures so they can cancel the contract due to the failure or dissatisfied services provided by Umrah travel agents, in cases of breach of guarantees. Section 60 of this act states that consumers may require the supplier to remedy the failure within reasonable time. In other words, the act provides a right to Umrah pilgrims in a way of cancellation of the contract. Furthermore, in Section 85 of the CPA 1999, Umrah package travelers who are dissatisfied with the performance of local tour operators and travel agents could file a private redress claim with TCCM. This tribunal is an independent judicial body with the primary purpose of hearing and deciding claims, including complaints lodged by tourists under the CPA 1999. Apart from the courts, TCCM provides an alternative redress mechanism for a consumer to sue for any loss suffered (in respect of any goods or services purchased or acquired) in a less cumbersome, fast way and at a reduced cost. In 2014, multiple lawsuits were filed by the Umrah package travelers who were disappointed by the local tour operators and travel agents to the Tribunals. The Tribunals awarded a certain amount of compensation to be paid to the Umrah package travelers accordingly.

iii. Enforcement of CPA 1999

The Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) has an absolute right to enforce the rights of consumers in order to ensure that this Act adequately protects the interests of consumers. The enforcement of consumer protection also can be carried out by the competent authorities or regulatory bodies based on the specific nature of the issues and complaints. Specifically, Part XIII of the CPA 1999 deals with the enforcement of CPA 1999. The MDTCC delegates the power to implement the law as defined in CPA 1999 to the controller, deputy controller and assistant control. The assistant controller shall be under the supervision and direction of the controller by virtue of Section 7(3) of CPA 1999. In addition, as specified in section 123 CPA 1999, the MDTCC delegates its jurisdiction in this Act to an assistant controller to investigate the commission of any offence under this Act. On 17 April 1972, the MDTCC also formed an Enforcement Division to eradicate unethical business activity in order to protect consumers from being exploited by traders through CPA 1999 (Ministry of Domestic Trade, Cooperatives and Consumerism, 2018).

The MDTCC had sought cooperation from the Malaysian Communication and Multimedia Commission with a view to

reaffirming the legitimacy and legal consequences of electronic transactions, eliminating legal barriers to e-commerce and to providing electronic communications with certainty (Malaysian Communication and Multimedia Commission, 2018). Recently, as local tour operators and travel agents began launching their Umrah package travel web portal, many Umrah package travelers in Malaysia preferred to book their Umrah package trips online. For instance, the one-stop GoUmrah.travel enables them to instantly book Umrah trips including all major elements such as flights, hotels, transfers, visits to holy sites, travel insurance and visa processing (The Star Online, 2017).

iv. The Effectiveness of CPA 1999 As Legal Protective Instrument for Umrah Package Travelers

The changes of the world economy have since created various implications and challenges to the consumers. The advancement of the information technology and technology communication (for example: mobile phone application, internet, e-commerce etc.) has not just changed the environment of consumer transactions but also raised potential threats that impact the rights of consumers as a whole. Traders have enough tools to understand the goods and their related data. On the other hand, the consumers are more often left with limited or no information in regard to the products and services. This paper established some gaps in the current CPA 1999 that should be filled in order to retain its relevance for the current demand for protection by Malaysian consumers in general and, in particular, by Malaysian Umrah package travellers. The earlier examination also found that the CPA 1999 is not robust enough to protect consumers because it is not effectively enforced. About fifty per cent (50%) of respondents in the Consumer Profile Survey stated that there is no effective enforcement of laws.

The examination on the scope of protection exposes that the existing provisions of CPA 1999 are strongly concentrated on the safety of goods and services, misleading and false action and practices, unfair terms as well as redress. On the other hand, it excludes a number of matters important to consumers including the terms, obligations of traders and remedies entitled by the consumers in the existence of extraordinary circumstances.

They therefore need greater protection than is offered by the current CPA 1999. More precisely, additional protection is required to comprehensively protect the interests of consumers in this competitive market, including Umrah package travelers. For instance, the existing provision of CPA 1999 should require the traders i.e. tour operators and travel agencies to provide terms on exceptional circumstance, meaning of extraordinary circumstance, duties and obligations of traders in the case of extraordinary circumstance as well as remedies entitled by the consumers during the occurrence of extraordinary circumstance. Legislators must draw clear distinction between extraordinary circumstance, act of god as well as frustration.

Malaysian Association of Tour and Travel Agents (MATTA) Code of Ethics for Members

The Tourism Industry Act (TIA) 1992, Malaysian Tourism Promotion Board Act (MTPBA) 1992 and Tourism Vehicles

Licensing Act (TVLA) 1999 govern the tourism industry in Malaysia. On 15 May 2013, following the 13th General Election, the Ministry of Tourism and Culture (MOTAC) was created through the restructuring of the Cabinet. The Ministry's duties include formulating the national tourism policy to achieve the vision, mission and objectives and implementing policies relating to tourism. The policy and government legislation are not the only instruments that provide protection to the Malaysian Umrah package travelers, but Malaysian tourism trade associations and organizations also design a specific measure for protecting the rights and interests of Umrah travelers who are purchasing Umrah package travels from the local tour operators and travel agents.

MATTA serves as the national umbrella body representing the entire travel industry in Malaysia. In order to protect the interests of several groups, including tour operators, travel agents, other service providers as well as consumers, it has been set up to control the travel agency sector intentionally. MATTA boosts and expands its membership of over 3100 members including local tour operators and travel organizations and various international affiliations. With a full-time secretariat in Kuala Lumpur, its headquarters, MATTA has state chapters in Kedah, Penang, Perak, Federal Territory of Kuala Lumpur, Putrajaya, Melaka, Negeri Sembilan, Pahang, Terengganu, Kelantan, Selangor, Johor, Sabah, Sarawak and Labuan.

It promulgates the MATTA Code of Ethics for Members in order to refrain from taking any action by the local travel agents or tour operators that may prejudice the rights of package travellers as consumers. Every member of MATTA shall, pursuant to Articles VII and VIII of the MATTA Constitution, be bound by Code of Ethics for Members for the purpose of regulating the conduct and business and other practices of travel agents, tour and ground operators. Although Part III of MATTA Code of Ethics for Members specifically lays down guidelines on how to control the conduct between travel agents and members of the public i.e. consumers of tourism products including on the booking conditions, reservation forms, insurance, travel documents, travel arrangement, visa and health requirements.

i. MATTA Code of Ethics for Members: How It Protects the Rights of Umrah Travelers in Extraordinary Circumstances?

MATTA Code of Ethics for Members is applicable to all licensed tour operators and travel agents, whether domestic, inbound or outbound regardless of their nature of a business. It requires MATTA members to represent their consumers ethically and as defined in Code 5.2 of the MATTA Code of Ethics for Members, each member shall be committed upon their responsibilities. It is a measure to ensure that the activities of travel agents, tour operators, ground operators and others in the travel and tourism sectors make a major contribution to the economic, social and well-being of the communities and countries in which they work. It is generally the duty of MATTA members to provide accurate information on the trip, the tour, the hospitality arrangements and the contract conditions to travelers including Umrah package travelers in a simple, understandable and unambiguous way. Therefore, the local tour operators and travel agents who are operating Umrah travel package business owe duties to

perform their contracts, disseminate information to the consumers as well as compensate their consumers accordingly.

The Travel Industry (Tour Operating Business and Travel Agency Business) Regulations 1992 makes it mandatory for licensed travel agencies offering Umrah packages to ensure that all pilgrims are insured against the risk of emergencies, illness and death by the Takaful Umrah Scheme. The requirement was added into the Regulations through legislative amendment, which came into force in 1999. Furthermore, since March 2012, the MATTA has placed a mandatory requirement on its members to provide travel insurance. Travel agents shall in compliance with the Code 5.2.4 MATTA Code of Ethics for Members draw the attention of their client travellers to travel insurance facilities which are sufficient for them to insure themselves against any eventuality such as flight cancellation or delay, loss of luggage, personal accident etc. Thus, in the case of flight and accommodation cancellation by the service providers due to Covid-19 pandemic, the Umrah package travelers are entitled to claim for insurance. This provision indirectly prevents serious detriment to be suffered by the Umrah package travelers.

As provided in Code 5.2.2, the tour operators and travel agents who are the members of MATTA are obliged to practice fair pricing and refrain from providing service below cost which in other words, it allocates the consumers of package travel a right for a fair deal when making a purchase decision. According to marketing literature, fair is a global measure of price acceptability (Angela Mariani (2011). Fairness has previously been described as a decision as to whether an outcome and/or the method of achieving an outcome is fair, appropriate or just (Lisa et al., 2003). However, it is commonly accepted that the economic and social dimension of production and exchange should be taken into account in a more rigorous concept of justice (Sarah, 2002). However, the MATTA Code of Ethics for Members does not include a specific description of a reasonable term. A global measure of price acceptability has been taken to be fair. It has been believed that the criterion for deciding a reasonable or appropriate price is solely economic. A fair price therefore, is simply a low price - one that benefits the consumer, one that is economically appropriate.

Furthermore, local tour operators and travel agents who are registered with MATTA are responsible to supply accurate information to the consumers. As provided in Code 5.2.7, the members shall be factual and accurate when providing information about the services which they represent. They shall not at any time or place use misleading or deceptive practices. It is because information plays a vital role in consumer decision making. Inaccurate information pertaining to particular goods or services may defeat the consumers' interests and result in economic as well as emotional loss. However, this code does not clearly list down what is the information that should be provided to the consumers and how the information should be provided to the consumers. Different tour operators and travel agents could provide a different type of information to the consumers. Therefore, the MATTA Code of Ethics for Members should spell out clearly what are the information that should be provided by the local tour operators and travel agents to the consumers and how it

should be provided to the consumers. Only then, the consumers could evaluate whether the information provided to them is accurate or not. By requiring certain information especially on the requirement of vaccination and visa application and approval are amongst vital information that need to be provided to the consumers which could protect consumers' rights as a whole.

ii. The Enforcement and Compliance of MATTA Code of Ethics for Members

In the case where the MATTA members fail to comply with the MATTA Code of Ethics for Members, Code 1.3 MATTA Code of Ethics for Members provides a platform for the consumers including Umrah package travellers to file their complaints in writing to the MATTA Consumers Affairs Board (MCAB). If such complaints are unresolved, they will be brought to the attention of the Executive Council of MATTA and, where necessary, the Tourism Licensing Division (TLD).

As specified in Section 85 of the CPA 1999, consumers also have a channel to bring the claims through alternative dispute mechanisms to the TCCM. This provision is one of the statutory laws which provides a remedy in relation to misleading and deceptive conduct, false representation, unfair practices and unsafe goods and service. This TCCM is an independent judicial body with the primary role to hear and assess claims lodged by consumers under the CPA 1999. With the establishment of the TCCM in Malaysia, the role of the Commissioner in this aspect appears to be insignificant as consumers tend to bring the disputed cases to the TCCM (Mohd Motasim, 2014). It is because, apart from the courts, TCCM offers an alternative redress mechanism, for a consumer to claim for any damage incurred (in respect of any goods or services purchased or acquired) in a less cumbersome, fast way and at a minimal cost. Any settlement agreed upon and any award made by TCCM shall be final and binding on all parties to the proceedings (Rungit Singh, 2016). In addition, the award made by TCCM is considered to be an order of a magistrate's court and to be enforced by any party to the proceedings accordingly.

iii. The Effectiveness of MATTA Code of Ethics for Members Protects the Interests of Umrah Package Travelers

The MATTA Code of Ethics for Members does provide several protections as highlighted earlier. However, this study found that the protection provided by the MATTA Code of Ethics for Members does not correspond well to the consumers' needs, especially Umrah package travelers. For instance, Code 5.2.3 clearly provides that 'members who are providing tour arrangements shall deliver all components as specified in their promotional materials, written quotation or any form of written confirmation'. However, it does not clearly interpret what it meant by component and what are the components that should be specified in that promotional materials, written quotation or any form of written confirmation. This study would argue that the members of MATTA should be required to disclose all the relevant information to the travelers before the contract takes place. Therefore, an additional provision

should be included to fill in the existing gaps in the MATTA Code of Ethics for Members.

In addition, this paper found that Code 5.2.7 of MATTA Code of Ethics for Members is very general and has not apparently guided what is the information that needs to be provided by the tour operators and travel agents, when the information should be provided to the consumers and how it should be provided to the consumers. By virtue of that Code, the tour operators and travel agents are obliged to provide factual and accurate information to the consumers. When the Code is not deliberately guided on this matter, the information may not be supplied to the consumers as expected which may refrain the consumers from having adequate and accurate information at all stages of transaction. Therefore, it is really important for the Code to be more prescriptive and proscriptive; the Code must clearly require the local tour operators and travel agents to provide essential information in relation to Umrah package travel including accommodation, transportation, itinerary, registered address of tour operators and travel agents, price and mode of payment, health, vaccination requirement and visa requirement and etc.

CONCLUSION

The earlier examination on the protection measures for Umrah package travelers in the context of Malaysian legal paradigm reveals that there are several gaps that prevent the existing policies, laws, rules and approaches from comprehensively protecting the interests of Umrah package travelers in Malaysia in extraordinary circumstances i.e. Covid-19 era. The main legislation that provides provisions for consumer protection in Malaysia, particularly CPA 1999 does not exhaustively protect the consumers. The CPA 1999 was enacted 15 years ago. It did not change so much though it went for several amendments. The consumers need additional protection especially when the market keeps challenging in this globalization era and when the world is facing Covid-19 pandemic. Several flaws have been found in CPA 1999 where it excludes a number of matters important to consumers including provision on extraordinary circumstance, its legal effects and remedies entitled by the consumers. It does not correspond well to the current demand of consumers and insufficient to protect the Umrah package travelers as a whole. Moreover, the approaches employed by the MOTAC, MATTA and JAWHAR for protecting the interests of Umrah package travellers does not work as targeted. This paper found that the existing approaches insufficient to protect the interests of Umrah package travelers and far away to handle the existence of extraordinary circumstances. It may restrict the local tour operators and travel agents from committing an offence such as selling fraudulent Umrah package travel, but it does not guarantee any protection for the Umrah package travellers. The government must develop and implement an effective and practical legal protection framework which should cover appropriate instruments, good implementation framework and excellent enforcement.

References

- Abd Rahman W.F.I., Ahamat, H. (2019) *Legal Protection of Malaysia Umrah Pilgrims. International Journal of Engineering and Advanced Technology (IJEAT)*. 8,5C, 397-404.
- Abdullah Asuhaimi, F., Makhtar, M. & Abd Ghadas, Z.A. (2020). Right of Cancellation for Booking of Short-Term Accommodation Through Digital Economy Platform Before Movement Control Order (MCO). *Syariah and law in facing Covid-19: The Way Forward*. 3, 1, Retrieved from <http://insla.usim.edu.my/index.php/eProceeding/article/view/40>.

- Abdullah NC. (2002). General principles of Malaysian law: with special reference to the travel and tourism industry. Pusat Penerbitan Universiti, Universiti Teknologi MARA. 25. Bakar EA, Amin N. (2011). Consumer protection in the service industry under the Consumer Protection Act 1999. *Malaysian Consumer Law Journal*. 1,123-42.
- Ahmad Aminollah, R.N.A, Gomez, E.R. 'Air passenger rights curtailed by COVID-19 pandemic' Retrieved December 28, 2020. from <https://www.internationallawoffice.com/Newsletters/Aviation/Malaysia/SKRINE/Air-passenger-rights-curtailed-by-COVID-19-pandemic>.
- Amin N. (2007). Consumer redress mechanisms in Malaysia: Prospects and challenges. *IJUM Law Journal*.
- Amiso & Cairns, 'Covid-19 and Force Majeure Issues in Construction and Engineering Projects in the UAE and Beyond – Part 2', April, 2020
- Bakar EA, Amin N. (2010). ADR for consumers: An appraisal of the tribunal for consumer claims Malaysia. In: Naqib M, editor. *Mediation in Malaysia: The Law and Practice Kuala Lumpur*: Lexis Nexis.
- Bakar EA, Amin N. Consumer protection in the supply of service: A comparative study between the Consumer Protection Act 1999 Islamic Law. (2010). *IJUM Law Journal*, 18(1).
- Ebrahim, S.H., Memish,Z.A. (2020). Saudi Arabia's Measures to Curb the Covid-19 Outbreak: Temporary Suspension on the Umrah Pilgrimage. *Journal of Travel Medicine*,27, 3.
- Erotokritou, C. & Grigorieffe, C. (2020). EU Regulation No 261/2004 on Air Passenger Rights: The Impact of the COVID-19 on Flight Cancellation and the Concept of Extraordinary Circumstances. *Air and Space Law*,Vol 45, 123-141.
- European Commission, Commission Notice 18th March, 2020, 'Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19' available at https://ec.europa.eu/transport/themes/passengers/news/2020-03-18-covid-19-guidance-eu-passenger-rights_en accessed 29th June, 2020
- Faye Moore, 'Will Covid-19 Trigger a Force Majeure Clause?', 26th March, 2020 available at <https://www.pinsentmasons.com/out-law/guides/covid-19-force-majeure-clause>.
- Khairi Alwi, Ataul Karim Patwary, Nur Ilyani Ramly. (2020). Impact Of Covid-19 Towards Tourism Industry: An Evidence From Malaysia. *PalArch's Journal of Archaeology of Egypt / Egyptology*. 17(8), 354-382. Retrieved from https://archives.palarch.nl/index.php/jae/article/view/3328_20.
- Kokpan, B. (2020). COVID-19, Extraordinary Circumstances and Cancellation of Flights in Nigeria. *Journal of Comparative Law and Legal Philosophy* Retrieved from <https://ssrn.com/abstract=3726136> or <http://dx.doi.org/10.2139/ssrn.3726136>
9. Van-Thuan Hoang, Philippe Gautret, Ziad A. Memish & Jaffar A.Al-Tawfiq, Hajj and Umrah Mass Gatherings and COVID-19 Infection, (2020) 7, *Current Tropicals Medicines Report*, 133-140.
- Lee-Peng Foo, Mui-Yin Chin, Kim-Leng Tan & Kit-Teng Phuah (2020) The impact of COVID-19 on tourism industry in Malaysia, *Current Issues in Tourism*, <https://doi.org/10.1080/13683500.2020.1777951>.
- Leupold, P. (2019). Consumer Protection while Travelling – Enforcement of Air Passenger Rights during 'Extraordinary Circumstances' in Light of Regulation (EC) No 261/2004. *Journal of European Consumer and Market Law*, Vol 8, Issue 3,93-131.
- Markova,P. (2020). Consumer Protection While Travelling - Enforcement of Air Passenger Rights During Extraordinary Circumstances in Light of Regulation (EC) No 261/2004 (2009). *Journal of European and Market Law*,8,3.
- Neuberger,L. & Egger, R. (2020) Travel risk perception and travel behaviour during the COVID-19 pandemic 2020: a case study of the DACH region, *Current Issues in Tourism*, DOI: 10.1080/13683500.2020.1803807.
- Pandey,A. (2015). Understanding the Differences between Acts of God and Force Majeure. *NALSAR University of Law*. Retrieved from <https://www.lawctopus.com/academike/understandingdifferences-act-god-force-majeure/>
- Popovici, N., Condrea, E., Marin, C. A., & Oprisan, O. (2020). *TOURISM SERVICES AND COVID-19. JBFEM*. 3(2), 91-100. Retrieved December 30, 2020, <https://doi.org/10.32770/ibfem.vol391-100>.
- R. Alderman, A. De Franceschi, M. Giancaspro, G. Howells, C. Lei, J. Lete, H.-W. Micklitz, E. Miscenic, T. Naude, P. Pichonnaz, E. Poillot, I. Ramsay, E. Terryn, C. Twigg-Flesner, and T. Wilhelmsson. (2020). Consumer Law and Policy Relating to Change of Circumstances Due to the COVID-19 Pandemic. *J Consume Policy*, 1-14.
- Sabri MF. (2014). The development of consumer protection policies in Malaysia. *International Journal of Business and Social Research*. 4(6).
- Sara Drake, S. (2020). Delays, Cancellations and Compensation: Why Are Air Passengers Still Finding It Difficult to Enforce Their Eu Rights Under Regulation 261/2004? *Maastricht Journal of European and Comparative Law*, 27,2.
- Taylor,S. (2020). Flight Cancellations and the Covid-19 pandemic: Is European Union Law on Air Passenger Rights Fit for Purpose? *Tourism Facing A Pandemic: From Crisis to Recovery. Universita Degli Studi Di Bergamo*.
- Ugur, N.G, Akbiyik, A. (2020). Impacts of Covid-19 On Global Tourism Industry: A Cross-regional Comparison. Vol 36, *Tourism Management Perspective*, Vol 36, Retrieved December 28, 2020 from <https://reader.elsevier.com/reader/sd/pii/S2211973620301112?token=0EDA8454817008BC019B7>
- Viscount Simon in Criklewood Property and Investment Trust Ltd. v Leighton's Investment Trust Ltd (1945) A.C. 221 at 228.