

## PalArch's Journal of Archaeology of Egypt / Egyptology

### CONSUMER PROTECTON MEASURES FOR UMRAH PACKAGE TRAVELLERS IN MALAYSIA

*Norhasliza binti Ghapa*<sup>1</sup>

<sup>1</sup>Universiti Sultan Zainal Abidin, Gong Badak Campus, 21300 Kuala Terengganu,  
Terengganu Darul Iman, Malaysia.

[haslizaghapa@unisza.edu.my](mailto:haslizaghapa@unisza.edu.my)

**Norhasliza Binti Ghapa. Consumer Protecton Measures For Umrah Package Travellers In Malaysia--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 274-289. ISSN 1567-214x**

**Keyword: Umrah, Package Travelers, Consumer Protection, Law And Regulation.**

#### ABSTRACT

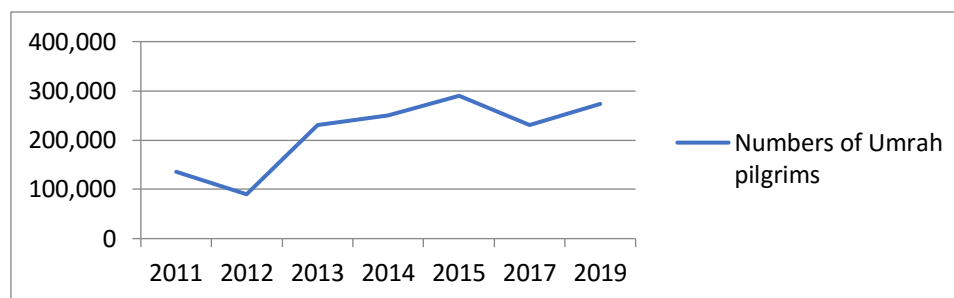
As one of the major contributors to the Malaysian tourism industry, Umrah package travel has been recognised. For their particular intent, Muslims in Malaysia travel by package to Mecca and Medina for their specific purpose: to perform religious duty (Umrah) to fulfill the unity of spirit, heart and soul. Recently, due to many issues including non-performance contract, poor service, cancelled trip as well as fraudulent cases, the number of complaints submitted by the Umrah package travelers increased tremendously. Due to that problem, Umrah package travelers may suffer financial, emotional and spiritual loss. In order to protect the interests of Umrah package travelers in Malaysia, it is therefore necessary to have a robust legal framework. This study is therefore intended to investigate how the Malaysian legal system safeguards the rights and interests of Umrah package travelers in Malaysia, in particular through laws and regulations. The results of the above analysis will define the adequacy of the existing legal framework and the mechanism that we still in need of protecting the welfare of Umrah package travellers.

#### INTRODUCTION

In Malaysia's economic development and contribution to income, the tourism industry plays a crucial role (Henderson, 2009). The industry has expanded remarkably and has expanded to become one of Malaysia's fastest-growing industry in the services sector and Malaysia's second largest gross domestic product (GDP) contributing sector. As reflected in the growth of tourist arrivals ad tourist receipts, this sector performed favourably. In 2018, for instance, Malaysia attracted 25,830,000 arrivals and approximately 26,100,000 arrivals in 2019 from all around the world (Statista, 2019). Meanwhile, despite the fluctuating Ringgit, Malaysia's outbound tourism remain resilient as the latest data released by Malaysian Airport Holding Berhad (MAHB) showed that

international passenger traffic had risen by 14.8% year on year (y-o-y) to 28 million for the period of January to July 2017 (The Strait Times, 2018). The fluctuating Ringgit has led Malaysians to shift travel habits moving closer to home to the destination instead (Corrine Wan, 2018; Natasha Joibi, 2017).

Nevertheless, it is noteworthy that the shift in the trend of Malaysian travellers does not affect the activities of Muslim religious tourism i.e. Umrah. According to the statistic recorded by the Umrah Regulatory Council (URC), the number of Muslims travel to Mecca and Medina showing an upward trend from year-to-year.



**Figure 1:** Numbers of Malaysian Umrah Pilgrims from the Year 2011-2019

Based on a report written by Salleh Buang in 2017, at least 136,000 Malaysians walked on their Umrah in 2011. Nevertheless, the number of Malaysian pilgrims performing Umrah fell sharply to 90,000 in 2012. To accommodate the expansion of facilities at the Great Mosque of Mecca, the number of Umrah visas issued by Saudi Arabia that year was reduced. In comparison, the number of Malaysian Muslim pilgrims went for Umrah rose to 230,000 in 2013. In 2014, the number of Umrah pilgrims rose to 250,000 and in 2015, to 290,000. In the first half of 2017, the number of Umrah pilgrims was about 230,000 and increased to 274,066 pilgrims for the first half of year 2019. This trend shows a good sign of the growth of this industry.

In recent years, the Malaysian Umrah travel industry has seen a boom involving 573 licensed Umrah tour operators and travel agencies (Ministry of Tourism, Arts and Culture Malaysia, 2020). However, according to official statistics released by the Tribunal for Consumer Claims Malaysia (TCCM) in 2011, 798 complaints were lodged against travel agency services by the Umrah package travellers and the number of complaints increased to 977 cases in 2014. As the industry increases in size, the figures show a pattern, so, the issue does, too. Many unfortunate Umrah package travellers typically discovered that they are victims at the very last minute, left stranded at the airport without the tour operators and travel agents in charge of any information or updates. There is a long list of causes, the most prominent being a mixture of ignorance and attitude of too much faith on behalf of the pilgrims, exacerbated by the lack of real interest and lack of serious concern by the authorities (Amin Ridzuan Ishak, 2018; Asma Hanim Mahmood, 2018). In addition, the shortcomings of the current legislative frameworks to protect the rights of Umrah package travellers have also contributed to these problems. As a result, this scenario has badly affected Umrah package travellers and they have suffered major economic, spiritual as well as emotional losses (the Star Online, 2017).

### ***The Concept of Consumer Protection***

In a wider context, consumer protection applies to the laws and regulations that ensure fair interaction 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.

### ***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 (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).

### ***National Policies on Consumer Protection***

Many consumer protection policies such as the National Consumer Policy (NCP) 2002 and Consumer Master Plan (CMP) 2003-2013 have been developed and enforced by the Malaysian government. This important move is aimed at

enhancing consumers' welfare, consumer education and consumer protection measures as well as to develop and maintain effective consumer protection measures that balance the interests of traders and the welfare of consumers. Practical and policy-setting measures demonstrates the government's close attention to the need of consumers and paves the way for the implementation of a robust and efficient system of consumer protection.

The National Consumer Policy (NCP) 2002 was launched on 26<sup>th</sup> July 2002 to achieve an effective level of consumer protection. It was formulated by the National Consumer Protection Council (NCPC) as:

'...the basis of all consumerism related activities by government agencies, consumers' associations, other non-governmental organizations and the private sector in such a way that the culture of consumerism and sustainable production may be enhanced'.

Consequently, the National Consumer Advisory Council (NCAC) formed under CPA 1999. The ultimate aim is to improve the quality of life of the individuals who are consumers as well. The NCP 2002's main objective is to provide the highest degree of consumer protection which provides an atmosphere conducive to the creation of a fair market and sustainable growth in tandem with the local and global economic developments.

The NCP 2002 constitutes the basis for the CMP 2003-2013. The CMP is nicely designed for the purpose of protecting the consumers. According to Fernandez (2002), the CMP formulation is intended to upgrade and raise the level of consumerism to the status of developed nations in Malaysia. The CMP provides the context, vision, mission, background of issues, market situation analysis and recommendations to prepare Malaysian consumers, business and the public sector for the adoption and empowerment of sustainable development practices and to enable them for the period 2003-2013 to face the challenges of liberalisation and globalisation.

The CMP 2003-2013 tends to illustrate to the Malaysian government the centrality of consumer interests as well as the ability of NGOs to position their own agendas within official policy. Continuing with NCP 2002, the mission set up by the CMP 2003-2013 is to promote the highest level of consumer protection through comprehensive consumer education, consumer information, comprehensive regulatory regime, business self-regulation and effective representation of consumers.

12 keys recommendations outlined in CMP 2003-2013 were hoped to encourage the highest degree of consumer protection. According to Fernandez, 12 keys recommendations (included in the CMP 2003-2013) should be adopted, covering strategic areas and realising the goals of the plan. The MDTCC said however, that the 2003-2013 CMP had not been put into effect. The Ministry recommended that this 2003-2013 CMP be revised to ensure that it is applicable to current circumstances in order to protect the interests of consumers in this country.

### ***Malaysian Law of Consumer Protection***

By means of laws transplanted from the United Kingdom (the last colonial power here), 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 recognised. 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 transaction drawn up in a sophisticated manner by the large business organization. As a result, CPA 1999 which entered into force on 15<sup>th</sup> 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 consumers protection in relation to the supply of goods and services either offline or online (Elistina and Naemah, 2011; Roshazlizawati 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...'

A consumer is defined, pursuant to Section 2 of CPA 1999 as a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption. They purchase goods or services for direct use or ownership rather than for resale. 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, pursuant to section 3(1) of CPA 1999.

### ***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 pilgrimage 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 travellers which is a contract for service, it should be within the ambit of CPA 1999 where the Umrah travellers deserve certain protection in this respect like the other consumers as defined by Section 2 of CPA 1999.

#### ***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 travellers, 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. 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.

By virtue of Section 8(a) of CPA 1999 and Part II of CPA 1999, consumers are protected from any misleading or deceptive conduct, false misrepresentation and unfair claims committed by the traders, suppliers and manufacturers. Where a tour operator or travel agent is found guilty of the offences prescribed in Part II of CPA 1999, that company shall be liable to a fine not exceeding two hundred and fifty thousand ringgit (MYR250,000), and a fine not exceeding five hundred thousand ringgit (MYR500,000) for a second or subsequent offence (section 10, Consumer Protection Act 1999). There is, however, no single requirement requiring traders, suppliers or manufacturers to provide consumers with standard information.

As stated in Section 85 of the CPA 1999, Umrah package travellers 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 travellers 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 travellers accordingly.

### ***Enforcement of CPA 1999***

The 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 complaint. 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 to launching their Umrah package travel web portal, many Umrah package travellers 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).

### ***The Effectiveness of CPA 1999 As Legal Protective Instrument for Umrah Package Travellers***

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. 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 is 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 information provision as an instrument to protect the interests of consumers. Due to different causes, consumers are vulnerable in different circumstances. The factors leading to consumer disadvantage may be a lack of knowledge and information asymmetry. Thus, from a need-based perspective. The weaker status of consumers as loss bearers must be taken into consideration. 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 travellers. For instance, the existing provision of CPA 1999 should require the terms to be transparently presented during the pre-contractual process and the information provided should form as the term for a contract.

***Protection of Umrah Package Travellers by 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 not the only instruments that provide protection to the Malaysian Umrah package travellers, but Malaysian tourism trade associations and organisations also design a specific measure for protecting the rights and interests of Umrah travellers who are purchasing Umrah package travels from the local tour operators and travel agents.

MATTA serves as the national umbrella body representing the entire Malaysian travel industry. In order to protect the interests of several groups, including service providers, tour operators, travel agents 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 public i.e. consumers of tourism products including on the booking conditions, reservation forms, insurance, travel documents, travel arrangement, visa and health requirements.

### ***MATTA Code of Ethics for Members: How It Protects Travellers?***

MATTA Code of Ethics for Members is applicable to all licenced tour operators and travel agents, whether domestic, inbound or outbound regardless of their nature of a business. MATTA is a platform that offers consumers including Umrah package travellers clear rights in order to protect them from being the victims of unscrupulous tour operators and travel agents. 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 travellers including Umrah package travellers in a simple, understandable and unambiguous way.

By virtue section 5(2) TIA 1992, each and every tour operator, travel agent and ground operator must have a valid licence issued by MOTAC under the TIA 1992. MOTAC acts as rule-maker, while MATTA is responsible to monitor the operation of local tour operators, travel agents and ground operators business which should be registered and licensed as required by law. Section 5(1) and (2) of TIA 1992 provides that:

‘(1) No person shall carry on or operate, or hold himself out as carrying on or operating a tourism training institution unless that person holds a valid license granted under this Part.

(2) No person shall carry on or operate, or hold himself out as carrying on or operating;

a tour operating business; or

a travel agency business,

unless it is a company and holds a valid license granted under this Part.’

If MATTA finds that any tour operator, travel agent or ground operator operates an Umrah package travel company without having a valid licence, MATTA has the right to report the offence to the MOTAC and, if found guilty for an offence, is liable to a fine not exceeding fifty thousand ringgit (MYR50,000) or to imprisonment for a period not exceeding five years or to both (section 5(3) TIA 1992). However, if the same offence is repeatedly committed and found guilty, the local tour operators or travel agents shall be liable for a daily fine not exceeding five thousand ringgit (MYR5,000) for each day on which the offence continues to be committed. If the MATTA vigorously monitors the market entry

and operation of tour operator and travel agents selling Umrah package travel, the Umrah package travellers will be covered from buying Umrah package travels from unlicensed tour operators or travel agents. However, as there are still numbers of local tour operators and travel agents who unlawfully operate their business in this sector, MATTA is not effectively acting as an industry supervisor (Julia Chan, 2018).

The Travel Industry (Tour Operating Business and Travel Agency Business) Regulations 1992 makes it mandatory for licensed travel agencies offering Umrah package 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.

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 Member 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 results to 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 to be provided to the consumers, it could protect the consumers from lacking information which consequently might place them at risk.

### ***The Enforcement and Compliance of MATTA Code of Ethics for Members***

In the case where the MATTA members fail to comply 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 1999The consumers also have a channel to bring the claims through alternative dispute mechanism 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 access 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.

### ***The Effectiveness of MATTA Code of Ethics for Members Protects the Interests of Umrah Package Travellers***

The MATTA Code of Ethics for Members does provide several protections as highlighted earlier. However, this study found that the protection provides by the MATTA Code of Ethics for Members does not correspond well to the consumers' needs especially Umrah package travellers. 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 does 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 travellers 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 guide 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. Or in the worst scenario, it may result in information overloading if the information supplied by the tour operators and travel agents are too much and beyond their needs. 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 and visa requirement and etc.

Furthermore, the President of MATTA encountered that the existing sanction delineated by MATTA Code of Ethics for Members for the local tour operators and travel agents who are violating the law (selling fraudulent Umrah package travel) fail to stop the same unscrupulous tour operators and travel agents from committing the same offence. This gap prevents the existing Code of Ethics for Members from effectively protects the Umrah package travellers. The MATTA Code of Ethics for Members imposed a minimum amount of fine to the local tour operators and travel agents who have been found guilty for promoting or selling fraudulent Umrah package travel. According to the President of MATTA, this sanction is insufficient to deter them from committing the same offence because the profit offers by that activity is very lucrative. Therefore, the MATTA members took a step forward by proposing the government to increase the existing sanction to maximum level as to warn and prevent the local tour operators and travel agents from selling fraudulent Umrah package travel (Noor Mohamad, 2018; Hilal Azmi, 2018) In other words, the MOTAC, MATTA, BUMITRA and all regulatory agencies need to review the enforcement and sanction of the existing approach as to ensure that it can be an effective tool to deter the local tour operators and travel agents from committing unscrupulous acts and protect the consumers indirectly.

## **CONCLUSION**

The earlier examination on the protection measures for Umrah package travellers in the context of Malaysian legal paradigm reveals that there are several gaps that prevent the existing policies, laws, rules and approaches from comprehensively protect the interests of Umrah package travellers in Malaysia. The NCP 2002 and CMP 2003-2013 drafted by the Malaysian government look great on paper. There is clear direction drew by the NCP 2002 and CMP 2003-2013 which is to produce capable consumers, to self-regulate the industry and to provide comprehensive protection to the Malaysian consumers. However, its do not change into practice when the policies were left without proper implementation.

In addition, 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 since last 15 years ago. It did not change so much though it went for several amendments. The consumers need for additional protection especially when the market keep challenging in this globalization era. Several flaws have been found in CPA 1999 where it excludes a number of matters important to consumers including information provision as an instrument to protect the consumers interest. It does not correspond well to the current demand of consumers and insufficient to protect the Umrah package travellers as a whole.

Moreover, the approaches employed by the MOTAC, MATTA, JAWHAR, MFA, RMP, CCM, MyCC, MOT, MCMC, TH, as well as BUMITRA for protecting the interests of Umrah package travellers does not work as targeted. The tour operators and travel agents who running Umrah package travel business are required to have sub-licence for handling Umrah package travel and setting up minimum price of Umrah package travel. This paper found that those approaches insufficient to protect the interests of Umrah package traveller. 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 effective and practical legal protection framework which should cover appropriate instrument, good implementation framework and excellent enforcement. This study would stress out that comprehensive strategies and measures for protecting the interests of Umrah package travellers should involve 3 main parties. Firstly, Malaysian governments is responsible to set out and enforce the rules relating to consumer protection as to safeguard and supervise the welfare and interest of Umrah package travellers. Secondly, tourism agencies and travel organizations should contribute to responsible market development by offering appropriate services and observing standards of business conduct. Industry associations and private standard-setting bodies can lead the establishment of collective 'self-regulatory' measures such as codes of conduct or technical service standards. Thirdly, consumers also play an important role by choosing providers and products carefully, taking action to self-protect (consumer responsibilities).

## REFERENCES

- Amin Ridzuan Ishak, 'Sindiket Gelar Diri Hamba Allah Tawar Pakej Umrah' (Berita Harian Online 4<sup>th</sup> July 2018) <https://www.bharian.com.my/berita/kes/2018/07/445027/sindiket-gelar-diri-hamba-allah-tawar-pakej-umrah> accessed 9<sup>th</sup> March 2019.
- Angela Mariani, 'Fairness and Alternative Food Networks in Italy' in Colin L.Campbell (ed), *The Consumer is Not Always Right? Marketing Orientation in A Dynamic Business World* (Springer, 2011) 34.
- Asma Hanim Mahmood, 'Guna Imam, Bilal Untuk Tipu Pakej Umrah (Utusan Online, 6<sup>th</sup> April 2018) <http://www.utusan.com.my/berita/jenayah/guna-imam-bilal-untuk-tipu-pakej-umrah-1.643355> accessed 9<sup>th</sup> March 2019.
- Azmah binti Othman, *Essays On The Co-Operatives' Performances In Malaysia* (Universiti Sains Malaysia, 2014).

- Chris Willett, *Fairness in Consumer Contract* (Aldershot, 2007).
- Code 1.1, MATTA Code of Ethics for Members.
- Code 1.2, MATTA Code of Ethics for Members.
- Code 5.2.4, MATTA Code of Ethic for Members.
- Consumer Association of Penang, 'The Consumer Protection Act' < <https://www.consumer.org.my/index.php/complaints/rights/254-the-consumer-protection-act> > accessed 24 April 2017.
- Corrine Wan, 'Special Report: No Slowdown in Malaysia's Outbound Travel Despite Weak Ringgit' < <https://www.webintravel.com/special-report-no-slowdown-in-malysias-outbound-travel-despite-weak-ringgit/> > accessed 3<sup>rd</sup> November 2018;
- Elistina Abu Bakar and Naemah Amin, 'Consumer Protection In the Service Industry Under the Consumer Protection Act 1999' < [http://irep.iium.edu.my/3106/1/Malaysian\\_consumer\\_law\\_journal\\_2011v1\\_22318747.pdf](http://irep.iium.edu.my/3106/1/Malaysian_consumer_law_journal_2011v1_22318747.pdf)> accessed 26 April 2017.
- Joan C.Henderson, 'Cultivating Domestic Tourism with Global Advantage: Malaysia and Singapore Compared' in Shalini Singh (ed), *Domestic Tourism in Asia: Diversity and Divergence* (Earthscan, 2009).
- Josie M Fernandez, Consumer Master Plan 2003-2013 for Ministry of Domestic Trade and Consumer Affairs (Malaysia) (Ministry of Domestic Trade and Consumer Affairs (Malaysia), 2002).
- Julia Chan, 'Over 20 Tour Companies In Sabah Busted In Tourism Crackdown' < <http://www.themalaymailonline.com/malaysia/article/over-20-tour-companies-in-sabah-busted-in-tourism-crackdown> > accessed 16<sup>th</sup> April 2018.
- Lisa E.Bolton, Luk Warlop and Joseph W.Alba, 'Consumer Perceptions of Price (Un) fairness' (March 2003) Vol 29, No.4, *Journal of Consumer Research*, 474-491.
- Malaysian Communication and Multimedia Commission, 'Safer Online Shopping' < <https://www.mcmc.gov.my/media/press-clippings/safer-online-shopping?lang=en-US> > accessed 3<sup>rd</sup> March 2018.
- MATTA, 'About MATTA' < <http://www.matta.org.my/about-us> > accessed 2<sup>nd</sup> August 2017.
- Ministry of Domestic Trade, Co-Operative and Consumerism, 'Enforcement of Awards' < <https://tppm.kpdnkk.gov.my/portal/index.php/en/award/enforcement-of-award> > accessed 7 May 2015.
- Ministry of Domestic Trade, Cooperatives and Consumerism. 'Enforcement Division' < <https://www.kpdnkk.gov.my/kpdnkk/enforcement-division/?lang=en> > accessed 11st March 2018.
- Ministry of Tourism, Arts and Culture Malaysia, 'Senarai Syarikat yang Mempunyai Lesen Perniagaan Pengendalian Pelancongan Luar Negeri Bagi Umrah Atau Ziarah' < <http://www.motac.gov.my/semakan/umrah> > accessed 23<sup>rd</sup> September 2020.
- Mohamad Fazli Sabri, 'The Development of Consumer Protection Policies in Malaysia' (2014) Volume -4, No.6, *International Journal of Business and Social Research (IJBSR)*, 98-108; Malaysian Communication and Multimedia Commission, 'What Is Consumer Protection?' < <https://www.skmm.gov.my/faqs/complaints/what-is-consumer-protection> > accessed 17th August 2018.

- Mohd Motasim Ali Khan, 'Role of Tourism Organisations in the Development of Tourism Industry of Malaysia' [2014]3 Abhinav National Monthly Refereed Journal of Research in Commerce & Management, 57.
- Mohd Yusof Abdul Rahman 'Dasar Kepenggunaan Hanya Wujud Di Atas Kertas Sahaja' < <http://www.konsumerkini.net.my/v1/index.php/berita-terkini/polisi-awam/342-dasar-kepenggunaan-hanya-wujud-i-atas-kertas-sahaja> > accessed 8<sup>th</sup> June 2017.
- Mohd. Hamdan Adnan. *Perjuangan Perundangan Pengguna* (Petaling Jaya, Selangor: IBS Buku Sdn. Bhd, 2005).
- Naemah Amin, 'The Consumer Protection Act 1999 and Fair Trade Practices in Malaysia' (Seminar on "When Life Gives You Lemon...", 14<sup>th</sup> October 2014).
- Natasha Joibi, 'Malaysians Are Going Places-Literally' (30<sup>th</sup> July 2017) < <https://www.thestar.com.my/news/nation/2017/07/30/malaysians-are-going-places-literally-despite-uncertainties-were-set-to-be-second-most-seasoned-tra/> > accessed 3<sup>rd</sup> November 2018.
- Noor Mohamad Shakil Hameed, 'Tangani Dengan Bijak Kes Penipuan Umrah' < <http://www.utusan.com.my/rencana/tangani-dengan-bijak-kes-penipuan-umrah-1.427343> > accessed 6<sup>th</sup> September 2018; Hilal Azmi, 'Penipuan Pakej Umrah' < <http://www.astroawani.com/berita-malaysia/matta-desak-hukuman-keras-elak-penipuan-pakej-umrah-35327> > accessed 6<sup>th</sup> September 2018.
- Norni Mahadi, '967 Charged Over Fraud Umrah Packages' (Borneo Post Online, 24<sup>th</sup> September 2017) < <https://www.theborneopost.com/2017/09/24/967-charged-over-fraud-umrah-packages/> > accessed 9<sup>th</sup> March 2019.
- Norsiah Kadir and Mohd Zaini Abd Karim, 'Tourism and Economic Growth in Malaysia: Evidence from Tourist Arrivals from ASEAN-5 Countries' (2012) Vol 25 No 4, Economic Research, 1089-1100.
- Official Portal Ministry of Domestic Trade and Consumer Affairs, 'Background Information' < <https://www.kpdnkk.gov.my/kpdnkk/about-kpdnkk-2/?lang=en> > accessed 16<sup>th</sup> August 2018.
- Ong Tze Chin and Sakina Shaik Ahmad Yusoff, 'Remedy As Of Right For Consumer Protection' (2016) Vol 17 No.2, Mediterranean Journal of Social Science, 142-148.
- Oya Pinar Ardic, Joyce A.Ibrahim and Nataliya Mylenko, Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set (2011) Policy Paper Working Paper No. WPS5536, The World Bank, 2.
- Roshazlizawati Mohd Nor and Naemah Amin, 'The Issue Of Quality Of Goods: E-Consumer Protection In Malaysia'(Proceeding - Kuala Lumpur International Communication, Education, Language and Social Sciences 1 (KLiCELS 2), Hotel Putra, Kuala Lumpur, Malaysia, 17 – 18 October, 2015).
- Rungit Singh, 'Consumer Claims Cross Border Redress Mechanism In the Asean Region' < [aseanconsumer.org/misc/downloads/misc-crossborder.pdf](http://aseanconsumer.org/misc/downloads/misc-crossborder.pdf) > accessed 4 Jan 2016.
- Salleh Buang, 'Increase in Fraud Packages' < <https://www.nst.com.my/news/2017/01/201965/increase-fraud-packages> > accessed 11<sup>st</sup> August 2017.

Sarah Maxwell, 'Rule-Based Price Fairness And Its Effect On Willingness To Purchase' (9 April 2002) Vol 23, Iss 2, Journal of Economic Psychology, 191-212.

Sec 10, Consumer Protection Act 1999.

Sec 123, Consumer Protection Act 1999.

Sec 2, Consumer Protection Act 1999; Rungit Singh, 'Consumer Claims Cross Border Redress Mechanism in The Asean Region' < <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=5&ved=0ahUKEwjW4PHZx-TZAhWjB5oKHXvZD-UQFghQMAQ&url=http%3A%2F%2Faseanconsumer.org%2Fmisc%2Fdownloads%2Fmisc-crossborder.pdf&usg=AOvVaw2zPdoiwj8nIobCpiUOgMfv> > accessed 11st March 2018.

Sec 25(a), Consumer Protection Act 1999.

Sec 3, Consumer Protection Act 1999.

Sec 5(2), Tourism Industry Act 1992.

Sec 5(3), Tourism Industry Act 1992.

Sec 59, Consumer Protection Act 1999.

Sec 7, Consumer Protection Act 1999.

Statista, *Tourist arrival to Malaysia from 2010-2019* < <https://www.statista.com/statistics/1004711/tourist-arrivals-malaysia/#:~:text=In%202019%2C%20there%20were%20approximately%2026.1%20million%20tourist%20arrivals%20in%20Malaysia.> > accessed 23<sup>rd</sup> September 2020.

The Star Online, 'Booking An Umrah Trip Is Just A Few Clicks Away' < <https://www.thestar.com.my/metro/metro-news/2017/10/07/booking-an-umrah-trip-is-just-a-few-clicks-away/> > accessed 16<sup>th</sup> April 2018.

The Star Online, 'Pilgrims Anxious To Return Home' < <https://www.thestar.com.my/news/nation/2017/12/27/pilgrims-anxious-to-return-home-travel-agency-leaves-453-stranded-after-flights-did-not-take-place/> > accessed 27<sup>th</sup> March 2018.

The Straits Times, 'Malaysia's Outbound Tourism Remain Resilient Despite Fluctuating Ringgit' < <http://www.straitstimes.com/asia/se-asia/malysias-outbound-tourism-remain-resilient-despite-fluctuating-ringgit> > accessed 22<sup>nd</sup> April 2018.