

# Now everyone can fly... with fewer headaches!

January 31 2018 | Contributed by [SKRINE](#)

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## Introduction

The aviation industry is increasingly diverse and competitive, with airlines using different business models which offer a wide range of fare structures and service levels to suit consumers' different travel needs. Generally, the market place consists of:

- low-cost carriers (LCCs), which provide basic, no frills service at competitive prices; and
- full service carriers (FSCs), which offer a comprehensive array of services at premium prices.

However, it is increasingly difficult to pigeonhole airlines into the standard categories of LCC or FSC, as these carriers have evolved their business models over time – for example, by adopting practices from the other category.

As air travel becomes more accessible to the public, especially with the proliferation of low-cost travel options, the issue of safeguarding consumers' interests has attracted increasing attention. The government, in addition to the consumer protection provided under the Malaysian Consumer Protection Act 1999, has chosen to regulate airline service standards by introducing the Malaysian Aviation Consumer Protection Code 2016. The code, which came into operation on July 1 2016 pursuant to Section 69 of the Malaysian Aviation Commission Act 2015, aims to strike the right balance between protecting passengers and industry competitiveness.

## Framework

The code consists of six parts. Parts II to V contain the core provisions of the code. The main thrust of these core provisions is examined below.

Part II consists of Sections 3 to 9 of the code, which deal with the minimum service levels and the standards of performance for airlines and aerodrome operators.

### ***Section 3 – full disclosure of air fare***

An airline must indicate the final price of air fares to be paid and clearly itemise at least the following:

- government imposed taxes and fees;
- fees and charges imposed by the Malaysian Aviation Commission (MAVCOM);
- passenger service charges;
- security charges;
- baggage fees; and
- fuel charges.

### ***Section 4 – prohibition on post-purchase price increase***

Airlines are prohibited from increasing the price of a sold air fare, unless:

- the increase is due to government or MAVCOM fees or taxes;

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- the consumer is given notice of the potential price increase; and
- the consumer has consented in writing before completing the purchase.

### ***Section 5 – prohibition on automatically adding on services***

Airlines cannot automatically add any optional services to a consumer's purchase. Any optional services must be communicated in a clear, transparent and unambiguous way at the start of any reservation process and acceptance must be on an opt-in basis only.

### ***Section 6 – identity of operating airline***

A contracting airline must inform its consumers of the identity of the operating airline during reservations and specify in the general terms of sale its obligation to do so. If there is a change to an operating airline after the reservation, the contracting airline must take immediate steps to ensure that passengers are informed of the same as soon as practicable, regardless the reason for the change.

### ***Section 7 – disclosure of terms and conditions***

Airlines must disclose all terms and conditions of the contract of carriage to consumers before they purchase a ticket. These terms and conditions must be printed or attached to the ticket or boarding pass or incorporated by reference.

### ***Section 8 – communication of change in flight status***

Operating airlines must inform passengers and the public of any change in the status of a flight (ie, cancellation, a delay of 30 minutes or more or a diversion) as soon as practicable after becoming aware of the same by means as determined by MAVCOM.

### ***Section 9 – non-discrimination of person with disability***

Airlines cannot refuse to:

- accept a reservation for a flight departing from an aerodrome to which the code applies; or
- embark a disabled person at such aerodrome, provided that the person concerned has a valid reservation.

However, an airline may refuse to accept a reservation or embark a disabled individual in order to meet safety requirements or if the size of the aircraft's doors makes it physically impossible to do so.

If the exceptions apply, the airline must make reasonable efforts to propose an acceptable alternative to the disabled individual, failing which the person concerned must be offered, among other things, compensation and care as prescribed under the first schedule of the code. In such a case, the airline must also immediately inform the disabled individual of the reasons for the refusal and, if requested, provide the reasons in writing within five days of such request.

The code also sets out specific procedures and timelines for airlines when they receive notification that a disabled person requires assistance and obliges airlines to provide assistance to the person concerned on arrival or in transit at the aerodrome. The code also holds the aerodrome operator responsible for ensuring structural amenities and facilities for disabled persons in such a way that enables disabled passengers to take the flight.

Part III consists of Sections 10 to 16 of the code, which deal with passengers' rights.

### ***Section 10 – entitlement to claims***

The code defines a person who is entitled to claim compensation and care as a passenger who:

- has a confirmed his or her reservation on a flight and presents him or herself for check-in at the time stipulated by the airline; or
- has been transferred to a flight other than the one that he or she had a reservation for by the an airline.

The instances in which a passenger can make a claim for compensation and care are set out below:

- Section 11 sets out the compensation for passengers when an operating airline reasonably

expects to deny boarding (except on grounds such as health, safety or security, or inadequate travel documentation).

- Section 12 outlines the compensation available when an operating airline reasonably expects a flight to be cancelled or delayed for at least two hours. For flights delayed for two hours or more, passengers must be offered free meals, refreshments, limited telephone calls and internet access. For flights delayed for five hours or more, passengers must be offered hotel accommodation (where a stay becomes necessary) and transport between the airport and the place of accommodation. If a flight is cancelled, passengers must be offered either:
  - a full reimbursement of the ticket (including taxes and fees) within 30 days, or a part thereof for the portion of the journey not made; or
  - re-routing under comparable transport conditions to their final destination, subject to the availability of seats, at no extra costs.

Alternatively, the operating airline can offer passengers a flight to an alternative airport at no extra cost.

- Sections 13 and 16 provide for compensation where a passenger's baggage does not arrive on the same flight as the passenger, or the baggage is lost or damaged while onboard or during any period within which the checked baggage was in the charge of the operating airline. The liability for delayed, lost and damaged baggage en-route is limited to 1,131 special drawing rights for each passenger, unless the passenger has made (at the latest at check in) a special declaration of interest in delivery at the destination and has paid a supplementary sum if the case so requires. In that case, the carrier will be liable to pay a higher liability limit. These provisions largely codify the requirements under Article 22 of the Montreal Convention.
- Section 14 sets out compensation where passengers' mobility equipment or assistive devices are lost or damaged.

### **Section 15**

Airline operators must put up notices at check-in counters in a visible manner containing the words:

*"If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the information stating your rights, particularly with regard to compensation and care."*

Part IV consists of Sections 17 and 18 of the code, which deal with consumer complaints.

### **Section 17 – complaints to airlines and aerodrome operators**

Airlines and aerodrome operators must provide the contact details of the department where a consumer may lodge a complaint pertaining to the services. The code prescribes the manner in which these particulars ought to be published by the airline operator and aerodrome operator. The airline operator and aerodrome operator must acknowledge receipt of any complaint within 24 hours and must send a substantive written response and provide a resolution to the complainant within 30 days of receipt of the complaint.

### **Section 18 – complaint to MAVCOM**

Consumers may lodge a complaint with MAVCOM pertaining to any aviation service within one year of the cause of the complaint.

Since the implementation of MAVCOM's online complaints management system in May 2016, consumers may lodge their complaints through an e-form on MAVCOM's website. (1) Alternatively, consumers may submit their complaints via email or telephone or in person at MAVCOM's office. (2)

Following receipt of a complaint, MAVCOM has seven days to reject or accept it. MAVCOM may reject a complaint if it:

- is frivolous or vexatious;
- does not relate to the civil aviation industry; or
- is subject to court proceedings, which were commenced before the complaint was lodged with MAVCOM and which have been decided by the court.

On the other hand, if MAVCOM accepts the complaint, it will forward such complaint to the aviation service provider and instruct it to provide a substantive written response to the complainant, setting out a resolution within 30 days of the receipt of the forwarded complaint. If the aviation service provider's written response is insufficient to address the issue, MAVCOM may order it to provide a remedy to the complainant.

Part V consists of Sections 19 and 20 of the code, which deal with consumer awareness.

### **Section 19 – consumer awareness**

An aviation service provider must make efforts to raise awareness of consumers' rights and the complaints procedure.

### **Section 20 – airlines' obligation**

Airlines must prominently publish and display signage at airports of the minimum service levels and standards of performance within the contracts of carriage and perform such other obligations as may be determined by MAVCOM to raise consumer awareness.

### **Comment**

The code is in line with the International Air Transport Association's core principles, which include the following:

- Regulations must be clear so that passengers can understand their rights.
- Passengers must always be kept informed and an efficient complaints procedures must be established.
- Passengers' entitlements must be proportional in relation to the service breakdown.

Since the introduction of the code, MAVCOM has been actively monitoring and addressing the complaints received. MAVCOM's consumer report (March to August 2017) states that a total of 677 complaints were received between March and August 2017, with 673 complaints regarding airlines and four regarding airports. Processing refunds, mishandled baggage and flight delays represent 62.6% of the complaints received.

It would be prudent for airlines to ensure compliance with the code. MAVCOM has powers to enforce decisions on consumer complaints by:

- registering its decision as a judgment of the high court; or
- bringing a court action on behalf of the consumer for an appropriate court order.(3)

MAVCOM has shown that it is fast to act on consumer complaints. MAVCOM has resolved, and closed, 99.1% of the complaints received between March and August 2017.(4)

The Malaysian Aviation Commission Act 2015 also grants MAVCOM the discretion to impose a financial penalty of no more than RM200,000 for any non-compliance with the code. In the case of a second or subsequent non-compliance, the financial penalty is 10 times that of the fine imposed for the first non-compliance.(5) MAVCOM is in the midst of developing a framework to quantify proportionate financial penalties for non-compliances with the code.(6)

As a result of the Malaysian Aviation Commission Act 2015, the jurisdiction of the Tribunal for Consumer Claims (established under the Consumer Protection Act 1999) to adjudicate complaints lodged by a consumer relating to aviation services has been expressly excluded. To date, no cases have been reported in respect of MAVCOM's adjudication of aviation consumer complaints.

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### **Endnotes**

(1) The e-form can be accessed at [www.mavcom.my/en/consumer/make-a-complaint/](http://www.mavcom.my/en/consumer/make-a-complaint/).

(2) Malaysian Aviation Commission's Consumer Report, March 2016 to February 2017 (April 2017).

(3) Malaysian Aviation Commission Act 2015, Section 73.

(4) Malaysian Aviation Commission's Consumer Report, March to August 2017.

(5) Malaysian Aviation Commission Act 2015, Section 69(4).

(6) Malaysian Aviation Commission's Consumer Report, March to August 2017.

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