

## Civil suit last resort for air ticket refund claims



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**Mavcom asks customers to refer to the respective carriers to ascertain the terms of refund requests by AFIQ AZIZ/ pic by ARIF KARTONO**

PASSENGERS, who have lost their flight tickets due to the Covid-19 crisis, can file civil suits against the airline firms shall they disagree with any refund terms given by the companies.

This follows the Malaysian Aviation Commission's (Mavcom) regulation which exempts airlines from refunding money during extraordinary crises, as stipulated in the Malaysian Aviation Consumer Protection Code 2016 (MACPC).

It is learnt that approximately 13.6 million seats were cancelled since the Covid-19 outbreak in January, which could translate to hundreds of millions of customers' money stuck with over 100 airlines.

According to the Domestic Trade and Consumer Affairs Ministry (KPDNHEP), the matter is not qualified to be heard by its Tribunal for Consumer Claims (TTP).

"The Consumer Protection Act 1999 (Act 599) was amended in 2015. With Mavcom's establishment, the TTP will no longer hold jurisdiction over matters concerning aviation services.

"Affected customers shall refer matters concerning airline services to the Mavcom," KPDNHEP spokesperson told The Malaysian Reserve (TMR).



As such, the ministry said consumers' next cause of action is to take their claims to the court of law under civil suits.

Last week, Mavcom announced that it will give some leeway to airlines in terms of how they should respond and complete refund requests after the overwhelming flight cancellations due to the virus outbreak.

Mavcom said while consumers may receive compensation for flight disruptions caused by airlines, the particular provision under MACPC does not apply if the flight disruption is an "extraordinary circumstance", which means outside of the airline's control.

It said the containment measures of Covid-19 involve national quarantines and travel bans worldwide.

Mavcom asked customers to refer to the respective carriers to ascertain the terms of refund requests.

So far, only Malaysia Airlines Bhd has committed to refunding their passengers, but only applicable to travels to countries that had closed their borders.

At the same time, AirAsia Group Bhd has urged its customers to accept the company's store credit mechanism for replacement flights instead of pressing for cash refunds.

However, Mavcom's action of providing leeway to airlines was received coldly by the Malaysian Association of Tour and Travel Agents (Matta).

Matta president Datuk Tan Kok Liang (picture) argued that the regulatory body's function is to provide a mechanism for the protection of consumers and not the airline companies.

Tan urged airlines to refund passengers and travel agents affected by Covid-19 with cash instead of credit values.

He said this is in tandem with US and European Union regulators which had generally instructed airlines to refund ticket holders their money.

By allowing airlines to dictate terms, especially during this time of crisis, shows poor supervision and governance over the matter, said Tan.

Lawyer and consumer activist Datuk Hishamuddin Hashim said through civil suit claims, consumers have the right to challenge the responsible party and claim the advanced payment made for an undelivered service.

He said among the damages consumers are eligible to sue for is compensatory damages, which are intended to bring the plaintiff to the same point as they would be if the contract was fulfilled.

"It could also include liquidated damages, a clause which is often included in the contract, which states the amount of damages that will be paid if the contract is breached," Hishamuddin told TMR.

He said the claim must be filed within six years, otherwise deemed nullified.

Claims over RM5,000 can be brought to the Magistrates' Court under Small Claims Procedure, while for claims more than that, parties shall proceed with the civil suit claim in the Lower Court under Contract Act 195, the lawyer said.

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