

**REGULATORY REFORM FOR PROTECTING THE INTERESTS
OF UMRAH PACKAGE TRAVELLERS IN MALAYSIA**

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

Umrah package travel has been recognized as one of the important contributors to the Malaysian tourism industry. Muslims in Malaysia travel by package to Mecca and Medina for their specific purpose: to perform a religious obligation (Umrah) for fulfilling the unity of soul, spirit and heart. Malaysian Umrah package travellers come from different social, economic, educational, geographical and age backgrounds. All those differences raise many issues and the very important issue within it is potential information vulnerability where it has an impact on the decision-making process. Due to that problem, they may suffer financial, emotional and spiritual loss when an inappropriate purchasing decision is made. Therefore, this research is aimed to provide the most appropriate mechanism for protecting Malaysian Umrah package travellers from any potential information vulnerability that might defeat their interests. This research investigates specific information vulnerabilities of Malaysian Umrah package travellers and specific need of information as to protect Umrah package travellers. It identifies the appropriateness of information regulation as an initial protective measure for Malaysian Umrah package travellers. It examines the policies and laws governing the protection of package travellers in the European Union (EU) and the United Kingdom (UK) to identify progressive ideas for Malaysia's adoption. It scrutinizes the current Malaysian legal framework in relation to the protection of Umrah package travellers as consumers. It presents a specific model purposely to protect Malaysian Umrah package travellers. It is hoped that specific model of regulatory approach which requires the tour operators and travel agents to provide essential information in relation to Umrah package travel at the pre-contractual stage will be the most appropriate protection measure for Malaysian Umrah package travellers.

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Legal Profession Act 1976

MATTA Code of Ethics for Members.

Medical Act 1971

Medicines Act 1956

National Consumer Policy 2002

Penal Code

Price Control Act 1946

Tourism Industry Act 1992

Tourism Vehicles Licensing Act 1999

Travel Industry (Tour Operating Business and Travel Agency Business)
Regulations 1992

United Kingdom

Consumer Contracts (Information, Cancellation and Additional Charges)
Regulations 2013

Consumer Protection from Unfair Trading Regulations 2008

Consumer Rights Act 2015

Equality Act 2010

Package Travel and Linked Travel Arrangements Regulations 2018

Package Travel, Package Holidays and Package Tours Regulations 1992 (SI
1992 No. 3288)

Sales of Goods Act 1979

Supply of Goods and Services Act 1982

Europe

Consumer Credit Directive 87/102/EEC343

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Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements

Distance Selling Directive 97/7/EC346

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European Economic Community

Lisbon Treaty

Treaty of European Union

Treaty of Rome

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Chapter 1 : Introduction

1.1 Introduction

Over the decades, tourism has experienced continued growth and deepening diversification to become one of the fastest growing economic sectors in the world,¹ but it is not problem free. Nowadays, tourism is one of the most vibrant economic generators and popular global activity in most parts of the world.² It has become one of the major players in international commerce and represents at the same time one of the main income sources for many developing countries.³

Similarly, in Malaysia, the tourism industry plays a crucial role in economic growth and income contribution.⁴ The industry experienced a remarkable expansion and developed to become one of Malaysia's fastest thriving industry in the services sector and the second biggest gross domestic product (GDP) contributing industry for Malaysia.⁵ This industry performed favourably as reflected in the growth of tourist arrivals and tourist receipts. For example, Malaysia attracted 26,760,000 arrivals in 2016 and 25,948,459 arrivals in 2017 from all around the world.⁶ Meanwhile, Malaysia's outbound

¹ David J. Telfer, Richard Sharpley, *Tourism and Development in Developing Countries* (London: Routledge, 2nd edn, 2015) 40.

² United Nations Environment Programme and World Tourism Organisation, *Making Tourism More: A Guide for Policy Makers* (UNEP and WTO, 2005)8.

³ Simon Darcy and Dimitrios Buhalis, 'Introduction: From Disabled Tourists to Accessible Tourism' in Dimitrios Buhalis and Simon Darcy (eds), *Accessible Tourism: Concept and Issues* (Channel View Publication, 2011)2.

⁴ 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).

⁵ 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.

⁶Tourism Malaysia, 'Malaysia Tourism Statistics in Brief' < <https://www.tourism.gov.my/statistics> > accessed 21st April 2018; Strategic Planning Division

tourism remain resilient despite the fluctuating Ringgit⁷ when the latest data released by Malaysian Airport Holding Berhad (MAHB) saw passenger traffic in the international sector had grown by 14.8% year on year (y-o-y) to 28 million for the period of January to July 2017.⁸ The fluctuating Ringgit did not discourage Malaysians from travelling, however, led them to a change in travel patterns by instead going to the destination nearer to home.⁹

Nevertheless, it is notable that the change in Malaysian travellers pattern does not affect the activity 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.

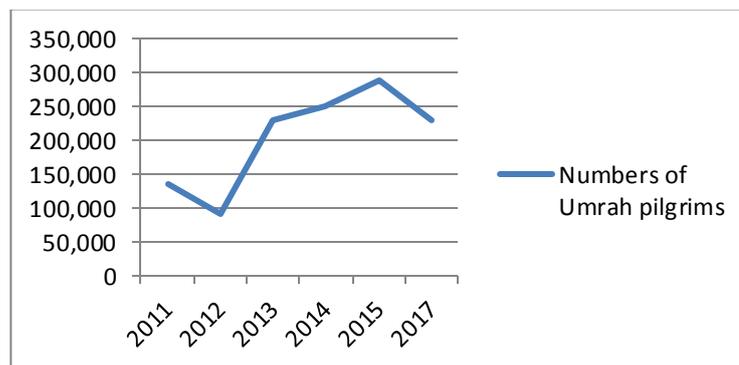


Figure 1: Numbers of Malaysian Umrah Pilgrims From the Year 2011-2017

of Tourism Malaysia, *Tourism Performance Report January-December 2017* < <http://mytourismdata.tourism.gov.my/wp-content/uploads/2018/04/Fast-Fact-2017.pdf> > accessed 11st Oct 2018.

⁷ The Straits Times, 'Malaysia's Outbound Tourism Remain Resilient Despite Fluctuating Ringgit' < <http://www.straitstimes.com/asia/se-asia/malaysias-outbound-tourism-remain-resilient-despite-fluctuating-ringgit> > accessed 22nd April 2018.

⁸ Tourism Malaysia (n6); The Straits Times (n7).

⁹ Corrine Wan, 'Special Report: No Slowdown in Malaysia's Outbound Travel Despite Weak Ringgit' < <https://www.webintravel.com/special-report-no-slowdown-in-malaysias-outbound-travel-despite-weak-ringgit/> > accessed 3rd November 2018; Natasha Joibi, 'Malaysians Are Going Places-Literally' (30th 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 3rd November 2018.

In 2011, at least 136,000 Malaysians went on their Umrah.¹⁰ However, the number of Malaysian pilgrims who performed Umrah in 2012 drastically reduced to 90,000. The number of Umrah visas issued by Saudi Arabia that year was reduced to accommodate the expansion of facilities at Great Mosque of Mecca. Conversely, in 2013, the number of Malaysian Muslim pilgrims went for Umrah increased to 230,000. The number of Umrah pilgrims increased to 250,000 in 2014 and 290,000 in 2015. For the first half of 2017, the number of Umrah pilgrims is about 230,000 and it shows a good sign of the growth of this industry.

Religious tourism is not a new phenomenon¹¹ for Muslims in Malaysia. For decades, religious tourism has played a major part in attracting Malaysian travellers to the sacred places for the performance of rituals. Muslims are avid tourists and in fact, Islamic doctrines encourage Muslims to travel.¹² Some Muslims consider themselves closer to Allah (God) when they travel and believe their supplication as travellers is more likely to be accepted by Allah (God). The Messenger of Allah, Muhammad Peace Be Upon Him (PBUH) said:

‘Three supplications will not be rejected Allah; the supplication of the parent for his child, the supplication of the one who is fasting and the supplication of the travellers.’¹³

The Qur’an often refers to travel as clearly stated in Surah Al-Ankabut (literally, The Female Spider) which explains one purpose of tourism is for consideration and contemplation. The ensuing verse asks people to journey here and there in the world to contemplate the creation of God as follows;

قُلْ سِيرُوا فِي الْأَرْضِ فَانظُرُوا كَيْفَ بَدَأَ الْخَلْقَ ۚ ثُمَّ اللَّهُ يُنشِئُ النَّشْأَةَ الْآخِرَةَ ۗ إِنَّ اللَّهَ
عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

¹⁰ Salleh Buang, ‘Increase in Fraud Packages’ <

<https://www.nst.com.my/news/2017/01/201965/increase-fraud-packages> > accessed 11st August 2017.

¹¹ Daniel H.Olsen and Dallen J.Timothy, ‘Tourism and Religious Journeys’ in Dallen J.Timothy and Daniel H.Olsen (eds), *Religion and Spiritual Journeys* (Routledge,2006)1-21.

¹² Al Quran (26: 20)

¹³ Al Bayhaqi, At Tirmidhi-Sahih.

‘Say, [O Muhammad], travel through the land and observe how He began creation. Then Allah will produce the final creation. Indeed Allah, over all things, is competent.’ (Surah Al Ankabut:20)

Likewise, Surah Al-An’am (literally, The Cattle) verse 11 urges people to roam about the earth to consider the destiny of those who preceded them, especially those who cast aspersions on God’s Word:

قُلْ سِيرُوا فِي الْأَرْضِ ثُمَّ انظُرُوا كَيْفَ كَانَ عَاقِبَةُ الْمُكْذِبِينَ

‘Say, Travel through the land; then observe how was the end of the deniers.’

Similarly, Surah Mohammed verse 10 highlights that :

أَفَلَمْ يَسِيرُوا فِي الْأَرْضِ فَيَنْظُرُوا كَيْفَ كَانَ عَاقِبَةُ الَّذِينَ مِنْ قَبْلِهِمْ ۖ دَمَّرَ اللَّهُ عَلَيْهِمْ ۖ
وَالْكَافِرِينَ أَتْمَلَّهَا

‘Have they not travelled through the land and seen how was the end of those before them? Allah destroyed [everything] over them, and for the disbelievers is something comparable.’

Thus, based on those quotes from the Qur’an, Muslims are encouraged to travel for historical, social, and cultural encounters, to gain knowledge, to associate with others, to spread God’s word, and to enjoy and appreciate God’s sustenance.¹⁴ According to Saadi, a Persian poet, versed in Islamic theology:

‘The benefits of travel are many: the freshness it brings to the heart, the delight of beholding new cities, the meeting of unknown friends, the learning of high manners.’¹⁵

Muslims are always excited to travel to Mecca and Medina especially to visit the house of Kaaba to be in touch with or be at the place where four of

¹⁴ Dallen J. Timothy and Thomas Iverson, ‘Tourism And Islam: Considerations of Culture and Duty’ in Dallen J. Timothy and Daniel H. Olsen, *Tourism, Religion and Spiritual Journeys* (Routledge, 2006) 186-205; John H. Falk, Roy Ballantyne, Jan Packer and Pierre Benckendorff, ‘Travel and Learning: A Neglected Tourism Research Area’ (2012) Vol 39, Iss 2, *Annals of Tourism Research*, 908-927.

¹⁵ Jafar Jafari and Noel Scott, ‘Muslim World and Its Tourisms’ (January 2014) *Annals of Tourism Research*, 1-19.

the great prophets had trodden. Millions of pilgrims go for Umrah every year for the Kaaba experience.¹⁶ Still, this is not because of their presence or history associated with their presence there that the Muslims make the pilgrimage, rather it is because of Allah's instruction in Al Quran to do so for those who could afford to make the journey as a religious act.¹⁷

1.2 Statement of Problem

The Malaysian Umrah travel industry has seen a surge in recent years which involves 234 licensed Umrah tour operators and travel agencies.¹⁸ As more and more Muslims are interested in performing Umrah, the religious ritual has turned into a lucrative business with many companies offering various types of Umrah package travel; from economy to luxury packages and services. Usually these packages range from MYR4900 to MYR15000 (£800-£2500) and include visa arrangement, accommodation, transportation to the destinations and meals.

Umrah also helps Muslim travellers to return to the purified state of a person, reflecting the holy spirit, nature and presence of God in creation.¹⁹ They are fully motivated to experience a deeper spiritual state of Umrah. Malaysian Umrah package travellers travel to Mecca and Medina with the same intention; to perform Umrah for fulfilling the unity of the soul, spirit and heart. It is clearly evidenced by research done by Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal and Osman Mohamed who found that Malaysian Umrah package travellers travel to the holy places in Mecca to find their inner

¹⁶ Shaikh Kadir, *Allah: Understanding God in Islam* (Patridge Publishing, 2016).

¹⁷ Kadir (n16).

¹⁸ New Strait Times, 'Be Vigilant Before Signing Umrah Packages' <
<https://www.nst.com.my/opinion/columnists/2018/01/326237/be-vigilant-signing-umrah-packages> > accessed 27th march 2018.

¹⁹ IIsan, A. (2011, October 28). 'Why Do Muslims Go To Hajj In Mecca?' <
<http://www.lhsanalexander.com/blog/why-do-muslims-go-to-hajj-in-mecca/>> accessed 13rd May 2017.

self, understand and be at peace with themselves, to experience calmness and to gain a sense of renewal. ²⁰

Malaysian Umrah package travellers come from different economic, social, educational, geographical and age backgrounds. Different age, education, income and social life will influence the information acquisition, information engagement and decision making of Malaysian Umrah travellers. Those who are well-educated, financially stable, living in big cities and young could have easy access, acquire and understand to detail information on Umrah package travels compared to uneducated, poor and older Umrah package travellers. Limitations of accessing, acquiring and understanding essential information given²¹ on Umrah package travels could result in a potential informational vulnerability which may prevent the Umrah package travellers from making a good decision and protect themselves from unscrupulous tour operators and travel agents. This raises issues of availability and use of information including how the decisions surrounding Umrah package travels are made. In consequence, they are capable of being easily or quickly harmed or injured and prone to be victimized by the unscrupulous local tour operators and travel agents.

According to official figures issued by the Tribunal for Consumer Claims Malaysia (TCCM), 798 complaints were made by the Umrah package travellers against the travel agency services in 2011 and the number of complaints increased to 977 cases in 2014. The figures show a trend as the industry grows in size, so, too, does the problem. Many unfortunate Umrah package travellers usually realized that they are victims at the very last minute, left stranded at the airport without any information or updates from the tour operators and travel agents in charge. There is a long list of reasons, the most common being a combination of ignorance and too trusting attitude on behalf of the pilgrims, compounded by the authorities' lack of serious interest

²⁰ Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal & Osman Mohamed, 'Determination of Destination Knowledge Acquisition in Religious Tourism: Perspective of Umrah Travellers' (2015) Vol 7, No.3, *International Journal of Marketing Studies*, 85-94.

²¹ Peter Cartwright, *Consumer Protection and The Criminal Law: Laws, Theory and Policy in United Kingdom* (Cambridge University Press, 2001).

and consistency in resolving the cases.²² In addition, those problems have also happened because of the weaknesses of existing legal mechanisms in protecting the interests of Umrah package travellers. Consequently, Umrah package travellers are badly affected by this phenomena and they have suffered massive economic, spiritual as well as emotional loss.²³

1.3 Objectives and Research Questions

Malaysian Umrah package travellers need comprehensive protection to safeguard their interests as consumers at all stages; advertising, pre-contractual, during a contract, as well as post-contractual stage. Thinking about how we should deal with that problem, we need to consider what is the most appropriate tool, approach and what is the most effective technique of regulation that should be adopted. Therefore, this research will critically analyse and evaluate the most appropriate instrument that could be adopted for protecting the interests of Malaysian Umrah package travellers.

Regulation through information paradigm has long been presented as an answer to consumer protection and is used in jurisdictions with more sophisticated protection systems such as the UK and the EU. Alberto Alemunno and Amandine Garde stress that this information paradigm has been at the heart of EU policy and the primary tool of consumer protection.²⁴ In addition, according to Norbert Reich, it is well established in consumer

²² Buang (n10); Amin Ridzuan Ishak, 'Sindiket Gelar Diri Hamba Allah Tawar Pakej Umrah' (Berita Harian Online 4th July 2018) <https://www.bharian.com.my/berita/kes/2018/07/445027/sindiket-gelar-di-ri-hamba-allah-tawar-pakej-umrah> accessed 9th March 2019; Asma Hanim Mahmood, 'Guna Imam, Bilal Untuk Tipu Pakej Umrah (Utusan Online, 6th April 2018) <http://www.utusan.com.my/berita/jenayah/guna-imam-bilal-untuk-tipu-pakej-umrah-1.643355> accessed 9th March 2019; Nomi Mahadi, '967 Charged Over Fraud Umrah Packages' (Borneo Post Online, 24th September 2017) < <https://www.theborneopost.com/2017/09/24/967-charged-over-fraud-umrah-packages/> > accessed 9th March 2019.

²³ 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 27th March 2018.

²⁴ Alberto Alemanno and Amande Garde, 'The Emergence of EU Lifestyle Policy: The Case of Alcohol, Tobacco and Unhealthy Diets' (2013) Iss 6, Common Market Law Review, 1-36.

theory that this information paradigm may be a useful tool of protection though it may not be enough.²⁵ It is evident in several consumer protection directives,²⁶ EU food legislation and even in the other market areas for consumer protection.²⁷ Information paradigm consists of two types; 1) to require specific information to be provided, or 2) to prevent misleading information from being provided.

Information is vital at all stages of contract either at pre-contractual, during contract or post-contractual stage. However, information provision at the pre-contractual stage is incredibly important before consumers enter into any contract because consumers may not be able to get out of it once they signed to the contract.

Thus, the hypothesis of this research is as follows:

Information regulation which requires the tour operators and travel agents to provide essential information relating to Umrah package travels at the pre-contractual stage is crucial in the protection of Malaysian Umrah package travellers.

The objectives of this research are:-

1. To demonstrate the specific need and application of information regulation in protecting Malaysian Umrah package travellers;
2. To identify the appropriateness of information regulation as a protective measure for consumers;
3. To analyse the extent to which information regulation could protect Malaysian Umrah package travellers;

²⁵ Norbert Reich, 'Crisis or Future of European Consumer Laws' in Annette Nordhausen, Gerent Howells, Deborah Perry and Christian Twigg- Fleshner, *The Yearbook of Consumer Law* (London: Routledge, 2016)14.

²⁶ Geraint Howells and Thomas Wilhelmsson, *EC Consumer Law* (2nd edn, Routledge, 2017) 2.

²⁷ Kai Purnhagen, 'The Virtue of Cassis de Dijon 25 Years Later- It Is Not Dead, It Just Smells Funny' in Kai Purnhagen and Peter Rott (eds) *Varieties of European Economic Law* (Springer, 2014) 329-332.

4. To examine the UK laws for the purpose of providing effective protection for Malaysian Umrah package travellers; and
5. To present a specific model of information regulation for protecting the interests of Malaysian Umrah package travellers.

In achieving these objectives, this research considers the following questions;

1. What current protection is there for Umrah package travellers in Malaysia?
2. What are the specific vulnerabilities of the Malaysian Umrah package travellers?
3. Does the current protection address these?
4. If not, is information regulation the most appropriate tool in protecting the interests of Malaysian Umrah package travellers?
5. How the law and practices of the European Union and the United Kingdom could provide an effective protection mechanism for Malaysian Umrah package travellers?
6. How a specific model of information regulation could appropriately be translated to the Malaysian law for protecting the interests of Malaysian Umrah package travellers?

1.4 Methodology

The methodology to be undertaken for this study is principally doctrinal research and qualitative analysis for legal transplant.

1.4.1 Doctrinal Research

Doctrinal or theoretical legal research can be defined in simple terms as research which asks what the law is in a particular area.²⁸ It also can be defined as research into legal doctrines through analysis of statutory provisions and cases by the application of reasoning. The emphasis is upon the analysis of legal rules, principles or doctrines. It involves an empirical inquiry into the operation of law, how the doctrine or principle which has been adopted in real world settings. Doctrinal research is concerned with the formulation of legal 'doctrines' through the analysis of legal rules.²⁹ Thus, the doctrinal legal research emphasizes research in law focusing on black letter law.³⁰

This research locates the law in statutes, judicial pronouncements, and discussions in commentaries, textbooks, journals, debates and official documents. A number of sources are used for this research; library and online databases are used to examine the concept of consumer protection, consumer protection measures, theory of regulation, self-regulation, self-protection and information regulation. Academic literature relating to consumer protective measure are examined and analysed for the purpose of identifying the best approach that could be employed for achieving the main purpose of this research. Then, this research explores further the theory of regulation through information provision as a specific instrument for protecting the interests of consumers including its notion and role in the context of consumer protection, advantages as well as disadvantages.

This research also explores the approach adopted by the European Union(EU) and the United Kingdom (UK) for the purpose of protecting the interests of their package travellers. Thus, a critical examination on the

²⁸ Ian Dobinson and Francis Johns, 'Qualitative Legal Research' in Mike McConcille and Wing Hong Chui (eds) , *Research Methods for Law* (Edinburgh University Press, 2007)18-19.

²⁹ Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing Ltd, 2008) 29.

³⁰ Chynoweth (n29).

Package Travel Directive (PTD) 1990, Package Travel, Package Holidays and Package Tours Regulations (PTRs) 1992 (SI 1992 No. 3288), the Directive (EU) 2015/2302 of the European Parliament and of the Council On Package Travel And Linked Travel Arrangements (PTD 2015) and Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 is made. Several English cases are referred to illustrate the court's approach in interpreting the concept of package travel as well as to analyse how the PTD 1992, PTRs 1999, PTD 2015 and PTRs 2018 protect EU and UK package travellers.

Furthermore, as the crux of the study involves the Malaysian consumer protection measures for Umrah package travellers in Malaysia, scrutiny is made on the National Consumer Policy (NCP) 2002, Consumer Master Plan (CMP) 2003-2013, Consumer Protection Act (CPA) 1999 together with the relevant legislation applicable towards addressing the package travellers protection issues. Accordingly, this study examines relevant legal instruments which are related to the Umrah package travellers' protection such as the Tourism Industry Act (TIA) 1992, the Tourism Vehicles Licensing Act (TVLA) 1999, the Malaysian Association of Tour and Travel Agents (MATTA) Code of Ethics for Members and Umrah Regulatory Council (URC).

1.4.2 Qualitative Analysis

It is difficult to provide a precise or widely accepted definition of qualitative research and the theory underpinning it because so much of the terrain is contested. Kirk and Miller suggest that qualitative research as:

'...fundamentally depends on watching people in their own territory and interacting with them in their own language, on their own terms. As identified with sociology, cultural anthropology, and political science, among other disciplines, qualitative research has been seen to be 'naturalistic,' 'ethnographic,' and participatory.'³¹

³¹ Jerome Kirk and Marc L. Miller, *Reliability and Validity in Qualitative Research* (SAGE, 1986) 9.

By naturalistic Kirk and Miller mean that the research is conducted in its natural context (often 'the field') rather than in an environment constructed by the researcher. By ethnographic they mean holistic (in an anthropological sense) and by participatory they mean that the research subject plays an active part in the process.³² Most researchers who conduct qualitative research would agree that it is socially concerned, examines phenomena in their social settings and considers those phenomena in context.³³

In qualitative research, the data are usually collected through three main methods; direct observation, in-depth interview or data analysis which is largely dependent on the research question, leading to the research design that best fit to research objectives, the availability of or access to particular data sources and the resources available to conduct the research.³⁴ This research wholly involves an analysis of the documents collected from books, textbooks, journal articles, official data and statistics as well as newspaper articles. Some of the data was collected from the Library of the University of Leeds, the National Library of Malaysia, the Library of Sultan Zainal Abidin University (Unisza), the Library of International Islamic University of Malaysia (IIUM), the Library of Malaysian National University (UKM), the Library of University Teknologi Mara (UiTM), the Library of Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC), Malaysian Department of Statistics, as well as online database. The secondary sources recorded by the Malaysian Department of Statistic, TCCM, Ministry of Tourism (Licensing Division) as well as URC provide evidence for the claims lodged by consumers especially Umrah package travellers.

Documentary analysis can provide a wealth of data.³⁵ It is noted that documents, as the sedimentations of social practices, have the potential to inform and structure the decisions that people make daily and longer-term

³² Lisa Webyly, 'Qualitative approaches to the Empirical Legal Research' in Peter Cane, Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010) 936.

³³ Webyly (n32).

³⁴ Ibid (n32).

³⁵ Ibid (n32).

basis; they also constitute particular readings of social events. They tell us about the aspirations and intentions of the period of which they refer and describe places and social relationship at a time when we may not have been born, or were simply not present.³⁶ For many researchers, documents provide evidence of policy directions, legislative intent, understanding of perceived shortcomings or best practice in the legal system, and agenda for change.³⁷ Documentary analysis has been criticized on a number of grounds. Some argue that documents are not susceptible to scientific, systematic analysis in keeping with positivist traditions. To what extent can one draw conclusions from these documents? For some, documents reflect or report reality, describing an event, a perception, or an understanding.³⁸

It is possible to use qualitative research for exploratory, explanatory and descriptive research and to draw causal inferences from the data – assuming of course that the researcher develops an appropriate research design, and adopts an appropriate data collection method and mode(s) of data analysis in order to answer the research questions posed. This thesis examines the concept of tourism, religious tourism, Umrah travellers and Umrah package travellers through secondary sources such as books, journal articles and statistical data recorded by the Malaysian Department of Statistic, TCCM as well as Ministry of Tourism (Licensing Division). It discloses a number of complaints lodged by the consumers with particular concern on the cases involved the local tour operators and travel agents. The same design has been used to examine the most appropriate approach to protect the interests of consumers. Arguments and comments by academic scholars as well as practitioners are the main resources that have been referred to.

³⁶ Tim May, *Social Research: Issues, Methods and Process* (4th edn, Mc Graw Hill Open University Press, 2011) 192.

³⁷ *Ibid* (n32).

³⁸ May (n36).

1.4.3 Legal Transplant

In order to fill in the existing gaps in Malaysian legal framework of consumer protection and provide an effective mechanism to protect the interests of the travellers who purchase package travels from the local tour operators or travel agents, it is worthwhile considering whether or not Malaysia can adopt the same approach i.e. information regulation that has been applied by another jurisdiction with some modifications to suit local circumstances. The UK is used as a model for this research for several reasons. First, it has a very strong history of consumer protection for protecting their package travellers. Secondly, the UK PTRs 1992 and 2018 could be used as a model due to its successful application in protecting UK package travellers for more than 20 years until the market reached its maturity. Thirdly, it is due to a variety of theoretical and practical reasons for wanting to know about what the UK does to achieve working laws, policies and practices of protecting consumers particularly Umrah package travel travellers. If it is can be successfully argued that information regulation is the best tool to protect the consumers and in particular package travellers and the UK PTRs should be used as a model, then it will be visualized through legal transplant.

The concept of legal transplant is defined as a transfer of laws and institutional structures across geopolitical or cultural borders which can be imposed or voluntary, encompass entire legal systems or single legal principles and integrate similar or different cultures.³⁹ For millennia, legal systems around the world have developed through a legal transfer.⁴⁰ In very general and simplified terms, transplantation is understood as a movement of law from one legal tradition to another by a conscious process of law-making or legal reform.⁴¹ A legal transplant can take place in three ways i.e.

³⁹ John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a 'Rule of Law' in Vietnam* (1st edn, London: Routledge, 28 November 2006) < https://www.ashgate.com/pdf/SamplePages/Transplanting_Commercial_Law_Reform_Intro.pdf > accessed on 25 August 2015.

⁴⁰ Gillespie (n39).

⁴¹ Tatiana Kyselova, 'The Concept of Legal Transplant: Literature Review' (University of Oxford, 2008).

legislative, judiciary process or through private contracting. In the era of globalisation, various legal systems have been integrated into a single law. A parallel idea to the combination of fragmented rules from different foreign sources into a single law in a national legal reform is the legal standardisation or harmonisation.⁴²

One of the greatest proponents of legal transplant concept, Alan Watson claimed that laws were often strongly rooted in the past. He arrived at this conclusion based on three arguments. He believed that legal transplantation is easy, very common in all legal systems and can explain most of the changes in the law of particular countries.⁴³ He contended that the development of the civil law is the result of 'purely legal history' and can be explained 'without reference to social, political, or economic factors'.⁴⁴ In fact, laws were usually borrowed from elsewhere, so that laws often operated in societies and in places very different from those in which they had initially developed.⁴⁵ Indeed, he argued further that much of law is out of step with the needs and desire of society. This argument contradicts with Kahn-Freund who claimed that anyone inclined to borrow laws needed to reflect on the nature of the society that generated the borrowed rule.⁴⁶ Watson argued further that law is primarily a product of deliberate work of a closed clan of a legal elite represented by lawyers, judges and legal academics whose needs are reflected in the law but not the needs of society.⁴⁷

Nevertheless, Watson's view on a legal transplant is contrary to what seems to be Pierre Legrand's approach. Pierre Legrand who was one of the strongest opponents of legal transplants argues that legal transplants are

⁴² Li-Wen Lin, 'Legal Transplants Through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example' (Summer 2009) Vol. 57, No. 3 *The American Journal of Comparative Law*, 711-744.

⁴³ Alan Watson, *Legal Transplant* (2nd edn, University of Georgia Press 1993)95.

⁴⁴ Kyselova (n41).

⁴⁵ John W. Cairns, 'Watson, Walton, And The History Of Legal Transplants' (2014) Vol. 41, No.3 *Georgia Journal of International and Comparative Law*, 637-96.

⁴⁶ Cairns (n45).

⁴⁷ Watson (n43).

'impossible' due to ingrained differences between the systems involved.⁴⁸ According to him, what can be displaced from one jurisdiction to another is literally a meaningless form of words because the meaning of a rule is dependent on interpretation in a given legal context. He concluded that no rule in the borrowing country can have any significance as regards the rule in the jurisdiction from which it is borrowed.⁴⁹ Transplantation of law is not possible at all because every law is culturally determined.⁵⁰

By looking at other legal systems or approaches employed by other countries particularly the UK, it is hoped to benefit the national system of an observer (Malaysia) by offering suggestions for future developments, providing warnings of possible difficulties, giving an opportunity to stand back from one's national system and look at it more critically.⁵¹ Being one of the colonized countries by British, Malaysia retained many transplanted English laws and legal institutions, although post-independence political and cultural imperatives have to vary degrees slowly changed both the substance and jurisprudential basis of law in Malaysia. During the period of 1867-1937, Malaysia transplanted English common law as the main sources in the legal system where applied primarily to criminal and commercial (not family, inheritance) matters.⁵² The doctrine of judicial precedence states that judgement of foreign courts, especially those from the United Kingdom, are treated with great respect, to the extent that differences in statutory language are ignored or glossed over,⁵³ and the English common law is one of the greatest, if not the greatest, contributor to Malaysian jurisprudence today.⁵⁴ In addition, English law is used as a source of Malaysian law as provided in Section 3 and Section 5 of the Civil Law Act (CLA) 1956. These two countries i.e. Malaysia and UK

⁴⁸ Pierre Legrand, 'The Impossibility of Legal Transplant' (1st June 1997) Vol 4, Iss 2, Maastricht Journal of European and Comparative Law, 111-124.

⁴⁹ Legrand (n48).

⁵⁰ Zaki Tun Azmi, 'The Common Law of Malaysia in the 21st Century' (2012) 24 Singapore Academy of Law Journal, 8.

⁵¹ Geoffrey Wilson, 'Comparative Legal Scholarship' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007).

⁵² Daniel Berkowitz, Katrarina Pistor and Jean-Francois Richard, 'The Transplant Effect' (2003) Vol 51, No.1 The American Journal of Comparative Law, 163-203.

⁵³ Mohammad Rizal Salim, 'Are Legal Transplant Impossible?' (2009) Journal of Comparative Law, 1.

⁵⁴ Tun Azmi (n50).

share the same legal principles and common law where Malaysian's legal system is very much rooted and influenced by the UK, the rule of statutory interpretation and how court shapes their finding influenced the Malaysian legal system in the early period.

However, the adoption of English law and approaches to the Malaysian legal system is subjected to two circumstances; 1) the absence of local statutes on the particular subject, and 2) suit to local circumstances. Section 3 (1) of CLA 1956 clearly states;

'Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall—

(a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;

.....Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.'

The existing CPA 1999 applicable to all types of consumers as defined by the statute but no specific protection has been allocated to the package travellers. However, the United Kingdom has a specific provision which protects the package travellers. Therefore, by referring to the Section 3 (1) of CLA 1956, it gives a room which allows Malaysian legal system to adopt English law with some modifications to suit with the local circumstances in the absence of local statutes govern on the protection of package travellers.

Therefore, in this research, regulatory reform with a specific model of information regulation based on UK approach will be proposed to provide efficient, appropriate and actionable protection for Umrah package travellers in Malaysia instead of relying on the existing private law and redress mechanism. This proposed reform is hoped to benefit the domestic demand of Umrah package travellers for a new practical and comprehensive law which protects their interests as consumers from being defeated.

1.5 The Originality of the Research

The subject of information regulatory approach for protecting Umrah package travellers is a relatively new academic topic in Malaysia. Despite the presence of recent available research and research in progress on consumer protection measure, the local research communities have mostly ignored the significance of an information regulatory approach as a measure for protecting the interests of consumers generally and Umrah package travellers particularly. Therefore, this research presents a new perspective by proposing information regulation as a protective measure for safeguarding the interests of Umrah package travellers rather than using the private law or traditional mode of regulation.

Generally, there are much analysis and commentaries produced by the academicians and practitioners on the concept of consumer protection which covers on the needs of the consumer protection in a marketplace,⁵⁵ the protection provides by the private law⁵⁶ as well as the redress mechanism offers by private laws for injured consumers. However, this research offers a different perspective of consumer protection measures to be applied in Malaysia paradigm. This research will fill the current gaps that exist in the Malaysian law on consumer protection, especially for Umrah package travellers.

⁵⁵ E. Scott Maynes, 'Consumer Protection: The Issues' [1979] Vol 3, Iss 2, Journal of Consumer Policy, 97-109; Iain Ramsay, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (2nd edn, Oxford and Portland, 2007) 11; Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Ashgate Publishing Ltd, 2005); John Mickelburgh, *Consumer Protection* (Professional Books, 1979); Robert B. Reich, 'Towards A New Consumer Protection' [1979] Vol 28, Iss 1, University of Pennsylvania Law Review, 1-40

⁵⁶ Anthony I. Ogus, *Regulation: Legal Form and Economic Theory* (Hart Publishing, 2004); Wilhelmsson 'Consumer Law and Social Justice' in Ramsay (ed) *Consumer Law in the Global Economy* (Dartmouth Publishing Co Ltd, 9 Oct 1997) 217-232; Ross Cranston, Julia Black and Colin Scott, *Consumers and the Law* (3rd edn, Cambridge University Press, 2000).

In general, although religious based tourism is expanding there is not much information or discussion in relation to the phenomenon, particularly pilgrimage tourism such as Umrah. Research on this thriving industry is limited, thus knowledge about this trend remains scarce. Until recently, relatively little attention has been given to highlight the subject matter in the tourism literature due to the complex relationship between tourism and religion. In Malaysia, religious tourism is now in the limelight.⁵⁷ This paper builds on the current limited work in this area.

More specifically, there is work that highlights the issue of protection needs by the Umrah package travellers in Malaysia when they are facing with the fraudulent practices in the travel agencies business,⁵⁸ a risk of travel deposit abscondment, insolvency of travel agencies, and loss in respect of breach of package holiday terms and conditions.⁵⁹ However, no serious attention has been given by the researchers on the most appropriate protective measure that could be used to protect the Umrah package travellers though this group of consumers deserve additional protection compared to the other consumers. This research could give a special contribution to the Ummah (Muslim community) and even, the protective measure proposes through this research could also be used for protecting package travellers more generally in Malaysia.

The aim of this research is to provide a contribution to Malaysian government policy in tackling the best solution for the current issue facing by Malaysian Umrah package travellers. Due to the big amount of economic loss

⁵⁷ Siti Hasnah Hassan, Nurul Illiyani Mohd Nasir and Amin Maghsoudi, 'A Conceptual Model Of Perceived Value And Consumer Satisfaction: A Survey Of Muslim Travellers' Loyalty On Umrah Tour Packages' (2016) Vol 1, No.3, International Journal Islamic Marketing and Branding, 215-237.

⁵⁸ Nuraisyah Chua Abdullah and Zuraidah Mohd Sanusi, 'Travel Consumer Fraud: Comparative Analysis on Regulatory Framework and Legal Redress in Selected Countries' (The 6th International Conference of Financial Criminology, Thailand, 5 September 2014).

⁵⁹ Ahmad Afiq Hassan and Nuraisyah Chua Abdullah, 'Tourism Industry Compensation Fund(TICF) in Malaysia: Some Legal and Policy Consideration' in Salleh Mohd Radzi, Norzumana Sumarjan, Chemah Tamby Chik, Mohd Salehuddin Mohd Zahari, Zurinawati Mohi, Mohd Faez Saiful Bakhtiar and Faiz Izwan Anuar (eds), *Theory and Practice in Hospitality and Tourism Research* (CRC Press, 2015).

suffered by the Umrah pilgrims, this issue has been highlighted in the newspapers, articles and electronic media.⁶⁰ As a result, the Ministry of Tourism and Culture (MOTAC) formed a Council for Umrah Regulation, fixed a minimum price of a package at MYR4,900 and require sub-license of Umrah. This research will, therefore, examines further whether regulating the minimum price for Umrah package travel and requiring sub-license of Umrah are sufficient to protect the rights of Umrah package travel or otherwise. This research believes that a comprehensive approach is required to protect Malaysian Umrah package travellers. Therefore, the hypothesis is being explored is the information regulatory approach that has been designed together with enforcement framework could formulate a practical and actionable mechanism to protect the Umrah pilgrims who purchase Umrah package travel from the local tour operators and travel agents beforehand.

1.6 An Organisation of the Research

This research is divided into seven chapters, including this introductory chapter, and conclusion. The introductory chapter of this thesis, above, has dealt with the aims, research questions, objectives and methodology of the study. It addressed the reasons why this study should be conducted and what are the contributions to the knowledge.

The title of Chapter Two is 'Tourism, Muslim Religious Tourism, Umrah Travellers and Umrah Package Travel' primarily elucidates the concept of Umrah package travel by explaining and defining the general concept of tourism, religious tourism, Muslim religious travellers and Umrah package travel which are interrelated to each other. The discussion will be mainly on the concept of Umrah (lesser pilgrimage), its difference compared to Hajj

⁶⁰ New Straits Times, 'Matta: Management Of Umrah Tours Should Remain Under Tourism Ministry, Not Tabung Haji' < <https://www1.nst.com.my/news/nation/2017/12/316556/matta-management-umrah-tours-should-remain-under-tourism-ministry-not> > accessed 16th April 2018; The Star Online, 'Another Umrah Group Fleeced' < <https://www.thestar.com.my/news/nation/2017/12/28/another-umrah-group-fleeced-travel-agents-pilgrims-need-to-be-wary-of-packages-that-are-too-cheap/> > accessed 16th April 2018.

(pilgrimage), its significance to the Muslims, the rituals that should be performed by the Umrah travellers and requirements imposed by Sharia (Islamic law) as well as Saudi government on Umrah package travellers. Then, this chapter examines further specific vulnerabilities of Umrah package travellers compared to other types of travellers. This chapter also explores the framework, obligations, responsibilities and liabilities owed by the players of Umrah package travel. In addition, this chapter analyses Malaysian Umrah package travel by examining the phenomenon of Malaysian Umrah package travel, personification of typical Malaysian Umrah package travellers, the main issue surrounds on Umrah package travel, the push and pull factor that cause to the highlighted issues, and the extent to which the highlighted issue affects the interests of Malaysian Umrah package travellers.

Chapter Three primarily identifies information regulation and appropriate protective approach for consumers generally and Umrah package travellers specifically. Scrutinizing the concept of consumer detriment reveals how consumer detriment may occur and how information could minimize consumer detriment and safeguard consumers from loss. Moreover, this chapter explores further the necessity of information in the context of Umrah package travel and the obstacles of information. Regulatory intervention may be necessary to protect the interests of consumers. Regulation has covered a range of areas including licensing to permit market entry, price control, tax and subsidies, agency regulation, information disclosure etc. To be effective, the approach employed must be appropriate to the objectives that have been identified. Therefore, this chapter decides to employ a specific approach of information regulation as a consumer protection measure. This part provides an explanation as to how an information regulation could be the most appropriate tool for protecting the consumers, and why it could be the best legal mechanism in protecting the interest of consumers rather than using other legal approaches.

Chapter Four 'The European Union (EU) and the United Kingdom (UK) Protective Measure on Information Provision In The Sphere of Package

Travel' specifically refers to approaches adopted by the European Union (EU) and United Kingdom (UK) purposely to protect the information provision of consumers including Umrah package travellers. This chapter examines how sophisticated the EU Directives and UK set of regulations protect the EU and UK Umrah package travellers in terms of information. This chapter begins with the exploration of the concept of package travel as interpreted by EU and UK laws. The discussion also concentrates on processes which have brought the law to its current position and its development. At the same time, this chapter also discusses the other relevant laws relating to consumer protection through information provision for EU and UK consumers. This chapter explores the extent to which the EU and UK laws protect the consumers of Umrah package travel in practice. By exploring the strengths and weaknesses of the existing EU and UK legal framework on information provision protection, it provides some answers to the question of how to design the best instrument for protecting Malaysian Umrah package travellers.

Chapter Five 'Protection Measures for Umrah Package Travel Consumers In the Context of Malaysian Legal Paradigm' exclusively analyses the existing legal framework (policies, laws and rules) that has been designed for the purpose of protecting consumers generally and Umrah package travellers specifically in Malaysia. In addition, it also reveals all the gaps that exist in the current legal framework which demand for amendment. On top of policies, strategies and consumer-related legislation that have been deliberately enacted and implemented by the Malaysian government to protect the Umrah package travellers, this chapter examines further the specific measure adopted by the Malaysian tourism industry as to protect their Umrah package travellers. Moreover, this chapter analyses further how information regulation could correspond to the current issue facing by Umrah package travellers, protect the interests of Umrah package travellers and filling the existing gaps in the Malaysian consumer protection framework.

Chapter Six then proceeds to use the analysis of chapter three, chapter four, and chapter five of this thesis for designing information regulatory

approach as the most appropriate measure for safeguarding the interests of Umrah package travellers in Malaysia. A specific approach of regulation through information provision explains how information regulation could play its function as an appropriate tool to protect the Umrah package travellers, the list of information that should be provided by the local tour operators and travel agents to the Umrah package travellers, amount of information that should be provided and method of providing information to the Umrah package travellers. The discussion also looks at the relevant enforcement framework that is appropriate to be implemented as to ensure that the information regulatory approach could protect the Umrah package travellers effectively.

Finally, Chapter Seven provides a general conclusion to the whole thesis.

Chapter 2 : Tourism, Muslim Religious Tourism, Umrah Travellers and Umrah Package Travel

2.1 Introduction

Tourism is a socio-economic phenomenon involving travel from one point of origin to another destination for the purpose of leisure, business, medical treatment, cultural, art, religion and other activities. Despite the increasing attention tourism is now receiving as a field of study, widespread agreement on defining the basic concept has not yet been reached.¹ Therefore, this chapter will explain and examine the concept of tourism from the early age of this activity up to this date as a deep understanding of what we mean by tourism will allow us to identify issues for a specific type of travellers and properly analyse an appropriate nature of current and future protection for travellers.

The needs for travel, the level of cultural, social facilities and the existing means of transport are the main reasons why several types of tourism remain to exist nowadays. Compared to the other types of tourism, religious tourism is different and it stands in its own class because religious tourism is not an activity that is solely for pleasure and leisure purpose only, but the travellers travel to the holy places for the religious purpose which is very sacred. Muslim religious tourism specifically Umrah will be the key area of this research because it is the oldest religious tourism that constantly practised until today by the Muslims all around the world and a phenomenon in the Malaysian tourism industry. This chapter will explore the concept of Umrah (also known as lesser pilgrimage) including why Muslims have serious

¹ Clive L. Morley, 'What is Tourism? Definitions, Concepts and Characteristics' (1990) Vol.1 No.1 Journal of Tourism Studies, 3-8.

intention to do Umrah, what are the rituals that should be performed by the travellers during Umrah trip and how they decide to go for Umrah.

Recently, varieties of Umrah package travels ranging from economy to luxurious are offered by the local tour operators and travel agents. This chapter will examine thoroughly the framework of Umrah package travel, what personifies the typical Malaysian Muslim pilgrims who are purchasing Umrah package travel and how do they buy that Umrah package travel. This research also will examine further what are the potential causes that lead to the current issues in relation to the Umrah package travels, the extent to which the current issues detriment the interest of Malaysian Umrah package travellers and where protection should be targeted.

2.2 Conceptual Definitions

Tourism is without a doubt, one of the most important forces shaping our world.² William F. Theobald in his book suggests that the word tour is derived from the Latin, 'tornare' and the Greek, 'tornos', meaning 'a lathe or circle; movement around a central point or axis'.³ However, this meaning has changed in modern English to represent 'one's turn'. The suffix -ism is defined as an action or process; typical behaviour or quality. When the word tour and the suffixes -ism and -ist are combined, he suggests the action of moving in a circle. Therefore, a tour is considered as a round-trip journey, i.e. the act of leaving and ultimately returning to the original starting point⁴ by describing a circle implies returning to one's starting point.⁵ Tourism is a social, cultural and

² Robin Cohen and Paul Kennedy, *Global Sociology* (2nd edn, Washington Square, NY: New York University Press, 2007).

³ William F. Theobald, *Global Tourism* (Butterworth-Heinemann, 1998) 6-7.

⁴ Theobald (n3).

⁵ Neil Leiper, 'The Framework of Tourism: Towards a Definition of Tourism, Tourists, and the Tourist Industry' (Oct/Dec 1979) *Annals of Tourism Research*, 390-407.

economic phenomenon which entails the movement of people to places or countries outside their usual environment for personal or business purposes.⁶

2.2.1 Tourism and Travel

Various definitions, concepts and descriptions of tourism arise from the multidisciplinary nature of the topic. Smith notes that 'there are many different legitimate definitions of tourism that serve many different legitimate needs'.⁷ A clear concept and a more precise definition of tourism in fact is required for various purposes including for the purpose of statistical, industrial, legislative, administrative, study, and this research. Much of the early research for tourism definition was entirely subjective and raised more questions than answers. For example, Heath and Wall define tourism as '... forms of recreation that take place beyond a specified distance from the home or in an administrative jurisdiction different from one's place of permanent residence'.⁸ However, the word specific distance is not clearly defined and a question may be asked whether a trip in 5 miles distance for relaxing also can be considered as tourism or not.

However, the more holistic definition tries to embrace the whole essence of the subject area in defining tourism term. Professor Hunziker and Professor Kraph of Berne University in their study define tourism as:

'The sum of phenomena and relationship arising from the travel and stay of non-residents, in so far as they do not lead to permanent residence and are not connected to any earning activity.'⁹

⁶ UN World Tourism Organisation, 'The Tourism Satellite Account in a Nutshell' < <http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/docpdf/tsainanutshell.pdf> > accessed 12 November 2015; UN World Tourism Organisation, 'Understanding Tourism: Basic Glossary' < <http://media.unwto.org/en/content/understanding-tourism-basic-glossary> > accessed 25 July 2015.

⁷ Stephen L.J. Smith, 'Defining Tourism: A Supply-Side View' (1988) Vol 15, *Annals of Tourism Research*. 179-190.

⁸ Ernie Heath and Geoffrey Wall, *Tourist Development* (London: Longman, 1989).

⁹ Hunziker and Kraph in Burkart and Medlik, *Tourism: Past, Present and Future* (2nd edn, London: Heinemann Publishers, 1981).

This definition allows for both interdisciplinary and multidisciplinary approach to the study of tourism.¹⁰ Its feature is its scope, recognising that tourism embraces many facets centring around the principal one, travellers. This definition helps to distinguish tourism from migration and makes the assumption that travel and stay are necessary for tourism. Nevertheless, it appears to exclude activity that generates remuneration such as travel for business purposes from the scope of tourism. Leiper says that the Hunziker and Kraph definition can be criticized on the ground that it is too vague; the phrase 'sum of phenomena and relationship' does not indicate methodical applications or extensions.¹¹

Leiper in his article states that another holistic approach proposes by Jafari describes tourism as:

'...the study of man away from his usual habitat, of the industry which response to his needs, and of the impacts that both he and the industry have on the host's socio-cultural, economic and physical environment.'¹²

Jafari defines tourism based on an anthropological point of view which describes the elements of tourists' behaviour, the role of primary sectors in the tourism industry (accommodation, transportation, services, etc.), and how the result of these two activities may affect the receiving countries generally, as well as the host communities individually. However, Nurhazani in her book 'Bisnes Pelancongan'¹³ and Leiper¹⁴ argue that Jafari's definition of tourism is too broad and difficult to understand because it does not explain in detail what connotes tourism and what factors contribute to this industry development.

There is a third holistic approach to define the term of tourism. This is proposed by Gunn who claims that tourism is 'a closed system of tourism environment made up of five components: people, attractions, transportation,

¹⁰ Leiper (n5) 394.

¹¹ *ibid* (n5).

¹² Jafar Jafari, 'Editor's Page' (1977) V *Annals of Tourism Research*, 6-11.

¹³ Nurhazani Shariff, *Bisnes Pelancongan* (Kuala Lumpur: PTS Publications and Distributors Sdn Bhd, 2004).

¹⁴ *ibid* (n5) 394.

services and facilities, as well as information and direction'.¹⁵ While Pearce et al. indicate that tourism might be seen as an origin-linkage-destination system involving the temporary movement of people from an origin to a destination with (usually) return to his or her permanent home after at least one overnight stay.¹⁶ The definitions proposed by Gunn and Pearce et al. share one similar element which is 'people' or also known as traveller.

Similar to Pearce et al.,¹⁷ Airey,¹⁸ Hudman and Hawkins¹⁹ indicate that the definition of tourism, either at domestic or international levels, has three additional common elements, including movement between two places (origin and destination), purpose, and time. Undoubtedly, those three elements are also established in the definition of tourism given by Leiper. However, according to Leiper, 'people' should be the fourth element that should exist in constituting an activity as tourism. Subsequently, Leiper defines tourism as a system involving the discretionary travel and temporary stay of persons away from their usual place of residence for one or more nights, excepting tours made for the primary purpose of earning remuneration from points en route.²⁰ Mill and Morrison also highlight the same elements, defining tourism as;

'...an activity (taking place) when people cross a border for leisure or business and stay at least twenty-four hours and not exceeding one year.'²¹

They define tourism in a more detailed and critical manner and manage to distinguish tourism activities from non-tourism activities. According to these authors:

'...tourism is a difficult phenomenon to describe.... all tourism

¹⁵ Clare A. Gunn, *Vacationscape, Designing Tourist Regions* (Austin: University of Texas, 1972) 21.

¹⁶ Philip L. Pearce, Alastair M. Morrison, and Joy Rultedge, *Tourism - Bridges Across Continents* (Sydney: McGraw Hill, 1998) 255.

¹⁷ Pearce, Morrison and Rultedge (n16).

¹⁸ David Airey, 'The Meaning of Marketing in Travel and Tourism' <
v5.books.elsevier.com/bookscat/samples/9780750644716/97807506447 > accessed 17 July 2015.

¹⁹ Llyod E. Hudman and Donald E. Hawkins, *Tourism in Contemporary Society* (Englewood Cliff: Prentice Hall, 1989).

²⁰ *ibid* (n5) 403-404.

²¹ Robert Christie Mill and Alastair M. Morrison, *The Tourism System: An Introductory Text* (New Jersey: Prentice Hall, 1985).

involves travel, yet all travel is not tourism. All tourism involves recreation, yet all recreation is not tourism. All tourism occurs during leisure time, but not all leisure time is given to touristic pursuit'.²²

From this definition, it is clear that travel for the purposes of tourism should consist of certain criteria that differentiate it from ordinary trips. It is especially important when considering that not all recreation activities are tourism-related activities. For example, the action of a man who invites his friends over to his house on a bank holiday to watch a live football match on his television cannot be associated with tourism, even though the scenario involves travelling and spending leisure time. Suzanne Cook, on the other hand, defines tourism in the broadest way possible to include all movements by people from place to place, exclusive only of those trips made in the course of necessary, everyday activities, such as commuting to work or shopping. It differs from the definitions given by Leiper, Hunziker and Kraph who exclude earning or remuneration purposes from being recognised as one of the purposes of tourism.

Based on the earlier discussion, tourism could be interpreted as a system which involves temporary movement of people from their place of origin to a destination at least for one night for many purposes including leisure, religious and medical treatment in which, four basic features should exist in considering an activity as tourism; human, movement, time limit of travel and purpose of travelling. All those four elements of tourism are also recognised by the World Travel and Tourism Council (WTTC). According to WTTC, tourism includes '...the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes'.²³ By considering all the elements that must exist to constitute an activity as tourism, Umrah therefore could be defined as a part of tourism activity performed by Muslims all around the world to Mecca and Medina for religious purposes.

²² Mill and Morrison (n21).

²³ UN World Tourism Organisation, 'Tourism Satellite Account- Why Do We Have It And What Does It Do?' < http://statistics.unwto.org/sites/all/files/pdf/unwto_tsa_1.pdf > accessed 20 June 2015.

Traveller is the major component and backbone of tourism activity. Historically, the term 'traveller' was first coined in the late eighteenth century to describe upper-class travellers. At that time, travel was still very much a privilege of the upper classes, but this soon changed. Traveller is the human element which is the focal point that must be established in tourism.²⁴ The League of Nations Statistical Committee in 1937 adopted the definition of traveller and referred it to an international traveller, who visited a country other than that in which he habitually lives for a period of at least twenty-four hours.²⁵ This had been the basis of the later definition given by the United Nations (UN). In 1963, the UN recommended a definition of a traveller for statistical purposes as a temporary visitor staying at least twenty-four hours in the country visited and the purpose of whose journey can be classified under one of the following headings: (a) leisure (recreation, holiday, health, study, religion, and sport), (b) business, family, mission and meeting.²⁶ This definition was approved by the World Tourism Organization (WTO) in 1968 and has since encouraged countries to use it.

Travellers travelling around the world for many reasons including for leisure, enjoyment and to encounter spiritual values. People on short-term humanitarian missions from the developed world offering their services to improve the lives of people of the developing world in areas of health, hygiene, and education are travellers, typically referred to as volunteer travellers. Similarly, business people travelling to attend intense marketing meetings or business conventions away from their home areas are travellers (business travellers), the same way a person vacationing on the beach in Jamaica is a traveller (beach traveller). From this perspective, then, a pilgrim is a religious traveller who is motivated by spiritual or religious factors. For the purpose of this study, an Umrah pilgrim could be interpreted as a traveller who travels from his or her regular place of residence to Mecca and Medina for a period of

²⁴ *ibid* (n5) 392.

²⁵ Steven Pike, *Destination Marketing Organisations* (Oxford: Elsevier, 2004)10.

²⁶ Arjun Kumar Bhatia, *The Business of Tourism: Concepts and Strategies* (New Delhi: Sterling Publisher Private Limited, 2006) 56.

more than one night for religious purposes. The word Umrah pilgrims, Umrah tourists and Umrah travellers will be used interchangeably in this thesis.

2.2.2 Types of tourism

Travelling is known as one effective way to see the world, experience new cultures and meet new people at the same time. For many travellers, travel accomplishes many other purposes that do not even have anything to do with the joy of visiting a new place. They travel from one destination to other destinations with different purposes such as for religious, business, medical treatment as well as education purposes. As a result, the tourism industry keeps expanding and this is the reason why there are many different types of tourism that are varied and dynamic in time. The types of tourism presented in a given period are generated by the needs for travel, the level of cultural and social facilities and the existing means of transport.²⁷

Section 2 of the Malaysian Tourism Industry Act (TIA) 1992 follows similar approach by classifying tourism into three broad categories that are domestic, inbound and outbound tourism.²⁸ In domestic tourism, people travel outside their normal domicile to other areas within the country. For example, a Malaysian who travels for a holiday in Kuala Terengganu, Kuala Lumpur and Sabah is considered as domestic tourism because it is within the boundaries of Malaysia. There are thousands of domestic package travels offered by the local tour operators and travel agents such as Family Vacation 2 days 1 night in Malacca, 2 days 1 night Legoland Malaysia holiday package, 3 days 2 nights sunset cruise at Langkawi and etc.²⁹ Whereas, when they travel to a country other than the place they normally live, and which is a separate national unit with its own political and economic system, they are involved in

²⁷ Cornelia Elena Tureac and Turtureanu Anca, 'Types and Forms of Tourism' Acta Universitatis Danubius, NR1/2008, 92-103.

²⁸ See also Leonard J.Lickorish and Carson L.Jenkins, *Introduction to Tourism* (Butterworth-Heinemann, 1997).

²⁹ Domestic Packages <

https://www.mayflower.com.my/index.php?route=information/information&information_id=52 > accessed 14 December 2016.

international tourism. International tourism comprises of inbound tourism (non-residents' visits to a given country) and outbound tourism of residents of a given country (residents' visits abroad). Amongst international trips that always catch the eyes of Malaysians are tour packages to South East Asia, China, Hong Kong, Korea, Europe, Middle East, United States, Canada, Africa, India, Australia, New Zealand and others.³⁰ In 2015, there were 11.1 million outbound trips from Malaysia and in 2016, the number rose to 11.9 million trips.³¹ Based on the survey involving 503 respondents, Visa Inc. found that Malaysian mostly travelled within the Asian region with the top destination being Singapore (41%), Thailand (32%), Indonesia (30%) and Hong Kong (26%).³²

Hall and Page,³³ Kotler and Makens,³⁴ and Boone³⁵ argue that tourism is an on-going process which is constantly changing according to taste and fashion. Today, the tourism industry offers many specialized forms of tourism in order to meet the increasingly diverse and unique requests of demanding customers. Perhaps the most common type of tourism is what most people associate with travelling is recreational tourism. Recreational tourism is a massive and highly prevalent form of tourism movement. Today's pace of civilization and its harmful effects such as fatigue, noise, air pollution, work overload in technological innovation (the internet and television, primarily) underline the need for tourism recreation in the foreground. Since the recreation necessity of modern society, whether it comes to preventive medical care, sport or just a vacation, this form of tourist traffic is an integral

³⁰ Wartawan Sinar Online, 'Ramai Rakyat Malaysia Bercuti ke Luar Negara' (Sinar Online, 9th August 2017) < <http://www.sinarharian.com.my/bisnes/ramai-rakyat-malaysia-bercuti-ke-luar-negara-1.715766> > accessed 24th July 2018; Bernama, 'Rakyat Malaysia Lebih Cenderung Melancong Ke Luar Negara' < <https://sarawakvoice.com/2018/01/10/rakyat-malaysia-lebih-cenderung-melancong-ke-luar-negara/> > accessed 24th July 2018.

³¹ Corrine Wan, 'Special Report: No Slowdown in Malaysia's Outbound Travel Despite Weak Ringgit' < <http://www.webintravel.com/special-report-no-slowdown-in-malysias-outbound-travel-despite-weak-ringgit/> > accessed 24th July 2018.

³² The Star Online, 'More Malaysian Travelling Abroad' (Wed, 16th December 2015) < <https://www.thestar.com.my/news/nation/2015/12/16/more-msians-travelling-abroad-nine-out-of-10-went-on-international-trips-during-the-past-two-years/> > accessed 24th July 2018.

³³ Micheal C.Hall and Stephen J.Page, *The Geography of Tourism and Recreation - Environment, Place and Space* (London: Routledge, 2000).

³⁴ Philip Kotler, John T.Bowen and James Makens, *Marketing for Hospitality and Tourism* (1st edn, New Jersey: Prentice Hall, 1996).

³⁵ Louis E.Boone and David L.Kurtz, *Contemporary Marketing* (Texas: Dryden Press, 1995).

part of tourism in general. This is when people go to a place that is very different from their regular day-to-day life to relax, have fun and have leisure. Beaches, theme parks and campgrounds are often the most common places frequented by recreational travellers.

When the objective of one's visit to a particular place is to get to know its history, culture, art, architecture, religion(s), values and lifestyle of the local population, then this type of tourism is known as cultural tourism.³⁶ Cultural tourism has a long history, and it developed since the Grand Tour from the 16th century onwards. The Grand Tour of Europe saw a flood of British, German and even American tourists to France, Italy and in some rare cases, even further south to Greece. Travellers may visit different landmarks of a particular country or they may simply opt to focus on just one area. They may also attend events, festivals and ceremonies in order to gain a better understanding of the people, their beliefs and their practices. Sites such as the Louvre in Paris, the British Museum in London and the Metropolitan Museum in New York attract millions of visitors to their displays of culture. Some attraction such as the Eiffel Tower, the Big Ben and the Pyramids come to represent entire cultures. These attractions are held in awe not just by those who travel from afar to gaze upon them, but they also become important elements of national or even international consciousness and identity.³⁷

While medical tourism is a relatively new type of travel activity where the main focus of travel is improving one's health, physical appearance or fitness. Many people who travel for care do so because treatment is much cheaper in another country.³⁸ Medical tourism also incorporates aspects of recreation tourism where the patient goes to a relaxing getaway to recover from the procedure. For instance, Malaysia introduced My Corporate Wellness package which includes skytrex adventure, treasure hunt, health screening,

³⁶ Montana-Vidin-Dolj, 'Nature and Characteristics of Cultural Tourism' < <http://www.montana-vidin-dolj.com/en/publications/?NewsId=3> > accessed 4th September 2016.

³⁷ Greg Richards, 'The Development of Cultural Tourism in Europe' in Greg Richards (ed), *Cultural Attractions and European Tourism* (CABI Publishing, 2001) 4.

³⁸ Centre for Disease Control and Prevention, 'Medical Tourism' < <http://www.cdc.gov/features/medicaltourism/> > accessed 5th September 2016.

traditional Chinese wellness treatment, accommodation at 5/4 star hotel, full board meal, city tour, firefly river tour and shopping tour.³⁹

The other type of tourism that can be observed as having been practised over hundred years ago is the key focus of this study, namely religious tourism. Religious tourism, sometimes called spiritual tourism has gained an increasing role throughout the world.⁴⁰ Due to its initial component, pilgrimage, it is often considered the oldest form of tourism.⁴¹ Today, millions of people travel throughout the world in search of sacredness, spiritual guidance, reaching places considered holy and worshipped as such. The market for religious tourism was estimated at \$18 billion⁴² and it significantly continues to attract millions of travellers every year around the world.⁴³ The World Religious Travel Association (WRTA) reveals that over 300 million travellers travel to sacred sites in 2007.⁴⁴ A close relationship between religious tourism and Umrah as a subset of Muslim religious tourism performed by Muslims all around the world will be explained further in section 2.3 of this Chapter.

2.2.3 The Concept of Package Travel

The package travel services sector is made up of a complex web of relationships between a variety of suppliers, tourism products, destination marketing organizations, tour operators, travel agents, and many others. The relationship between tour operators, travel agents and consumers of package travel with a specific focus on Umrah will be deliberately discussed later in

³⁹ Malaysian Healthcare, 'My Corporate Wellness' < <http://www.medicaltourism.com.my/experience-our-healthcare/my-corporate-wellness> > accessed 14th December 2016.

⁴⁰ Madalina Lavinia Tala and Ana Mihaela Padurean, 'Dimension of Religious Tourism' (2008) 10, *Amfiteatru Economics*, 242-253.

⁴¹ Lavinia Tala and Mihaela Padurean (n40).

⁴² William Law, 'Religious Tourism: A New Era, A Dynamic Industry' < <file:///C:/Users/HP-PC/Downloads/religious-tourism-a-new-era-a-dynamic-industry.pdf> > accessed 1st Oct 2018.

⁴³ Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal and Osman Mohamed, 'Conceptualizing the Well-being of Religious Travellers' (Knowledge Management International Conference (KMICe) 2014, Malaysia, 12-15 August 2014)1.

⁴⁴ Hassan, Mohamed Zainal and Mohamed (n43).

Part 2.4 of this chapter. Package travel becomes one of the greatest influences in the global tourism industry recently which offers many advantages to the travellers and tourism service providers.⁴⁵ The biggest advantage of having a holiday by package travel is it could give the best offers at a cheaper price and includes the cost of everything. It is because the tour operators or travel agents have better knowledge of the best airfares and hotel tariffs compared to the travellers. In addition, the package is fully arranged and managed by the tour operators and travel agents starting from booking flight tickets, checking out accommodation availability at hotels and booking rooms. Another big advantage of the travel package is travellers may have a complete tour. It might be difficult for the travellers to complete all traveller spots at an unknown city or town. They might manage to make a complete list but some spots may remain unvisited due to a shortage of time. However, normally travel packages are designed specially to cover all major spots in a place so that travellers get the best value for their money. The last factor in favour of holiday packages is safe travelling because the tour operators or travel agents who are offering tour packages are completely aware of situations in a particular place, the risks and the safe zones and hence travellers can enjoy a safe trip.

Package travel is known as 'the ultimate, mass-marketed product' of the tourism and travel industry.⁴⁶ Especially after the 1950s, the package tour becomes an important factor in the expansion of mass international tourist markets.⁴⁷ According to Atherton, package travel is a complex service product which is an experiential, intangible, perishable, consumable, composite and international export.⁴⁸ In contrast, Middleton writes in her article that the package tour simply comprises any two or more elements of transport, accommodation, food, destination attractions, and other facilities and

⁴⁵ Sheauhsing Hsieh , Joseph T. O'Leary & Alastair M. Morrison, 'A Comparison of Package and Non-package Travellers From the United Kingdom' (1994) Vol 6, Iss 3-4, Journal of International Consumer Marketing, 79-100.

⁴⁶ Trevor Atherton, 'Package Holidays: Legal Aspects' (1994) 15, Tourism Management, 93-99.

⁴⁷ Gareth Shaw and Allan M. Williams, *Critical Issues in Tourism: A Geographical Perspective* (2nd edn, Oxford, UK: Blackwell 2011).

⁴⁸ Atherton (n46).

services.⁴⁹ Nelson-Jones and Stewart, the leading authors on the subject, define package travel as follows:

‘.....the elements of which are packaged together to form a whole which is sold at an inclusive price. The creator of the package is the tour operator who makes arrangements for transport companies, hotels, etc. to provide the travel, accommodation, meals and other items which together constitute a particular package.’⁵⁰

The concept of package travel may be interpreted differently from one country to other countries and the scope of protection also may be differed. Thus, this part will exclusively explore the concept of package travel from the UK and Malaysia perspective.

2.2.3.1 Package Travel From the United Kingdom (UK) Perspective

Since 1992 until June 2018, the marketing, sale and performance of package holidays sold or offered for sale in the United Kingdom were regulated by the Package Travel, Package Holidays and Package Tours Regulations (PTRs) 1992 (SI 1992 No 3288). These Regulations implemented the Council Directive 90/314/EEC of 13 June 1990 on Package Travel, Package Holidays and Package Tours (PTD). According to Regulation 2(1) of the PTRs 1992, a package is defined as:

‘the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty four hours or includes overnight accommodation: (a) transport; (b) accommodation; (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package and (i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package; (ii) the fact that a combination is arranged at the request of the consumer and

⁴⁹ Victor T.C.Middleton, ‘Whither the Package Tour?’ (1991) 12, *Tourism Management*, 185-192.

⁵⁰ John Nelson-Jones and Peter Stewart, *A Practical Guide to Package Holiday Law and Contracts* (3rd edn, Tolley, 1998).

in accordance with his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged’.

According to the term of the package defines by the Regulation, two elements must be established; 1) pre-arranged combination, 2) at an inclusive price.⁵¹

a) Pre-arranged

Grant and Mason state that the interpretation of the words ‘pre-arranged’ means that the combination had to be put together before being offered to the consumers.⁵² This would mean, of course, that only standard holidays advertised in brochures would be covered. The former UK Department of Trade and Industry (DTI)⁵³ has had a similar interpretation with Grant and Mason on the term of pre-arrange by stating it in Note 15:

‘..... means the combination must be put together by the organiser in advance of the conclusion of the contract.⁵⁴

However, then the DTI maintained that if the elements of the package are identified by the consumers, and not more generally on offer as a possible package, then it is not considered as a package.

Kilbey⁵⁵ believes that this view is wrong for a reason. As briefly indicated by David Grant, the advice seems contrary to the result in the European Court of Justice (ECJ) case of *Club Tour, Viagens e Turismo v Garrido*.⁵⁶ In the view

⁵¹ David Lowe, ‘ABTA v CAA-The Wrong Decision’ (2006) Vol 2006, Iss 2, *International Travel Law Journal*, 99-105.

⁵² David J. Grant and Stephen Mason, *Holiday Law: the Law Relating to Travel and Tourism* (4th edn, London: Sweet & Maxwell, 2012).

⁵³ ‘DTI-The Department of Trade and Industry Explained’ <<http://www.dti.co.uk/>> accessed 3rd April 2018. The Department of Trade and Industry (DTI) was a United Kingdom government department formed on 19 October 1970. It was replaced with the creation of the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills on 28 June 2007.

⁵⁴ The Package Travel Regulations: The Law Relating to Package Travel (DTI Guidance Note) November 2006.

⁵⁵ Ian Kilbey, ‘Tailor-Made Holidays- Is the CAA/DTI Advice Correct?’ [2005] Vol 2005, Iss 3, *International Travel Law Journal*, 129-132.

⁵⁶ *Club Tour, Viagens e Turismo v Garrido* [2002] ECR I-4051.

The facts of the case were that the defendant booked a holiday through a travel agency in Portugal. The holiday consisted of accommodation at an all inclusive resort operated by Club

of ECJ, the term 'package' used in Article 2(1) of PTD 1990 must be interpreted so as to include:

'holidays organized by travel agents, at the request of and in accordance with the specifications of a consumer or a limited group of consumers.'

It is sufficient for a service to qualify as a package if it contains the necessary elements and covers a period of 24 hours or includes overnight accommodation. Further, there is nothing in the definition of a package to say that packages put together in accordance with the specifications of the consumer cannot be considered to be a package holiday. ECJ affirmed the Advocate General's opinion which noted that the term pre-arranged combination necessarily covers cases where the combination of tourist services is the result of the wishes expressed by the consumer up to the moment when the parties reach an agreement and conclude the contract. The court, therefore, took a broad approach to the meaning of package. Therefore, any combination of holiday components bought from a single source at the same time could be a package including the Umrah package travel.

b) Inclusive price

The word inclusive connotes more than a mere arithmetical total of the components of the price. In the UK case *Sean Titshall v Qwerty Travel Ltd*,⁵⁷ the key issue was whether the claim arose from a package holiday as defined in the PTRs 1992. In determining whether components were sold or offered for sale at an inclusive price, it was necessary to answer the factual question of whether the services were being sold or offered for sale as components of a combination, or whether they were being sold or offered for sale separately,

Med in Greece plus flights from Portugal. It was the travel agent who combined the flights with the all inclusive resort. While on holiday, the resort became infested with thousands of wasps which prevented the defendant from enjoying his stay. Despite his complaints, neither the travel agency nor Clun Med could provide suitable alternative accommodation. On his return, the defendant refused to pay for the holiday and the travel agent sued him. The domestic court in Portugal referred the case to the European Court of Justice for a ruling on 2 issues; 1) whether arrangements put together by a travel agent at a request of consumer fall within the definition of a package 2) whether the term pre-arranged combination could be interpreted as meaning of package put together at the time when the contract was concluded.

⁵⁷ *Titshall v Qwerty Travel Ltd* [2011] EWCA Civ 1569.

but at the same time. The District Judge Glover in the Dartford County Court concluded that the advertisement to which the claimant responded was an invitation to treat, and that had purchased two services at the same time but separately, and that the composite price was not an inclusive price, but an aggregate price, so that no package had been sold. In his appeal against that decision, the claimant sought to show that the defendant had as a question of fact sold or offered for sale a package within the meaning of the 1992 Regulations. The appeal was allowed and the Lord Justice Tomlinson said that two services were sold to Mr Titshall as the component parts of the combination or package.⁵⁸ There was no principled basis upon which one can conclude that any particular proportion of the services costs should be attributed to the sale of flights or to the sale of accommodation.⁵⁹

More than 10 years after the 1992 Regulations came into force, the precise meaning of package was less certain⁶⁰ and under scrutiny. It is because, in the late 1990's and early 21st century, there had been significant changes in the pattern of tourism where consumers were increasingly buying tailor-made packages.⁶¹ Over the last 15 years, the tourism industry has undergone substantial changes due to the rise of the low-cost airlines, the rise of the internet, growing appetite of consumers to be more active in the selection of components and direct selling of holiday to consumers. This has provided increased choice and flexibility in the travel market, allowing consumers to mix and match components of a holiday to suit their particular needs. This makes the market more fragmented and diverse. At the same time, the whole industry has become more competitive. However, it has also created a gap in protection as these new methods of packaging holidays are outside the scope of the PTRs 1992.

⁵⁸ Titshall v Qwerty Travel Ltd [2011] EWCA Civ 1569 para 25 and 26.

⁵⁹ Titshall v Qwerty Travel Ltd [2011] EWCA Civ 1569.

⁶⁰ Matthew Chapman, 'Holidays, Excursions, Trips, Tours, Promotions Packages? A Voyage Around Regulation 2(1) of the Package Travel Regulations 1992' [2004] Vol 24, Iss 4, International Travel Law Journal, 249-254.

⁶¹ David Lowe, 'What is a Package? The Impact of the Club Tour Decision' (2002) Vol 2002, Iss3, International Travel Law Journal, 132-138.

The UK government recognized that there was a need to introduce stronger consumer protection to address this gap⁶² and it is important that the UK implement changes irrespective of its exit from the European Union. By virtue of the objectives set by the Great Repeal Act, the existing UK laws which implement the UK's obligation to comply with EU law will be preserved.⁶³ New Regulations will extend protection beyond traditional package holidays to give clear protection to UK travellers who book other forms of combined travel.⁶⁴ Some changes on the existing UK PTRs 1992 will be made to reflect the new requirements of a new Package Travel Directive (2015/230/EU). The PTD 2015 extend the protection of the 1990 EU Package Travel Directive to cover not only traditional package holidays but also the consumers who book other forms of combined travel, e.g. a self-chosen combination on a website of a flight plus hotel or car rental. The new Directive broadens the existing concept of 'package' of the 1990 EU Package Travel Directive and now will apply to 3 different sorts of travel combinations; pre-arranged packages, customised packages and linked travel arrangements (if the consumer, after having booked one travel service on one website, is invited to book another service through a targeted link or similar, the new rules offer some protections—provided that the second booking is made within 24 hours).⁶⁵

In September 2017, the UK's Department for Business, Energy & Industrial Strategy ("BEIS") closed a consultation which sought views from the travel industry on the UK government's plans for implementation of PTD 2015. In particular, the consultation paper asking the views on modes of insolvency protection for packages that do not include a flight, the new concept of Linked Travel Arrangements (LTAs), an extension to current protections, a

⁶² Department for Business, Energy & Industrial Strategy, 'Updating Consumer Protection in the Package Travel Sector' < <https://www.gov.uk/government/consultations/updating-consumer-protection-in-the-package-travel-sector> > accessed 1st May 2018.

⁶³ Claire Ingleby, 'Prepare For the Big Repeal' in ABTA, *Travel Law Today* (London: ABTA Ltd, 2017) 4.

⁶⁴ Department for Business, Energy & Industrial Strategy, 'Updating Consumer Protection in the Package Travel Sector' < <https://www.gov.uk/government/consultations/updating-consumer-protection-in-the-package-travel-sector> > accessed 1st May 2018.

⁶⁵ European Commission, 'Package Travel' < http://ec.europa.eu/consumers/consumer_rights/travel/package/index_en.htm > accessed on 22 December 2015.

requirement for better information to be provided to travellers at the point of booking and minimum harmonisation provisions. On 1st July 2018, the new Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 came into force. Instead of just one definition of package travel, there are now no less than 6. An arrangement only needs to come within one of these to be a package as explicitly provided in Regulation 2(5) of PTRs 2018;

‘a combination of at least two different types of travel services for the purpose of the same trip or holiday, if—

(a) those services are combined by one trader, including at the request of, or in accordance with, the selection of the traveller, before a single contract on all services is concluded; or

(b) those services are—

(i) purchased from a single point of sale and selected before the traveller agrees to pay,

(ii) offered, sold or charged at an inclusive or total price,

(iii) advertised or sold under the term “package” or under a similar term,

(iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or

(v) purchased from separate traders through linked online booking processes where—

(aa) the traveller’s name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders, and

(bb) a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service,

irrespective of whether the traveller concludes separate contracts with one or more travel service providers in respect of the services’.⁶⁶

There are no surprises here and it is not dissimilar from the previous definition of a package, but the requirement for there to be an inclusive price has gone. Furthermore, it expressly includes tailor-made arrangements. A ‘point of sale’ as stated in Regulation 2(5)(b) (i) means a shop, a website, or a

⁶⁶ Reg 2(5), The Package Travel and Linked Travel Arrangements Regulations 2018.

telephone sales facility. It will cover the majority of situations where a consumer goes into a travel agency shop, or visits an Online Travel Agent's website, for this practical reason: if a consumer desires, say, a week in Greece, the agent may source a suitable flight which fits the bill. The definition (b)(ii) is so wide that it almost makes definition (b)(i) redundant. Under this clause, it recognises a package which is paid at a total price and that applies even if the elements of the holiday are offered or sold separately, but charged as a total. Whereas in clause b(iii), any offers under the term "package" or similar term by the travel company can be package travel. But what is meant by a 'similar term' is subjected to the court's interpretation. According to the Regulation 2(5)(b) (iv), a package covers purchases like holiday 'gift boxes', and clarifies that it can be packages even if the precise hotel, for example, or precise combination, is yet to be ascertained. In addition, the concept of the 'click-through' package is now within regulation. To be a package, the click-through must have followed the strict definition as described in (b)(v)(aa) and (bb) of PTRs 2018.

Compared to the PTRs 1992, to be a package, there needs to be a combination of at least 2 travel services. Previously there were 3 types of such services: in short form, transport, accommodation, and other significant tourist services. However, that travel services have been expanded to cover carriage of passengers, accommodation, rental of a car or any other tourist service not intrinsically part of a travel service within the meaning of Regulation 2(1) (a), (b) or (c).⁶⁷

2.2.3.2 Package Travel From Malaysia Perspective

However, TIA 1992 does not interpret the concept of package travel as much detail as the UK. It defines package travel as any travel arrangements described in any media and/or which are publicly marketed, promoted or advertised through any media and which include any two of the following components; transportation, accommodation or other tourist services not

⁶⁷ Reg 2(1), Package Travel and Linked Travel Arrangements Regulations 2018.

ancillary to transportation or accommodation and which form a significant part of the package.⁶⁸ It recognizes all forms of the package either pre-arranged, dynamic, tailor-made or linked travel arrangements. Besides, the method of payment i.e. billing in one invoice or price, which is a requirement that must be satisfied in UK PTRs 1992 is not a matter in Malaysian package travel as long as two components of the package are established. Malaysian approach of defining the package travel is, therefore, wider in scope. However, it could lead to massive interpretations.

2.3 Religious Tourism and Umrah

Religious tourism has grown consistently with the growth of the tourism industry worldwide.⁶⁹ Due to the globalization process, factors that influence travel, such as travelling cost and ease of the travelling process results in a significant increase in the number of religious and spiritually motivated travellers.⁷⁰ As such, religious tourism is now an important segment of international tourism and in the last five years it has developed into a full-fledged industry, this trend is expected to increase significantly in the near future.⁷¹ Religious tourism is often referred to as belief or faith tourism.⁷² It is a pattern of tourism that is exclusively or strongly motivated for religious reasons⁷³ whereby people travel to visit sacred and holy sights, for example, churches, shrines or monasteries, to perform a pilgrimage or missionary work or to participate in events and festivals connected to religious feasts. The

⁶⁸ Code 4.3.2, MATTA Code of Ethics for Members. MATTA Code of Ethics for Members is separate from Tourism Industry Act 1992.

⁶⁹ Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal & Osman Mohamed, 'Determinants of Destination Knowledge Acquisition in Religious Tourism: Perspective of Umrah Travellers' (2015) Vol 7, No.3, International Journal of Marketing Studies, 85-94.

⁷⁰ Hassan, Mohamed Zainal & Mohamed (n69).

⁷¹ David Ward, 'Pilgrims' Progress: Religious Tourism is Growing Despite A Slow Economy' (Deseret News, December, 18 2012) < <https://www.deseretnews.com/article/865569008/Pilgrims-progress-Religious-tourism-is-growing-despite-a-slow-economy.html> > accessed 11 April 2018.

⁷² Somnuck Jongmeewasin, 'Religious Tourism, Pilgrimage and Cultural Tourism' < http://www.academia.edu/12252237/Religious_Tourism_Pilgrimage_and_Cultural_Tourism > accessed 2nd September 2016.

⁷³ Gisbert Rinschede, 'Form of Religious Tourism' (1992) Vol 19, Iss 1, Annals of Tourism Research, 51-67.

religious sites may necessarily be associated with current religions since there are many religions in the history of the world still in practice.⁷⁴ It distinguishes itself, as to all other types of tourism between those, who travel to a destination in order to visit a historical sites from a cultural point of view, combining it with leisure and those, who are looking for a spiritual or religious experience. The short-term religious tourism is distinguished by excursions to nearby pilgrimage centres or religious conferences.⁷⁵ While the long-term religious tourism describes visits of several days or weeks to national and international pilgrimage sites or conferences.⁷⁶

Religious tourism is an ancient practice from ancient Greece or pre-Christian times but this type of tourism became popular in the Middle Ages, when people started looking for salvation, they visited holy places as a pilgrimage.⁷⁷ Later, as they had more free time and during the period of the Grand Tours, they started travelling more and more, also for leisure. Religion and tourism share a close relationship: religion often motivates travel and serves as a source of assorted visitor attractions.⁷⁸ In fact, religion has played a key role from the earliest days of the development of leisure and travel over the centuries and has influenced how people utilize their leisure time. Many people wish to escape from the hectic and busy modern life by visiting religious destinations or participating in a spiritual journey. Today, religious tourism is also closely connected with holiday and cultural tourism. For the participants of organized pilgrimages, a free day is often planned in the programme so that the pilgrims can also make day trips to the surrounding area.

⁷⁴ Ruth Blackwell, 'Motivations for Religious Tourism, Pilgrimage, Festivals and Events' in Razak Raj and Nigel D Morpeth (eds), *Religious Tourism and Pilgrimage Management: An International Perspective* (CABI, Oxford,2007)37.

⁷⁵ Rinschede (n73)

⁷⁶ *ibid* (n73).

⁷⁷ Anna Rita Pinter, 'Religious Tourism in Mecca, Saudi Arabia' < <http://dolgozattar.repozitorium.bgf.hu/1065/1/Szakdolgozat%20Pint%C3%A9r%20Anna%20Rita.pdf> > accessed 3rd August 2018.

⁷⁸ Joan Catherine Handerson, 'Religious Tourism and Its Management: The Hajj in Saudi Arabia' (11/2011)Vol 13, *International Journal Of Tourism Research*, 541–552.

Religious tourism has grown consistently with the growth of the tourism industry worldwide. The United Nations World Tourism Organisation (UNWTO) recognises that religious tourism is the segment that has grown most in recent years, with a significant increase in travellers or pilgrims to countries, which are home to sacred places.⁷⁹ It is now an important segment of international tourism. In the last five years, it has developed into a full-fledged industry and this trend is expected to increase significantly in the future.⁸⁰ As time passes and cultures change, religions evolve and change as well. At the present stage, religious tourism is growing and developing. Some popular present-day religions include Islam, Christianity, Hinduism, Buddhism, and Judaism. Each and every religion has its own sacred or holy places that will be visited by their adherents. For the Christians, millions of them travel on pilgrimage to Abrahamic Holy Land, or Jerusalem, Israel. Many Christian pilgrimage destinations are based on the Roman Catholic faith, especially shrines devoted to apparitions of the Blessed Virgin Mary such as Basilica of Our Lady of Guadalupe in Mexico, Sanctuary of Our Lady of Fatima in Portugal, and Sanctuary of Our Lady of Lourdes in France.⁸¹ There is also interest in pilgrimage to St. Peter's Basilica at the Vatican in Rome, the capital of the Roman Catholic Church.⁸²

Hinduism is one of the oldest living religions in the world⁸³ and the third largest behind Christianity and Islam. It evolved in India and about 83% of the population is Hindu which affects family life, food, dress and architecture. From the first instance of civilization to the present day, millions of Hindus leave their home in search of salvation, perform pilgrimage or also known as *Tirthatan*. Rivers are amongst the popular pilgrimage places, but

⁷⁹ Malek Bader, 'Religious Tourism in Jordan: Current Situation, Future Developments and Prospects: A Case Study on Islamic and Christian Holy Sites' < <https://eis.hu.edu.jo/deanshipfiles/conf111411491.pdf> > accessed 4th November 2018.

⁸⁰ Ward (n71).

⁸¹ iMinds, *Travel: Rome*, (iMinds Pty Ltd, 18 January 2010).

⁸² iMinds (n81).

⁸³ Jeanneane Fowler, *Hinduism Beliefs and Practices : Major Deities & Social Structure* (Vol 1, Sussex Academic Press, 1st July 2014); Prema Kurien, Multiculturalism and American Religion: The Case of Hindu Indian American (2006) Vol 85, No. 2, Social Forces John Hopkins University Press, 723-741; Freeke L. Bakker, Balinese Hinduism and the Indonesian State: Recent Developments, (1997) Deel 153, 1ste AF1, Bijragen tot de-Taal-Land-en Volkenkunde, 15-41.

temples, mountains, and other sacred sites in India are also destinations for pilgrimages, as sites where the gods may have appeared or become manifest in the world.⁸⁴ Whereas, today, there are over 500 million Buddhists all over the world especially in the Far East and the Southeast Asian countries look upon the Buddhist sites in North India with great reverence irrespective of their sect and belief.⁸⁵ It is believed that Lord Buddha himself had exhorted his followers to make the pilgrimage to India, the birthplace of Buddhism.⁸⁶ Buddhist pilgrimage mainly comprises of the four sacred places Lumbini (the birthplace of Buddha), Bodh Gaya (where he attained enlightenment), Sarnath (where he turned the wheel of Dharma); and Kushinagar (where he entered Parinirvana as mentioned by Lord Buddha himself).⁸⁷

In Islam, religious and spiritual journeys is a well-recognised traditional custom⁸⁸ and have been a part of the tourism industry.⁸⁹ Travelling has always been a significant part of Islamic practices, for religious, spiritual, education or trade purposes.⁹⁰ It can be divided into three forms of activity i.e. Rihla, Ziyara and Hajj or Umrah.⁹¹ The first activity is called Rihla, which refers to a Muslim's journey in search of knowledge, commerce, health or research.⁹² Several Muslim travellers and pioneers achieved high spiritual status through Rihla, famous examples are Sufi Rumi and Ibn Battuta.⁹³ While the second

⁸⁴ BBC, 'Religions' < <http://www.bbc.co.uk/religion/religions/hinduism/worship/worship.shtml> > accessed 4th September 2016.

⁸⁵ Jitendra Kumar Mishra and Ravi Shanker, 'Religious Tourism in India: A Case Study of Buddhism' < <http://n11.cgpublisher.com/proposals/132/index.html> > accessed 4th September 2016.

⁸⁶ Mishra and Shanker (n85).

⁸⁷ *ibid* (n85).

⁸⁸ Farooq Muhammad Haq and John Jackson, 'Spiritual Journey to Hajj: Australian and Pakistani Experience and Expectations' (2009) Vol 6, No.2, *Journal of Management, Spirituality and Religion*, 141-156; Straitwell, *Mecca and the Hajj: Lessons From the Islamic School of Hard Knocks* (Straitwell Travel Books, CA, 2006).

⁸⁹ Farooq Muhammad Haq, 'The Significance of Partnership as a Marketing Strategy for Islamic Spiritual Tourism' (2014), Vol 5, No.2, *Journal of Islamic Marketing*, 258-272.

⁹⁰ Haq (89).

⁹¹ Farooq Muhammad Haq and Ho Yin Wong, 'Is Spiritual Tourism A New Strategy For Marketing Islam?' (2010) Vol 1, Issue 2, *Journal of Islamic Marketing*, 136-148; Bharwaj, 'Non-Hajj Pilgrimage in Islam: A Neglected Dimension of Religious Circulation' (1998) Vol 17, Iss 2, *Journal of Cultural Geography*, 69-87; Clive S.Kessler, 'Review Essay for Pilgrim's Progress: The Travellers of Islam' (1992) Vol 18, No.1, *Annals of Tourism Research*, 147-153 .

⁹² Clive S.Kessler, 'Review Essay for Pilgrim's Progress: The Travellers of Islam' (1992) Vol 18 No.1, *Annals of Tourism Research*, 147-153.

⁹³ *ibid* (n89).

spiritual journey is Ziyara, a Muslim's journey to visit the shrines, mosque or monasteries for spiritual growth and devotion towards the famous spiritual people to ask for physical and spiritual healing, recovery from a significant loss, family affairs and family development.

The third activity of Muslim religious tourism is performing Hajj (pilgrimage) or Umrah (lesser pilgrimage). Hajj constitutes one of the five pillars of Islam and is fundamental to Muslim practice. It is mandatory for all Muslims to visit Mecca during the specific time frame from 8th to 12th Dhu alHijjaz. Umrah is not obligatory in Islam but is encouraged as a demonstration of devotion to God.⁹⁴ As stated in Quran (Al Baqarah:196):

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ وَلَا تَخْلِفُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحَلَّهُ فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِذْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ فَإِذَا أَمِنْتُمْ فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعْتُمْ تِلْكَ عَشْرَةٌ كَامِلَةٌ ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلَهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning:

'And complete the Hajj and Umrah for Allah . But if you are prevented, then (offer) what can be obtained with ease of sacrificial animals. And do not shave your heads until the sacrificial animal has reached its place of slaughter. And whoever among you is ill or has an ailment of the head (making shaving necessary must offer) a ransom of fasting (three days) or charity or sacrifice. And when you are secure, then whoever performs Umrah (during the Hajj months) followed by Hajj (offers) what can be obtained with ease of sacrificial animals. And whoever cannot find (or afford such an animal) - then a fast of three days during Hajj and of seven when you have returned (home). Those are ten complete (days). This is for those whose family is not in the area of al-Masjid al-Haram. And fear Allah and know that Allah is severe in penalty'.⁹⁵

⁹⁴ Dallen J. Timothy and Thomas Iverson, 'Tourism and Islam: Considerations of Culture and Duty' in Dallen J. Timothy, Daniel H. Olsen (eds), *Tourism, Religion and Spiritual Journeys* (London: Routledge, 2006) 186-205.

⁹⁵ Translation of Al Quran (2:196) < <https://quran.com/2/196> > accessed 5th May 2018.

2.3.1 Umrah: Muslim Religious Tourism

The history of Muslim religious tourism (Hajj or Umrah) starts with Prophet Ibrahim Peace Be Upon Him (PBUH). Prophet Ibrahim (PBUH) was instructed by Allah to take his son Isma'il (PBUH), who was still a baby and his wife Hajar from Kin'an to Hejaz. Hejaz was located deep in the desert of Arabia, a barren and waterless place. Ibrahim (PBUH) placed Isma'il (PBUH) on the ground near to where the Kaabah stands today. Beside him, he placed a bag filled with dates and a skin full of water. He started to walk away. Hajar called him, begging him not to leave them. He did not listen. Finally, she asked him if Allah had commanded him to leave them there. Ibrahim (PBUH) told her yes. In time she and Isma'il (PBUH) ran out of supplies, she had begun running between the two hills, in search of people or subsidence. Seven times from the hill of Safa to Marwah she ran in her quest of water. Isma'il (PBUH) became so thirsty, that he began crying and kicking the ground with his heels. The ground where his heels had hit, a small spring rushed miraculously forth from the ground. This water is still running to this day and it is known as the Zam Zam water.

Years later, Allah also commanded Prophet Ibrahim (PBUH) and his son Prophet Isma'il (PBUH), to build the Kaabah in Mecca to be served as a House of worship for Allah. Isma'il (PBUH) and Ibrahim (PBUH) began to call people to prayer at the Kaabah. The Prophet Ibrahim (PBUH) asked his son to bring a good stone to mark the corner of foundation. So that for all times this place would be marked, as Allah had commanded. The black stone was placed in the corner which was known as Hajar al-Aswad.

Many years passed and Muhammad (PBUH) was receiving the divine message and was teaching others of the oneness of Allah. They were living in Medina and the number of the Muslims had increased immensely, they decided they would travel to Mecca and make the first pilgrimage. A huge number of Muslims led by Muhammad (PBUH) entered the city of Mecca. The idolaters became nervous not knowing what the intention of the men were and

decided to meet with them. This would result in the non-believers and the Muslims coming together to sign the treaty of Hdaybiya. The treaty simply put is this: The Muslims could not enter the Kaabah that year. They would be allowed the following year and according to the agreement, the city would be vacated by the non-believers. They would pitch their tents on the hills surrounding the holy precinct. The Muslims were disappointed but they performed their ritual sacrifices at their encampment and returned to their homes. The Prophet assured them, they may return next year.

The following year, the Muslims left their home and headed for Mecca. The non-believers evacuated the city per the agreement and watched the strange sight. They saw the Muslims perform the rituals of Umrah, all clad in white robes, quiet and sombre in behaviour. There was no music, dancing, drinking or noise. Their hearts were stirred by the discipline and organization of the Muslims. In accordance with the treaty, the Muslims left Mecca at the end of three days. Even with the peaceful conduct of the Muslims, many of the disbelievers among the people still wanted to cause harm. They breached the contract, by killing members of the Muslim alliance. Muhammad (PBUH) warned them to accept Islam. The head of Quraish agreed and was the first to accept. He informed the others of the mercy of the Muslim's. Muhammad (PBUH) declared that anyone who came forward and accepted Islam would be forgiven of their past crimes. They came forward in great numbers accepting Allah as the truth and Muhammad (PBUH) as His Messenger. In the light of such a momentous achievement, the believers went to the homes that they had lost and reunited with their family. The Prophet declared that Mecca would be known as a sanctuary for all people.

Despite the Umrah's deep significance as written in Quran, it does not replace Hajj, but it is seen as being a way of getting closer to God and supplicating Him for mercy.⁹⁶ For Muslims, Mecca and Medina are the sacred and holy places that should be visited for performing Umrah. In Arabic, Umrah is derived from the word l'timaar which means to visit populated places,

⁹⁶ Timothy and Iverson (n94) 197.

whereas, from the Sharia point of view, it means to proclaim the intention of performing Umrah, put on ihram, perform Tawaf (circumambulation) around the Kaabah for seven times in an anticlockwise direction. Men are encouraged to do this three times at a hurried pace, followed by four times, more closely, at a leisurely pace. Then, pilgrims have to perform Sa'i (running) between Al-Safa and Al-Marwah seven times. This is a re-enactment of Hajar's frantic search for water. After performing the Sa'i, the rites of Umrah are finished, hair is shaved (men) or cut (women) at Marwa and the ihram is abandoned. Each and every rituals act performed by Umrah pilgrims along the Umrah journey represents the symbolic life of Ibrahim and his second wife (Hajar) and of solidarity with Muslims worldwide.

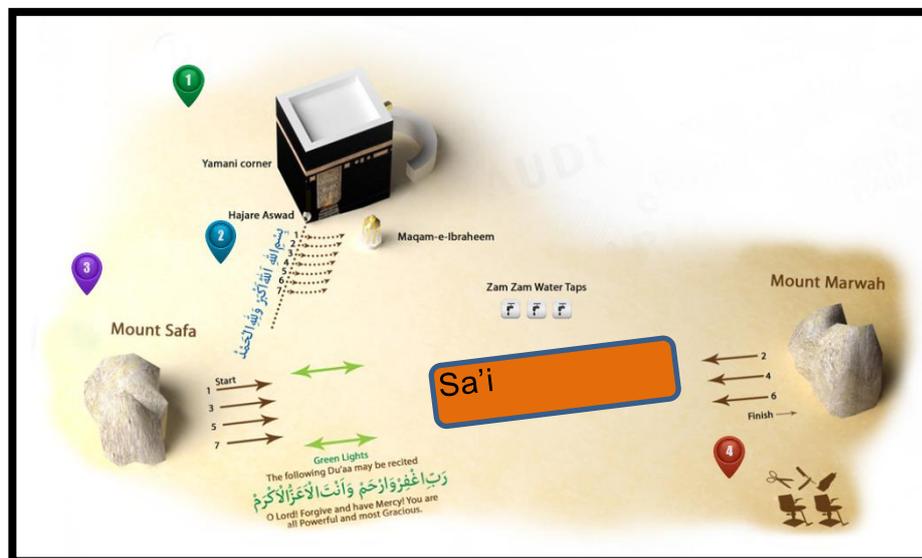


Figure 2: How to Perform the Ritual of Umrah

Umrah sometimes is called as the 'minor pilgrimage' or 'lesser pilgrimage'. The Umrah ritual is similar to the Hajj, donning the ihram garments, entering the Umrah gate of Al Masjid Al Haram and performing the Tawaf and Sa'i rituals, but the major difference is Umrah can be done at any time of the year and does not involve as many countries or as much time. There are two types of Umrah, depending on whether one wishes to combine the Umrah with Hajj or otherwise. Al-Umrat al mufradah refers to Umrah that is performed independently of Hajj, whereas Umrat al-tammatu refers to Umrah that is performed in conjunction with Hajj. More precisely, the rituals of the

Umrah are performed first and then the Hajj rituals are performed. Each trip to Mecca for Umrah normally covers a visit to sacred sites such as Jabal Tsur, Arafah, Jabal Rahmah and Jabal Nur Mountain in Mecca and also sacred places in Medina such as Jabal Uhud and Prophet's Mosque. It can be performed once or repeatedly depending on the individuals' physical and financial ability.⁹⁷

2.3.2 Umrah Travellers

Every Muslim aspires to visit the holy cities of Mecca and Medina at least once in his or her lifetime to perform the Hajj. However, the Saudi government has a Hajj quota for each country. A Muslim who wants to perform the Hajj may have to wait for his or her turn, maybe a decade or longer. The Umrah is then the alternative for Muslims to get to these holy cities for the spiritual experience of praying in Masjidil Haram in Mecca and Masjid Nabawi in Medina before their turn to perform the Hajj. Some people have had to save a lifetime to perform the fifth pillar of Islam.⁹⁸ And there are those who, knowing the fact that they will not have enough in their savings for the Hajj or the time to wait their turn, decide to go for the Umrah instead.

There are several requirements that need to be fulfilled by the Umrah pilgrims before travel. Firstly, Saudi government regulations specify that all pilgrims entering the country must apply for an Umrah visa through an approved Umrah travel agent.⁹⁹ Under the Umrah system, individuals cannot

⁹⁷ Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal and Osman Mohamed, 'Determinants of Destination Knowledge Acquisition in Religious Tourism: Perspective of Umrah Travellers' (2015) Vol 7, No.3, International Journal of Marketing Studies, 85-94.

⁹⁸ Pillars of Islam are five basic acts in Islam, considered mandatory by believers and are the foundation of Muslim life;

1. Declaration of faith
2. Pray
3. Alms Giving
4. Fasting
5. Pilgrimage to Mecca

⁹⁹ Embassy of the Kingdom of Saudi Arabia in United Kingdom, 'Consular Service Instruction' <
<http://embassies.mofa.gov.sa/sites/uk/EN/DiplomaticMissionServices/Consulates/Pages/default.aspx>> accessed 3rd February 2017.

directly approach the Saudi Arabian Embassy to acquire an Umrah visa. Visa applications are now only accepted through Ministry of Hajj approved travel agents. It is a requirement that all accommodation for the duration of stay in Saudi Arabia is pre-booked and paid for through the appointed travel agent. It is therefore not possible to acquire a visa only and make accommodation arrangements having arrived in the Kingdom as per the Ministry of Hajj regulations. Furthermore, each applicant for an Umrah visa must be a Muslim and if he has a non-Muslim name, he or she should submit a certificate from a mosque or an Islamic centre stating that the applicant is a Muslim.¹⁰⁰ In addition, they also need to prove a vaccination certificate against Meningococcal Meningitis before entering Saudi Arabia (pilgrims must have their immunisation at least ten days before travelling).¹⁰¹

Umrah package travellers, particularly women, are subjected to a limitation put by the Saudi rules and regulation. According to current Saudi rules and regulations, a woman under the age of 45 years cannot go for Umrah unless she is accompanied by her Mahram.¹⁰² A Mahram is a male relative with whom she is permanently forbidden to marry because of blood ties, breastfeeding or ties through marriage.¹⁰³ This includes several relations other than her husband, father, brother, son, grandfather, grandson, uncle, nephew, father-in-law, son-in-law, stepfather, stepson and any male with whom she has shared a mother's milk are Mahram for a woman according to Islamic shari'ah.¹⁰⁴ These rules are purposely to safeguard the woman and protect her dignity, which is fulfilled by knowing that the roadway is safe and that trustworthy faithful men and women are present. Islam is a religion that is wholly based on mercy and compassion; its teachings are aimed at protecting

¹⁰⁰ Saudi Arabia, 'Umrah Visa' <

<http://www.saudiairlines.com/portal/site/saudia/menuitem.a6a7f8a7f00aa3587988a76c5d6981ca/?vgnnextoid=36ecc2d7206e2410VgnVCM100000d59618acRCRD> > accessed 17th

December 2016.

¹⁰¹ Meningitis Research Foundation, 'Vaccination for Hajj and Umrah pilgrims from the UK' <

<http://www.meningitis.org/pilgrims> > accessed 15 March 2017.

¹⁰² Shaykh Muhammad Saalih al Munajjid, 'Who Is the Mahram With Whom A Woman Can Travel and Who Can Act As A "Chaperone" To Prevent Khulwah Between A Man and Woman Who Are Not Related to One Another' < <https://islamqa.info/en/137095> > accessed 26 August 2016.

¹⁰³ Al Munajjid (n102)

¹⁰⁴ Haq and Jackson (n88).

the weak and the vulnerable. It is therefore with the specific intent of safeguarding a woman's honour, dignity, and reputation that the Prophet Muhammad (PBUH) forbade women from undertaking long journeys without a Mahram.

In January 2018, Saudi Commission for Tourism and National Heritage announced that women aged 25 and over can be granted a tourist visa to go alone to Saudi Arabia.¹⁰⁵ According to Fauziah Ismail, that announcement will be used by the scammers to create Umrah packages disguised as travel packages.¹⁰⁶ The visa will allow them to travel to Saudi Arabia without their Mahram. Some have misunderstood the announcement as if to mean that women over the age of 25 can now go to Saudi Arabia without their Mahram to perform the Umrah. This may not be the case where the Arab News report, quoting the Commission, stated the tourist visa is "independent of work, visit, Hajj and Umrah visas". In other words, if 25 year old woman wants to perform the Umrah, she still needs to apply for the Umrah visa.

There is a surge in numbers of Muslims travelling to Mecca and Medina for performing Umrah during Ramadhan. Due to a strong economic development within Muslims in Malaysia, approximately 50,000 Muslim pilgrims performed Umrah during Ramadhan in 2015 compared to 40,000 pilgrims in the previous year. The reward of performing Umrah during Ramadhan is great and Allah removes all the sins of a person who performs it with pure intention and just for the sake of Allah.¹⁰⁷ It is because Ramadhan is the holiest month of Islamic calendar when every little deed or action will multiply by seventy times.¹⁰⁸ There are plenty of benefits of performing Umrah in Ramadhan. The very first thing a Muslim gets is a bundle of virtues from Allah Almighty. Performing Umrah during Ramadhan brings spiritual and mental alleviation but it also

¹⁰⁵ Ruba Obald, 'Saudi Tourist Visas; No Chaperon Required' (Arab News, 11st January 2018) < <http://www.arabnews.com/node/1223151/saudi-arabia> > accessed 7th April 2018.

¹⁰⁶ Fauziah Ismail, 'be Vigilant Before Signing for Umrah Package' (The Straits Times, 18th January 2018) < <https://www.nst.com.my/opinion/columnists/2018/01/326237/be-vigilant-signing-umrah-packages> > accessed 8th April 2018.

¹⁰⁷ Siraj Mohammed Bijlie, 'Saying the Prophet Muhammad' < <http://www.kokanews.org/wp-content/uploads/2016/06/Vol.8-No.-1-2-2016.pdf> > accessed 1st Oct 2018.

¹⁰⁸ Mohammed Bijlie (n107).

brings great reward in terms of blessings and acceptance by Allah. The Prophet Muhammad (PBUH) told a woman from Medina that:

‘Performing Umrah in Ramadhan is like accompanying me on Hajj (in terms of reward)’.¹⁰⁹

This beautiful hadith denotes the importance of performing Umrah during the Ramadhan season. The Prophet did not only declare the importance but the integrated value that it would mean performing Hajj with the greatest man on earth. It is the dream of millions to simply have seen a glimpse of the Prophet Muhammad (PBUH) let alone accompanying him for a Hajj experience. This is the beauty of the hadith. It is a message to the millions of Muslims across the world to perform Islamic rituals during the holy month of Ramadan.

2.4 Umrah Package Travel Framework

The Umrah travellers start on seeking for Umrah package that suit them according to their budgets from the travel agencies in their countries which offer Umrah services. Some of them will search for information relating to the Umrah packages from many sources such as travel agents, local newspapers, magazines, brochures, friends, relatives as well as hotel staff before they make any decision. While the market will respond to the demand put by the travellers and this will result in a more competitive market.

In Malaysia, there are dozens of local tour operators and travel agencies which are offering multiple options of Umrah package travels. There are different types of Umrah packages based on the number of days, transportation, accommodation, nature of package either in a group or customised Umrah package travel. Most of the travel agencies charge on a per person basis. Group Umrah deals are offered to pilgrims who want to travel in groups. All of their needs and requirements of the holy journey are

¹⁰⁹ Hadith of Bukhari and Muslim.

fulfilled through their selected travel agent. As these packages are going to cater for the needs of the group, the costs incurred per head automatically decreases. This makes this type of holy travel the cheapest Umrah packages. Individual Umrah deals can be rather expensive as compared to group Umrah deals. However, the most expensive of all is customized or tailor-made packages. But this package offers Umrah package travellers flexibility and are perfect when they are travelling with older people, family or children.

Once the Muslims purchase the Umrah package travels (inclusive of flight ticket, accommodation, transportation, halal food, visa, visit to Mecca and Medina, Umrah course, and *mutawwif* (professional guides)) from the local tour operators and travel agents, they are required to attend Umrah course that will be provided by the local tour operators or travel agents. At the same time, the local tour operators or travel agents will apply for the Umrah visa to the Saudi government. When the time comes, all the Umrah pilgrims will depart from their origin country such as Malaysia to either Mecca or Medina (depends on the itinerary agreed earlier with the local tour operators and travel agents). Each Umrah will have a trip to the city of Medina to have the honour of visiting and praying in the Prophet Muhammad (PBUH)'s holy mosque in Medina.

When Muslim pilgrims purchase Umrah package travels from the local tour operators or travel agents, many parties will be involved in the course of contract performance as follows;

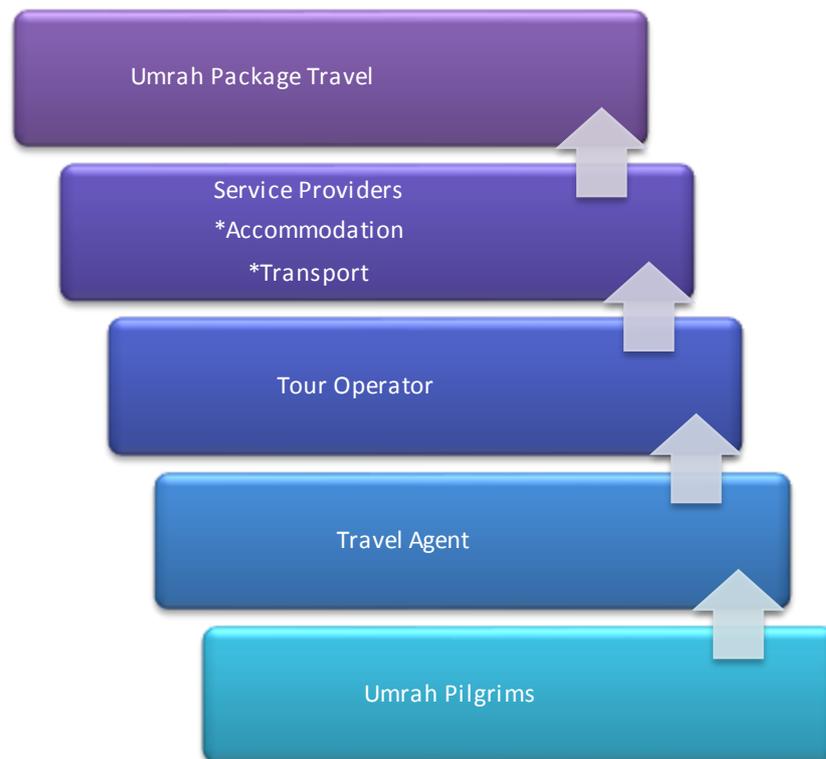


Figure 3: Systematic Link in the Performance of Umrah Package Travel

2.4.1 Travel Agent

A travel agent can be a person or company who has been authorized to act on the authority of and on behalf of the tour operator. The travel agents remain under the control of the tour operators in dealing with third parties, and all the authorized acts of the agents are imputed back to the tour operators as if they were done by the tour operators and not the travel agents. The agent's authority is limited by the scope of the agreement with the tour operators, and agents that act outside their scope of authority do not have their actions imputed back to their tour operators. To put it another way, travel agents are referring to person or company authorized to sell the tourism services arranged by the tour operators. In turn, the tour operators are the ones who authorize another person as the agent to act on their behalf.

As defined by TIA 1992, a travel agent in Malaysia is a licenced company carrying on travel agency business responsible in services of selling

and arranging packages from various tour operators to their personal customers based on what they are looking for and what package suits each customer best.¹¹⁰ In the case where the travel agents do not hold a valid licence, Section 5(3) of TIA 1992 provides that:

‘Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall in addition, be liable to a daily fine not exceeding five thousand ringgit for each day the offence continues to be committed’.

Previously any travel agencies wishing to handle Umrah activities only needed an outbound licence. However, starting from October 1, 2017, all travel agencies that intend to handle Umrah packages must have a special Umrah licence to be issued by the Ministry of Tourism and Culture (MOTAC).¹¹¹ It is to monitor and avoid fraudulent Umrah cases from recurring in the future.¹¹² In short, the travel agents must obtain two licences, namely outbound license and special Umrah licence.¹¹³

Mohammed Ali Selamat, who is Malaysian Consul General says that all pilgrims made arrangements with the travel agents regarding Umrah trip during Ramadhan and throughout the year.¹¹⁴ The travel agents play a role to sell and administer bookings for a number of tour operators. Sometimes, they also sell flights, ferry bookings, car hire, insurance and accommodation as separate products. The travel agents who are arranging or promoting Umrah packages should provide the necessary facilities and arrangements such as halal food, mosques and prayer rooms during the tour or enquire with shops, restaurants, parks, hotels, and outlets to provide private prayer places. There is a variety of Umrah packages on offer by the local travel agencies to be chosen by the Muslims in Malaysia. Usually, these packages include visa

¹¹⁰ Sec 2(1), Tourism Industry Act 1992.

¹¹¹ The Malay Online, ‘Travel Agencies Must Have Special Umrah Licence Starting Oct 2017’ < <http://www.themalaymailonline.com/malaysia/article/travel-agencies-must-have-special-umrah-licence-starting-oct-2017> > accessed 16th April 2018.

¹¹² The Malay Online (n111)

¹¹³ Ibid (n111).

¹¹⁴ Rodolfo C. Estimo Jr, ‘50,000 Malaysian Pilgrims Perform Umrah in Ramadhan’ < <http://www.arabnews.com/saudi-arabia/news/777246> > accessed 16th August 2017.

arrangement, accommodation, transportation to and in the destination and meals. The packages could range from MYR4900 to MYR15000 and the prices differ based on the type and quality of accommodation, its distance from religious sites and the mode of transportation. Those with a lower cost usually provide more distant accommodation from the main religious site.

2.4.2 Tour Operator

By virtue of Section 2(1) of TIA 1992, the tour operator is defined as a person licensed under subsection 7(1) to carry on or operate a tour operating business. It negotiates and make contracts with hotels, transportation companies, and other suppliers and combines these components into a package tour. The tour operator acts as an intermediary between the suppliers and the travel agent, or the suppliers and the consumer, and essentially the wholesaler in this market. The contract between the tour operator and the supplier can be of two different types. The tour operator can either make block reservations or block purchases with suppliers.¹¹⁵ The relative market power of the tour operator will determine whether a block reservation or block purchase is made. In the case of block reservation, the tour operator reserves the number of units expected to be used and negotiation are usually done a year ahead, the period for which brochures are printed.¹¹⁶ A block purchase is a less common type of contract but is sometimes found, especially with airlines.¹¹⁷ Once the tour operator has contracted with suppliers, put together all the different components and created a tour package, the next function is to market the product.

According to MOTAC, about 5437 tour operators are legally licensed under TIA 1992 which running inbound and outbound travel albeit currently there are only 59 licenced travel agencies were granted by the Saudi

¹¹⁵ Dimitro Buhalis, 'Tourism Distribution Channels: Practices and Processes' in Dimitrios Buhalis, Eric Laws (eds) *Tourism Distribution Channels: Practices, Issues and Transformations* (Thomson, 2001) 7-32.

¹¹⁶ Pauline J.Sheldon, 'The Tour Operator Industry: An Analysis' (1986) *Annals of Tourism Research*, 349-365.

¹¹⁷ Sheldon (n116).

government for handling Umrah package in which the visa application for Umrah must be submitted through them.¹¹⁸ Tour operators traditionally focused on selling Umrah package travel through travel agents. In addition, they also marketing their Umrah products by producing and distributing brochures through the travel distribution system to the consumer. This brochure is the main selling aid, however, some larger tour operators have sale forces which call travel agents to promote their products. Advertisement in the travel press is also used for promotional purposes. However, distribution channels for Umrah package are changing rapidly when the digital channels and other methods of direct selling such as internet, advertising and online networking exist. Over the internet, these packages are available at an economical price. Moreover, customers also have the option to go for a customized package and transactions are more flexible by allowing quick comparison of packages offered by several tour operators.

2.4.3 Service Provider

The players who sit at the top of the hierarchy of distribution system in the package travel industry is the service provider who supplies all the goods and services to the consumers. It includes all suppliers of goods and services whether or not they are directly contracted with tour operators or agents such as airlines, hotel companies, tourist transport companies, conference and convention facility providers. Hotel companies are the accommodation providers for the Umrah package travellers. Umrah pilgrims will be allocated to different hotels in Mecca and Medina, with difference distance with the sacred places depends on the package that they purchased. The travel agent will book the hotels that are situated at the nearest with the visit places. Furthermore, the services provided by the hotel staff will differ according to the star rate and customers' need. Umrah package travel involves a special group of travellers i.e. Muslim. Therefore, the tour operator or travel agent normally

¹¹⁸ Ministry of Foreign Affair, Embassy of Kingdom of Saudi Arabia in Malaysia , 'Visa Application Requirement' < <http://embassies.mofa.gov.sa/sites/malaysia/EN/AboutDiplomaticMission/DiplomaticMissionServices/Pages/03services180512.aspx> > accessed 2nd September 2016.

will book shari'ah compliance hotel which serves halal food to the consumers and the accommodation provider is obliged to provide services in accordance with consumers' need.

The other service provider that involves in Umrah package travel is airline company. Some of the Umrah package especially the premium Umrah package will offer a direct flight from their country to Jeddah or Mecca. Whereas, there also several packages which offer for transit flight and will takes long hour of journey before reach the holy land. As for the Shariah compliance air carriers, they will serve the Umrah pilgrims with halal food on board under the meal code of Muslim Meal (MOML) without any liquor and pork, halal and are prepared according to Islamic principles. Amongst the airlines that provide for halal food are Emirates, Qatar Airways, Saudi Arabian Airlines as well as Turkish Airlines. In addition, there is an airline which provides prayer information as well as prayer space for their customers' comfortability especially Muslim.

2.5 Malaysian Umrah Package Travel: Current Market and Problems

Malaysia is a multiracial country with a population that currently stands at 28 million, of which approximately sixty per cent (60%) are Muslims.¹¹⁹ Islam is constitutionally the country's official religion, with the freedom to practise other religions.¹²⁰ Muslims are encouraged to perform Umrah which can be undertaken at any time of the year. Umrah has been recognised as one of the largest level phenomena in the Malaysian tourism industry recently.

¹¹⁹ Islamic Tourism Centre of Malaysia, 'Islam in Malaysia' < <http://www.itc.gov.my/tourists/discover-the-muslim-friendly-malaysia/islam-in-malaysia/> > accessed 16 August 2017.

¹²⁰ Islamic Tourism Centre of Malaysia (n119); Samsiah Jayos, Faizah Abd Ghani, Lokman Mohd Tahir, Kamarul Azmi Jasmi, Nur Fatimah Abdullah Bandar, 'System Support in Counseling Among Muslim Convert Clients in Malaysia, (2015) Vol 1(1), Journal of Cognitive Science and Human Development, 74-81; Article 3(1), Federal Constitution 1957; Joseph M.Fernando, 'The Position of Islam in the Constitution of Malaysia' (2006) Vol 37, Iss 2, 249-266.

In fact, according to the Saudi government, about 6.28 million of visas for Umrah have been granted up to June 2016¹²¹ and Malaysian Muslims are amongst the largest group that perform Umrah every year.¹²²

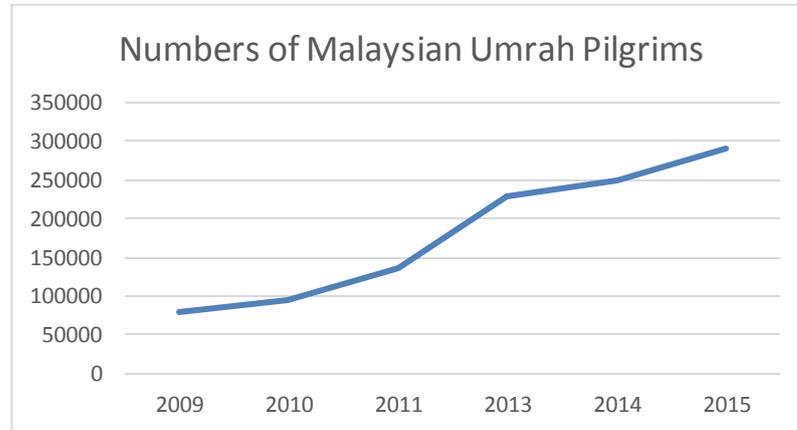


Figure 4: Numbers of Malaysian Umrah Package Travellers (2009-2015)¹²³

The number of Malaysian Muslims travelling to Mecca and Medina for performing Umrah keep increasing from year to years. According to the statistics issued by Arab Saudi Embassy and Bumiputera Travel and Tour Agents Association of Malaysia (BUMITRA), 80,301 Muslims from Malaysia performed Umrah in 2009 and increased to 93,497 in 2010.¹²⁴ The record shows the number of Umrah pilgrims increased steadily in 2011 where about 136,000 people went to Mecca and Medina for performing Umrah. However, in 2012, an enormous number of Umrah tourists from Malaysia went for Umrah show a very good sign to the outbound tourism industry. This significant rise

¹²¹ Arab News, '6.2m Umrah Visas Issued' (June 11, 2016) <

<http://www.arabnews.com/node/937861/saudi-arabia> > accessed 1st September 2016.

¹²² Hassan Mohd.Noar, 'Melayu Terokai Penerbangan ibadah bersama MAB' <

<http://m.utusan.com.my/rencana/melayu-terokai-penerbangan-ibadah-bersama-mab-1.341817> > accessed 31st August 2016.

¹²³ Tourism Malaysia, 'Kementerian Pelancongan dan Kebudayaan Perkenal Lesen Khas Umrah dan Sistem Pengurusan Maklumat Bersepadu untuk Tangani Penipuan Umrah < <https://tourism.gov.my/uploads/9f8148f4-28c7-4846-831b-cae43714b60d.pdf> > accessed 21st May 2018; New Straits Times, 'Increase in Fraud Packages' < <https://www.nst.com.my/news/2017/01/201965/increase-fraud-packages> > accessed 4th February 2018.

¹²⁴ Mohd Faizal bin Ab Hamid, 'Penipuan Pakej Umrah Serta Peranan dan Fungsi JAWHAR Dalam Majlis Kawal Selia Umrah (MKSU)' (Buletin Jabatan Wakaf, Zakat dan Haji < <http://www.jawhar.gov.my/wp-content/uploads/2016/05/penipuan-pakej-umrah.pdf> > accessed 22nd August 2016.

due to financial stability, as well as increased religiosity awareness amongst Muslims. A year after, the number of Malaysian Muslims pilgrims went for Umrah raised to 230,000. The number of Umrah pilgrims increased to 250,000 in 2014. The latest statistic issued by Saudi Embassy recorded that 290,000 Malaysians travelled to perform Umrah in 2015 (since 2016, there are no more recent figures has been recorded by the Saudi Embassy on the number of Malaysian pilgrims travel to Mecca and Medina for performing Umrah).

Typically, Muslims go to perform Umrah in a large group organised by speciality travel agencies such as Tabung Haji Travel & Services Sdn Bhd (THTS), Andalusia Travel & Tours, Rayhar Travels Sdn Bhd and Wira Saujana. Recently, Andalusia and Rayhar have their own chartered flight to Medina and Jeddah through MoU signing with Malaysian Airlines Berhad (MAB).¹²⁵ This effort is one of the initiatives taken by the tour operators through the travel agents that will ease the movement of Umrah pilgrims as well as attract the Muslims to buy their Umrah package. According to a survey done by Siti Hasnah Hassan, Amin Maghoud and Nurul Illiyani Mohd Nasir,¹²⁶ Andalusia (17.4%) and TH (33.7%) are the two most popular tour package providers in Malaysia amongst Muslim tourists performing Umrah. The majority of respondents (96.3%) chose all-inclusive tour packages which provided transportation, accommodation, meals, and a tour guide, as compared to the basic packages.

Lately, there are a lot of complaints lodged by the Malaysian consumers of tourism services to the Complaints Unit, Investigation And Enforcement (Tourism Licensing Division).

¹²⁵ Janatul Firdaus Yaacob, 'Penerbngan Catar Bawa Tetamu Allah' (Sinar Harian, 4 June 2016)< <http://www.sinarharian.com.my/mobile/bisnes/penerbangan-catar-bawa-tetamu-allah-1.528569> > accessed 2nd September 2016.

¹²⁶ Siti Hasnah Hassan, Amin Maghoud and Nurul Illiyani Mohd Nasir, 'A Conceptual Model Of Perceived Value And Consumer Satisfaction: A Survey Of Muslim Travellers' Loyalty On Umrah Tour Packages' (2016), Vol 1, No.3, International Journal Islamic Marketing and Branding, 215-237.

COMPLAINT CATEGORY	YEAR				MONTH(2015)												Total Case	Total Settled Case	%	Total Case in Proceeding	%
	2011	2012	2013	2014	Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec					
TRAVEL OPERATING BUSINESS AND TRAVEL (TOBTAB)	279	167	215	249	40	11	50	44	25	27	21	19	32	13			282	217	67.0	65	33.0
TOURIST ACCOMMODATION PREMISES	64	32	28	28	3	0	2	0	2	3	1	0	1	6			18	12	66.7	6	33.3
TOURIST GUIDE	9	9	7	17	2	0	1	2	0	0	3	1	3	2			14	6	42.9	8	57.1
TOURISM VEHICLE	16	0	0	0	0	0	0	0	0	0	0	0	0	0			0	0	-	0	-
TOURISM TRAINING INSTITUTE	0	2	0	0	1	0	0	0	0	1	0	0	0	0			2	2	100.0	0	100.0
PUBLIC TRANSPORT	4	0	0	3	0	1	0	0	0	0	0	0	0	0			1	1	100.0	0	-
GENERAL	8	25	14	6	2	0	6	5	3	3	4	4	5	4			36	23	63.9	13	36.1
TOTAL CASE	380	235	264	303	48	12	59	51	30	34	29	24	41	25			353	261	65.1	92	34.9
TOURIST COMPAIN CATEGORY	YEAR				MONTH (2015)												Total Case	Total Settled Cse	%	Total Cse in Proceeding	%
	2011	2012	2013	2014	Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec					
FOREIGN TOURIST	75	36	25	30	0	1	6	1	0	3	0	3	1	0			15	13	86.7	2	13.3
DOMESTIC TOURIST	305	199	239	273	48	11	53	50	30	31	29	21	40	25			338	248	73.0	90	27.0
TOTAL CASE	380	235	264	303	48	12	59	51	30	34	29	24	41	25			353	261	74.2	92	25.8
TOTAL SETTLED CASE	380	235	194																		
TOTAL SETTLED CASE (MONTHLY)	380	235	217		46	11	57	48	25	31	15	15	12	1			261				

Figure 5: Monthly Statistic on the Total of Complaint Case from 1st Jan-30th Oct 2015¹²⁷

According to the table above, most of the complaints were related to the Travel Operating Business And Travel (TOBTAB). In 2011, 279 cases were reported to the Tourism Licensing Division and a year later, the number of cases reduced to 167 cases only. However, the complaints on TOBTAB in 2013 increased up to 215 cases out of 284 total cases. Malaysian tourism industry got worse on the following year when the number of complaints lodged by the tourists against the TOBTAB increased to 249 cases. This scenario getting worst in 2015, when 282 complaints against TOBTAB were recorded up to October 2015. In three consecutive years, the complaints against TOBTAB keep increasing and most of the complaints were made by the Malaysian tourists.

¹²⁷ Complaints Unit, Investigation and Enforcement (Tourism Licensing Division), Ministry of Tourism and Culture Malaysia.

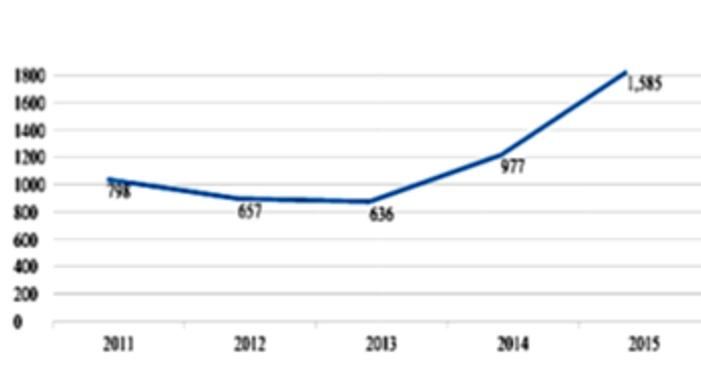


Figure 6: Complaints from Consumers Related to Travel Agencies Services and Umrah Packages from 2011-2015¹²⁸

Furthermore, an annual report issued by the Tribunal for Consumer Claims Malaysia (TCCM), Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) specify the complaints lodged by the consumers related to the travel agencies services and Umrah package travel. Based on the said report, 798 complaints were made by the consumers against the travel agencies services and Umrah packages in 2011. However, the number of complaints slightly reduced to 657 in the year 2012 and 636 in the year 2013. Even though, the number of complaints made by the consumers increased up to 977 cases in the following year. Many unfortunate Umrah pilgrims usually realised that they were victims at the very last minute, left stranded at the airport.¹²⁹ The excuse given is a convenient one, such as a regrettable failure to obtain the necessary visas from the Saudi authorities. The Malaysian tourism industry was badly affected by this phenomena and the consumers suffered massive economic loss as well as emotional loss.¹³⁰

Amongst complaints made by the consumers relating to Umrah package travels are; non-performance, poor service, failure to get visa approval and

¹²⁸ The Tribunal for Consumer Claims Malaysia, Ministry of Domestic Trade, Co-operatives and Consumerism Annual Reports

¹²⁹ Malaysian Digest.com, 'Holy Deception' < <http://www.malaysiandigest.com/frontpage/282-main-tile/499994-don-t-fall-victim-to-fraud-when-going-for-religious-duty.html> > accessed 20th May 2018.

¹³⁰ New Straits Times, 'Government Cracks the Whip on Umrah Scams' < <https://www.nst.com.my/news/nation/2017/12/314846/government-cracks-whip-umrah-scams> > accessed 22nd May 2018.

fraud package through 'scratch and win' scheme.¹³¹ The case of *Janariah bt Salleh v Hijjaz Legend Travel & Tours Sdn Bhd*,¹³² is one of the complaints made by the consumer on her dissatisfaction when the travel agent constantly change the date of departure. In this case, the claimant filed a case in the Tribunal in Shah Alam, Selangor against Hijjaz Legend Travel & Tours Sdn Bhd. She argued that she decided to cancel the booking for Umrah when the defendant constantly changed the date of departure and consequently, she claimed a refund of MYR3990.00 that she already paid to the defendant. The Tribunal decided in favour of the claimant.¹³³ In the case of *Mat bin Mat Taha v Syamar Smart Venture*,¹³⁴ the claimant filed a claim in the Tribunal in Wilayah Persekutuan, Kuala Lumpur against the defendant, Syamar Smart Venture. The claimant claimed a refund of MYR7000.00 for the Umrah package which the travel agency failed to provide. The Tribunal decided in favour of the claimant.¹³⁵

According to the research undertaken by the MOTAC and Malaysian Association of Tour and Travel Agents (MATTA), Malaysian pilgrims especially those who are poorer eager to buy cheap Umrah package travels offered by the local tour operators and travel agents. In order to fulfil the demand by the customers in the market, the tour operators and travel agents create cheap Umrah packages with varieties of selection. Of late, many unsuspecting Muslims in Malaysia have been cheated by unscrupulous tour operators and travel agents.¹³⁶ Their modus operandi almost always is to attract customers by offering very low price Umrah packages.¹³⁷ While the average cost of an Umrah package typically costs around MYR5000, these tour operators and travel agents will propose a price that is cheaper than that. The mushrooming

¹³¹ Jabatan Wakaf, Zakat dan Haji (JAWHAR), 'Slide Kesedaran Penipuan Pakej Umrah' < <http://intranet.jawhar.gov.my/umrah/slide1.pdf> > accessed 20th August 2016.

¹³² *Janariah bt Salleh v Hijjaz Legend Travel & Tours Sdn Bhd* (TCC-B-(P)-791-2011).

¹³³ TCC-B-(P)-791-2011, The Tribunal For Consumer Claims, retrieved November 15th, 2014

¹³⁴ *Mat bin Mat Taha v Syamar Smart Venture* (TCC-WP-(P)-1042-2014).

¹³⁵ TCC-WP-(P)-1042-2014, The Tribunal For Consumer Claims, retrieved November 15th, 2014 Reported Cases.

¹³⁶ Malaysian Digest.com, 'Holy Deception' < <http://www.malaysiandigest.com/frontpage/282-main-tile/499994-don-t-fall-victim-to-fraud-when-going-for-religious-duty.html> > accessed 15 August 2017.

¹³⁷ Malaysian Digest.com (n136).

of low-cost Umrah package travels are very attractive for Muslims especially those who are poorer, rural folks and uneducated persons. They are easily enticed by the appeal of cheap packages and due to that reason, it is considered as a well-worth experience to be grabbed. The cheaper price of Umrah packages offered by the local tour operators and travel agents (including pious men who act on behalf of the tour operators and travel agents) with excessive commercialisation has made the Umrah packages more attractive for them. When they have been offered cheap Umrah packages, they would definitely choose it without search for further information about the package travels offered and the identity of tour operators and travel agents involved. Consequently, it places the Umrah package travellers in a vulnerable circumstance where they make a decision without having adequate information about the package travels and tour operators.

However, beyond the lure of a cheaper rate, most of Malaysian Umrah package travellers have been duped by the unscrupulous tour operators and travel agents because of other reasons as well. One such reason Muslims get cheated is that most have the notion that because Umrah is a religious travel arrangement, it is unthinkable that anyone would be dishonest.¹³⁸ Sadly, fraudsters exist and act unfairly towards the vulnerable pilgrims who are more likely to be trusting at a time of heightened spirituality themselves. Some dubious travel companies even hire bona fide religious teachers, pious individuals, normally well versed in matters of Umrah and the religion in general¹³⁹ or highly regarded members of a particular community to do their unscrupulous activity for them, and leave them to take the blame once they have gone scott-free with the deposits.¹⁴⁰

¹³⁸ *ibid* (n136).

¹³⁹ *ibid* (n136).

¹⁴⁰ *ibid* (n136).

2.6 Specific Vulnerabilities of Malaysian Umrah Package Travellers

Malaysian Umrah package travellers come from different social, educational, economic, geographical and age backgrounds. Some of them are living in big cities while the rest are coming from rural areas. They have different financial status; high, middle and lower income. They also come from different levels of educational background; well-educated and illiterate. These raise the issue of potential vulnerability where it may have an impact on decision-making process. For example, those who are well-educated, financially stable, living in big cities and young could be accessible to detail information on Umrah package travels compared to uneducated, poor and older Umrah package travellers. Limitations of acquiring essential information and understanding information¹⁴¹ in relation to Umrah package travel could detriment the Umrah package travellers from making a good decision and protect themselves from unscrupulous tour operators and travel agents. In consequence, they are capable of being easily harmed or injured and prone to be victimized by the unscrupulous local tour operators and travel agents. In other words, the differences in terms of social, economic and educational background between Malaysian Umrah package travellers will influence their ability to protect themselves from any loss.

Umrah package travellers also have specific vulnerability based in emotion or religious nature of the travel. They travel to Mecca and Medina with a specific intention; to perform religious obligation for fulfilling the unity of the soul, spirit and heart. That is why Umrah is a very unique practice compared to the other types of travel activities. The Umrah package travel is incredibly important for Muslim because it helps Umrah package travellers to return to the purified state of a person, reflecting the Holy Spirit, nature and presence of God in creation.¹⁴² They are fully motivated to experience a deeper spiritual

¹⁴¹ Peter Cartwright, *Consumer Protection and The Criminal Law: Laws, Theory and Policy in United Kingdom* (Cambridge University Press, 2001).

¹⁴² IIsan, A. (2011, October 28). *Why Do Muslims Go To Hajj In Mecca?* Retrieved from

state of Umrah. Umrah is not just a package holiday, but an obligatory religious visit, so Muslim travellers tend to be far too trusting. The licensed local tour operators and travel agents will use this chance to promote their package to the Muslims travellers. The opportunist local tour operators and travel agents who are looking for monetary gain will take advantage over the vulnerable Umrah travellers.

The persona of the Umrah package travellers itself makes it different from the other type of travellers. Umrah package travellers are fully dedicated to their Umrah visit, and often save money for many years to afford the trip of a lifetime. They may be influenced comparatively more easily as they are too eager to perform Umrah especially during the holy month of Ramadhan. Even thousand pilgrims are trying to get the best offer Umrah package travel from the local tour operators and travel agents. The cheaper price of Umrah package travels look more interesting and can easily catch the eyes of Malaysian Umrah package travellers. Unfortunately, it could place them at risk especially when they have no knowledge at all on the status of the Umrah package travels promoted to them either genuine or fake.

Academic literature has constructed a number of possible definitions of consumer vulnerability which focus on different factors.¹⁴³ Some studies focus on how individual characteristics make consumers vulnerable. For example, Ringold sees vulnerable consumers as those who have “diminished capacity to understand the role of advertising, product effects or both”.¹⁴⁴ Smith and Cooper-Martin argue similarly that vulnerable consumers are those who are “more susceptible to economic, physical, or psychological harm in, or as a result of economic transactions because of characteristics that limit their ability

<http://Www.lhsanalexander.Com/Blog/Why-Do-Muslims-Go-To-Hajj-In-Mecca/>

¹⁴³ James Devenney, ‘Conceptualising Vulnerability’ in James Devenney and Mel Kenny (eds) *European Consumer Protection* (Cambridge University Press, May 2012) 121-236; Peter Cartwright, ‘Understanding and Protecting Vulnerable Financial Consumers’ (June 2015) Vol 38, Issue 2, *Journal of Consumer Policy*, 119-138; Hua Yu Shi, Feng Jie Jing, Yan Yang, Bang Nguyen, ‘The Concept of Consumer Vulnerability: Development and Validation’ (2 Sept 2017) 41, *International Journal of Consumer Studies*, 769-777; Ligbet Berg, ‘Consumer Vulnerability: Are Older People More Vulnerable As Consumers Than Others?’ (11 March 2015) Vol 38, Iss 4, *International Journal of Consumer Studies*, 284-293.

¹⁴⁴ Debra Jones Ringold, ‘Vulnerability In The Marketplace: Concepts, Caveats, And Possible Solutions’ (2005) Vol 25, Iss 2, *Journal of Macromarketing*, 202-214.

to maximise their utility and well - being.”¹⁴⁵ Those studies focus on the difficulty that consumers have in playing the role traditionally expected of consumers by classical economics - that of “rational maximizers of their own utility”- because of their individual characteristics.

Burden sets out an alternative way of explaining vulnerability.¹⁴⁶ According to him, consumers may be vulnerable for two main reasons: first, because they may find it more difficult to obtain or to deal with information needed to make appropriate purchasing decisions, and second, because they may suffer a greater loss than other consumers by making inappropriate purchasing decisions.¹⁴⁷ In relation to obtaining information, difficulties may result from a variety of factors. For example, some consumers will not be able to access sources of information, perhaps because of physical disability or unfamiliarity with information technology. Furthermore, it has been argued that some consumers may be less inclined to seek out information, perhaps through a lack of confidence or because of negative previous experiences. On this basis, he identifies seven vulnerable groups: the elderly, the young, the unemployed, those with a limiting, longstanding illness, those in low-income households, members of ethnic minorities and those with no formal educational qualifications.¹⁴⁸

There are varying degrees of susceptibility to harm and one person may be more, or less, vulnerable than another. A person’s degree of vulnerability will be influenced by two categories of factors: 1) ability to protect or defend against the chance of injury or loss; and 2) ability to cope with the negative consequences of injury or loss when it occurs.

¹⁴⁵ Craig N.Smith & Elizebeth Cooper-Martin, ‘Ethics And Target Marketing: The Role Of Product Harm And Consumer Vulnerability’ (1997) Vol 61, No.3, Journal of Marketing, 1-20.

¹⁴⁶ Ramli Burden, ‘Vulnerable Consumer Groups: Quantification and Analysis (London: Office of Fair Trading 15, April 1998).

¹⁴⁷ Burden (n146).

¹⁴⁸ Ibid (n146).

Andreasen and Manning suggest that vulnerable consumers are those who are disadvantaged due to factors that are largely beyond their control.¹⁴⁹ Using this definition, disadvantaged consumers can also be described as vulnerable consumers in that as consumer disadvantage increases, so too will consumer vulnerability. However, Menzel Baker et al suggest disadvantage and vulnerable consumers are different. It relates to the issue of personal characteristic.¹⁵⁰ They suggest that consumers are vulnerable due to factors outside their control but consumers disadvantaged due to their personal characteristic.

Moreover, the European Commission has carried out a large research project, covering all 28 European Union Member States as well as Norway and Iceland. The study provides a new definition of vulnerable consumers which could be defined as;

‘A consumer, who, as a result of socio-demographic characteristics, behavioral characteristics, personal situation, or market environment is at higher risk of experiencing negative outcomes in the market, has limited ability to maximize his/her well-being, has difficulty in obtaining or assimilating information, is less able to buy, choose or access suitable products; or is more susceptible to certain marketing practices.’¹⁵¹

The above discussion reveals that consumer vulnerability does not restrict to the physical inability per se. But it covers a broad definition where the consumers are prone to physical, economic, mental, emotional as well as psychology loss. Different consumers will be particularly susceptible to a detriment in different circumstances. In order to improve the ability of consumers to operate within the market, the element of vulnerability should be tackled.

¹⁴⁹ Andreasen, A.R. & Jean Manning, ‘The Dissatisfaction And Complaining Behaviour Of Vulnerable Consumers’ (1990) Vol 3, Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behaviour, 12–20.

¹⁵⁰ Stacey Menzel Baker, James W. Gentry, and Terri L. Rittenburg, ‘Building Understanding of the Domain of Consumer Vulnerability’ (2005) Vol 25, Iss 2, Journal of Macromarketing, 128-139.

¹⁵¹ European Commission, ‘Understanding Consumer Vulnerability in the EU’s Key Markets’ https://ec.europa.eu/info/publications/understanding-consumer-vulnerability-eus-key-markets_en accessed 4th May 2018.

The informational vulnerability and emotional vulnerability of Malaysian Umrah package travellers should be addressed with an appropriate instrument to protect them from any detriment. By requiring particular types of information to be made available to the consumers at the pre-contractual stage, the law serves to bridge the information gaps, permitting the consumers to choose between different types of product in an informed manner. A powerful rationale for such intervention lies in the perception that consumer information reduces the imbalance of knowledge between consumers and traders.

2.7 Conclusion

Tourism is often seen as a global phenomenon with an almost incomprehensibly massive infrastructure. Its importance is evident from the fact that its influence thoroughly penetrates society, politics, culture and, above all, the economy. Indeed, this is the branch of the global economy with the most vigorous growth. The role of tourism is best summarised by Tarlow and Muehsam:

‘...the latter part of the twentieth century has seen a dramatic change in travel and tourism. Travel is no longer a torturous necessity, but an increasingly pleasurable option. With its emphasis on resource preservation, individual autonomy, comfort, convenience, affordability, and personalization, post-industrial travel will offer a broader horizon and opportunities.’¹⁵²

The earlier discussion on the concept of lesser pilgrimage (Umrah) evidenced that all four elements of tourism (tourist, movement, time limit of travel and purpose of travelling) definitely existed which constitute it as a tourism activity for religious purposes. However, Umrah is different compared

¹⁵² Peter E. Tarlow and Mitchell J. Muehsam, ‘Wide Horizons: Travel and Tourism in the Coming Decades’ (The Futurist, Sept-Oct 1992)32.

to the other type of tourism because the pilgrims visit all the sacred places specifically on the religious commitment while the ordinary tourists visit a place because the place is interesting and has considerable universal value. This spiritual tourism has sentimental value to the Umrah travellers and it is solely for fulfilling the unity of the soul, spirit and heart.

Pilgrimage reflects a human desire for fulfilment. Throughout history, pilgrimage has been a religious phenomenon that set people on a physical journey yielding spiritual results. It helps one to return to the purified state of a person, reflecting the holy spirit, nature and presence of God in creation.¹⁵³ The economic stability of Muslims and the encouragement by Islam to perform special worship to God are amongst the factors that motivate for the growth of Muslim lesser pilgrimage (Umrah). Compared to the last 20 years, the amount of Malaysian Muslims who went for Umrah was smaller than today and Umrah was not really popular in the eyes of Muslims because they only focused to perform Hajj which is obligatory upon Muslims. However, the number of Muslims who travel to Mecca and Medina for performing Umrah gradually increases when they start to realize the significance of this activity for their faith and their economic status permits them to travel for performing Umrah. Furthermore, many Malaysian Muslims decide to perform Umrah which has fewer rituals than Hajj, is shorter in duration and can be performed at any time in a year due to the restriction ruled out by the Saudi Arabia government of the quota of Hajj pilgrims.

Umrah package travellers come from various backgrounds; youngster, elderly, educated, uneducated, incapable, poor, sick etc. Some of them are vulnerable and prone to be exploited by the local tour operators and travel agents. There are groups of Umrah package travellers that put an effort for searching a piece of information about Umrah package travel before deciding to purchase it. However, there is also Umrah package travellers who are wholeheartedly put their trust in local tour operators and travel agents, decide

¹⁵³ IIsan, A., 'Why Do Muslims Go To Hajj In Mecca?' Retrieved from < <http://www.islamicrenaissance.com/blog/why-do-muslims-go-to-hajj-in-mecca/>> accessed 4th November 2018.

to purchase the Umrah package travel without seeking any information from them. Their ignorance on the significance of having information before entering into a contract leads to a major problem in Umrah industry currently. In the absence of any information relating to Umrah package travel sold by the local tour operators and travel agents, nothing can help the Umrah package travellers from exposing himself to the risk of detriment.

Chapter 3 : The Theory of Information Regulation

3.1 Introduction

As has been demonstrated in the previous chapter, limitation in accessing, acquiring and understanding the information in relation to Umrah package travel is a major issue that leads to potential informational vulnerability amongst the Malaysian Umrah package travellers. Malaysian Umrah package travellers come from different educational, social, economy and age backgrounds. They also come from different geographical areas; urban and rural areas. An Umrah package traveller who is educated, financially stable, living in a city and young could have full access to the information in relation to the Umrah package travel. However, the situation might be different to those who are uneducated, poor and living in a rural area due to difficulty in accessing the relevant information in relation to Umrah package travels. Umrah package travellers are not always provided with the information they need to make informed buying choices. Even, some of them may be put off from reading the entirety of contracts due to the complex and/or lengthy language contained therein. All those differences and circumstances raise the issue of potential informational vulnerability where it will have an impact on decision-making process. Subsequently, they may suffer greater loss by making inappropriate purchasing decision due to insufficient information acquired by them and failure to process the information provided before entering into the package travel contract.

The laws now protect the consumers including Umrah package travellers from a lot of things in different ways with different reasons. Thus, in order to protect Malaysian Umrah package travellers from any potential information vulnerability that might defeat their interests, ensuring appropriate protection is

therefore significant but extremely difficult. This chapter will examine how information could help to mitigate consumer detriment and respond to the specific vulnerability of Malaysian Umrah package travellers. Information is important at all stages of contract either at pre-contractual, during contract or post-contractual. However, information provision at the pre-contractual stage is incredibly important to protect the consumers before they agree to enter into any contract because consumers may not be able to get out of it once they signed to the contract. Hence, this chapter will explore further what is the specific measure that could be employed, why and how it could be the most appropriate instrument to be used.

3.2 Minimization Consumer Detriment Through Information

3.2.1 Consumers: Who are they?

At the outset, it is appropriate to consider who it is that the law purports to protect. The term consumer can bring numerous things in different context.¹ Generally, consumers by definition include us all², because human beings are consumers by default and consumption is an essential requirement for human survival and endurance³. There is no consistent and uniform definition of a consumer.⁴ It ranges from individuals, groups of people or organisation who only buy products or services for a private purpose and may be consumed with dual purposes. Therefore, legally, many regulations define consumer in a particular manner that may be similar from country to country despite the notion of consumers being very different.

¹ Geraint Howells and Thomas Wilhelmson, *EC Consumer Law* (2nd edn, Routledge, 2017) 2.

² President John F.Kennedy, 'Consumer Rights' <
<http://www.consumersinternational.org/who-we-are/consumer-rights>> accessed 14th
September 2017.

³ Muhammad Akhbar Khan, 'The Role of the Islamic State in Consumer Protection' [2011] PJIR 31, 44.

⁴ Christine Reifa and Julia Hornle, 'The Changing Face of Electronic Consumer Contracts' in Lilian Edwards and Charlotte Waelde (eds) *Law and the Internet* (3rd edn, Hart Publishing, Oxford, 2009)94.

The Islamic law has not introduced a definition for the term consumer, consumer protection or consumer contract. This is due to the fact that these terms are considered to be very modern in comparison to Shari'ah law which was introduced more than one thousand years ago.⁵ However, from a thorough analysis of the primary sources (Quran, Hadith, Ijma' and Qiyas) and works of the Muslim jurists, it becomes manifest that the Muslim jurists had described the general principles and rules for the protection of consumers in detail in various topics of fiqh such as liability (ḍamān), contracts ('Uqūd), fraud (Tadlīs), uncertainty (Gharar), hoarding (iḥtikār), law of options (Khiyārat), and ombudsman (Ḥisbah) explaining consumer's safety from adulteration, deception, concealment of defect etc.⁶ But, there is no specific chapter in the classical fiqh literature about the protection of consumers in general.

With regards to UK legislation, the definition of consumer differs depending on the legislation in question.⁷ For example, the definition under the Consumer Protection from Unfair Trading Regulations (CPUTR) 2008 is different from the definition given by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR) 2013 and other consumer protection legal frameworks (e.g. The Package Travel Regulation). The CPUTR 2008 adopt a narrow definition of consumer. Article 2 of CPUTR 2008 defines consumer as any individual who in relation to a commercial practice is acting for purposes which are outside his business. Whilst, the CCR 2013 defines consumer as an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession. Similarly to the Consumer Rights Act (CRA) 2015 which defines consumer as a natural person and who acts outside trade, business, craft or profession.⁸ The CPUTR 2008 and CRA 2015 interpret the term 'consumer' differently. The

⁵ Mohammad Akhbar Khan, *Consumer Protection in Islamic Law : A Review of Some Existing Legislation* (Dar Al-Kotob Al-Ilmiyah, Beirut 2004) 41-58 (in Arabic).

⁶ Mohammad Akhbar Khan (n5) 43.

⁷ Ahmad Alhusban, *The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan* (University of Portsmouth, 2014) 39.

⁸ Sec 2(3), Consumer Rights Act 2015.

words 'wholly or mainly' (which do not appear in previous legislation, nor in the EU Consumer Rights Directive 2011) expand consumer protection to include contracts where individuals obtain goods or services for business and personal use (provided the personal use predominates).⁹

The main legislation which regulates the consumer protection in Malaysia, the Consumer Protection Act (CPA) 1999 defines consumer 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.¹⁰ The question is, whether an Umrah package traveller is a consumer within the ambit of CPA 1999? Umrah package travellers could be described as individuals who are buying the services (Umrah package travel) from the local tour operators and travel agents for their religious and spiritual purposes. Therefore, by virtue of section 3(1) of CPA1999, Umrah package travellers are consumers within the ambit of CPA 1999.

3.2.2 The Concept of Consumer Detriment

Every year, thousands of Malaysian Umrah package travellers experience problems of one kind or another when purchasing the Umrah package travels from the local tour operators and travel agents. Whether the package travel falls below the standard that could be reasonably expected, non-completion of Umrah package travel services, the package travel not in existence or the tour operators or travel agents fail to get visa for Umrah from Saudi Arabia government, experiencing these problems and seeking to

⁹ Rafal Manko, 'The Notion of Consumer in EU Law' < [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI\(2013\)13_0477_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI(2013)13_0477_REV1_EN.pdf) > accessed 5th November 2018.

¹⁰ Sec 3(1), Malaysian Consumer Protection Act 1999.

resolve them cost Malaysian consumers in time, money, energy and emotion. These problems are known as consumer detriment.

There was no universally accepted definition of the term 'consumer detriment' in the UK. The Office of Fair Trading (OFT)) which has been replaced by a number of organisations including the Financial Conduct Authority (FCA) and the Competition and Market Authority has commissioned a number of studies on consumer detriment, some of which have attempted to define the term. Early OFT definitions tended to focus on the loss of consumer welfare due to information problems. For example, a 1997 paper written by London Economics for the OFT stated that;

'consumer detriment can be identified as the loss to consumers from making misinformed or uninformed choices. ... however, ... not every case of choice made with less than the maximum information potentially available constitutes a detrimental choice'.¹¹

Misinformed or uninformed choices is one type of consumer detriment that has been highlighted by the UK. However, the Europe Economics in the Final Report for DG SANCO suggests that definitions of consumer detriment should fall into two broad categories; (i) personal detriment and (ii) structural detriment.¹² Personal detriment focuses on ex-post outcomes for those consumers who have a negative experience.¹³ The Consumer Strategy Group (CSG) Ireland also refers to consumer detriment as a personal detriment when it defines consumer detriment as:

'The loss or damage experienced by customers when purchasing goods or services that do not meet their requirements are faulty,

¹¹ Office of Fair Trading, 'Consumer Detriment Under Conditions of Imperfect Information' (August 1997) Office of Fair Trading Research Papers 11, 56 < http://webarchive.nationalarchives.gov.uk/20140402182945/http://www.oft.gov.uk/shared_oftr/ports/consumer_protection/oft194.pdf > accessed 17th September 2017.

¹² Europe Economics, '*An Analysis of the Issue of Consumer Detriment and the Most Appropriate Methodologies to Estimate It*' (2007) Final Report for DG SANCO, 3 < http://www.europe-economics.com/publications/study_consumer_detriment.pdf > accessed 3rd January 2018.

¹³ Christian Thorun, 'Measuring Consumer Detriment and Improving Consumer Policy' (Institute for Consumer Policy, 2016 < https://www.acm.nl/sites/default/files/old_publication/publicaties/16718_thorun-consumer-detriment.pdf > accessed 21st May 2018.

over-priced or sub-optimal in some way'.¹⁴

By contrast, the Europe Economics labelled the second type of consumer detriment as a structural detriment to reflect the fact that it arises from market failure or a regulatory failure.

Consumer detriment may occur in many ways.¹⁵ Firstly, consumers may not buy the product or service at the cheapest price available to them. Secondly, consumers may not buy the most appropriate product, given their taste and preferences. This tends to occur in dense markets for complex products (including Umrah package travel). Thirdly, consumers may purchase a product or service which is not of the quality they assumed ex-ante. This may occur in all markets, but it most common in those for durables and other experience goods. Each of these effects is common in markets.

However, the cause of the detriment and its magnitude varies from case to case. Sometimes it may be the traders who withhold important information, present facts so as to exploit biases in the way in which consumers process and evaluate information, or actively mislead the consumers. As had been highlighted in Chapter Two, lack of information or imperfect information was identified as the main factor leading to Malaysian Umrah package travellers detriment. The impact of consumer detriment can include financial loss, loss of work and/or leisure time, stress and other psychological suffering and even injury or death from unsafe products. It clearly evidenced when the Umrah package travellers suffered a tremendous financial, emotional and spiritual loss when the package travels purchased by them do not turn up as expected or do not exist.

The issue of consumer detriment resulting from imperfect information should be tackled diligently. There are several ways that can be employed to

¹⁴ Thorun (n13).

¹⁵ Office of Fair Trading, 'Consumer Detriment Under Conditions of Imperfect Information' (August 1997) Office of Fair Trading Research Papers 11, 61 < http://webarchive.nationalarchives.gov.uk/20140402182945/http://www.of.gov.uk/shared_of/rports/consumer_protection/oft194.pdf > accessed 17th September 2017.

reduce the impact of consumer detriment due to lack of information acquired by Malaysian Umrah package travellers. Academic scholars argue that information could minimize consumer detriment and safeguard consumers from any loss. In addition, the UK government believes that information is the most efficient means of protecting consumers.¹⁶ Information seems to offer a win-win solution where the consumers are given the means to protect themselves and drive up a standard. Howell claims that information indeed is necessary for consumers and undoubtedly the provision of information is one of the key tools available to enhance consumer protection.¹⁷ Once this information is provided, consumers can protect their own interests by selecting the goods or services closest to their preferences. Harm will be reduced by ensuring goods and services are more likely to be in line with realistic consumer expectations based on reliable information. The role of information as a consumer protection instrument will be discussed in detail in Part 3.6 of this chapter.

3.3 The Necessity of Information In the Context of Umrah Package Travel

The consumers including Umrah package travellers represent the weaker party in a contract and their weaknesses could be increased in today's challenging environment where there are varieties of Umrah package travels range from the simple to the most complex. To add to their confusion, Umrah package travellers also have to deal with current technology, mass-marketing tactics, high-pressure salesmanship and sharp advertising. They are rarely well-informed when making a purchase decision. As such, today's Umrah package travellers need to be well-informed, necessary to empower them to

¹⁶ Geraint Howells, 'The Potential and Limits of Consumer Empowerment by Information' (September 2005) Vol 32, No. 3, Journal of Law and Society, 349-370; Department for Business Innovation & Skills, '2010 to 2015 Government Policy: Consumer Protection' < <https://www.gov.uk/government/publications/2010-to-2015-government-policy-consumer-protection/2010-to-2015-government-policy-consumer-protection> > accessed 5th November 2018.

¹⁷ Howells (n16).

be better able to act, make effective decisions and to ensure that they become more empowered, savvy and resilient.¹⁸

This part will examine why and how information is relevant to the Malaysian Umrah package travellers. Firstly, this part will discuss the concept of information in protecting the interests of consumers generally and the significance of information to the Umrah package travellers specifically. After that, it explores further the behaviour of Malaysian Umrah package travellers in dealing with information. This part also will examine the obstacles that might happen along that process and discuss how it affects to the interests of Umrah package travellers. Consequently, it reveals the necessity of information in the context of consumer protection from the perspective of Umrah package travellers.

3.3.1 General Concept of Information

The word information derives from the Latin *informare* which means to give form, shape, or character to something.¹⁹ Etymologically, it is therefore understood to be the formative principle of something or to imbue that something with a specific character or quality.²⁰ However, for hundred years, the word information has been used to signify knowledge and aspects of cognition such as meaning, instruction, communication, representation, signs, as well as a symbol. This is clearly appreciated in the Oxford English Dictionary, which defines information as the action of informing; formation or

¹⁸ Sharifah Azizah Haron, 'Understanding Consumer Empowerment: A Review of Literature' (2008) 10, *Malaysian Journal of Consumer*, 31-44.

¹⁹ Marcel Danesi, *Encyclopedia of Media and Communication* (London, University of Toronto Press, 2013); William A. Dembski, 'An Information-Theoretic Design Argument' in Francois J. Beckwith, William Lane Craig and J.P. Moreland, *To Everyone an Answer: A Case for the Cristian Worldview* (Intervarsity Press, 2004) 81.

²⁰ Luis M. Rocha and Santiago Schnell, 'The Nature of Information' < <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=92F86B11C2D7F44E31AA480BEC22F608?doi=10.1.1.211.4307&rep=rep1&type=pdf> > accessed 20th May 2018.

moulding of the mind or character, training, instruction, teaching; communication of instructive knowledge.²¹

Information is intangible and illusory in nature, not a product which may be scooped up into the bag or poured into a bottle and sold. It may exist in many forms including writing, sound as well as visual, depending on how traders try to communicate it to the consumers. The vast majority of information created within an industry is in written form. This can include hand-written or word processed information and information in the website, e-mails as well as reports produced from different classes of software, both general-purpose packages and bespoke software solutions. For example, the traders may record information in reports, memos and tables, receipts, invoices, statements, and summary accounting information. The list is almost endless and different businesses will produce their own type of written information. Another common form of information is aural, which information is presented as sound. The commonest form of aural information is of course through radio, speech, informal meetings, talking on the phone and voice-mail messages.

Consumers are viewed by economic theory as rational decision-makers who are only concerned with self-interest.²² When talking about information and rational choice, it needs to be clear about what sort of information is at issue. Firstly, consumers need to know the information about the products or services that they intend to buy. Secondly, they need to know whom they are dealing with especially when they are buying online or dealing with a new trader with whom they have no previous experience. Thirdly, they need to know about the terms and conditions of the contract under which the service is provided. This is important because consumers need to aware about their rights and obligations under the contract, in particular with regard to the allocation of risks between traders and consumers.

²¹ Amos Golan, 'Information and Entropy- Background, Definitions and Examples' in *Information and Entropy Econometrics- A Review and Synthesis* (Now Publisher Inc, 2008) 15.

²² Leon G.Schiffman and Leslie Lazar Kanuk, *Consumer Behaviour* (9th ed, New Jersey: Prentice Hall, 2007); George M.Zinkhan, 'Human Nature and Models of Consumer Decision Making' (1992) Vol 21, No.4, *Journal of Advertising*, II-III.

3.3.2 The Significance of Information to the Umrah Package Travellers

In order to protect the interests of Umrah package travellers before they enter into a contract with the local tour operators and travel agents, information has a vital role as an instrument for consumer protection.²³ For instance, the UK requires the organisers and retailers to provide information to the package travellers at the pre-contractual stage and guide how the information should be presented to the travellers.²⁴ It helps consumers who purchase package travels to understand what information they can expect to be provided with when they decide to buy package travels. The UK government believes that information is the most efficient instrument for protecting consumers.²⁵

Increasing the amount of information to consumers is undoubtedly beneficial for purchase decision-making. Each and every local tour operators and travel agents create their own Umrah package travel and it might differ in terms of price, location of accommodation, mode of transportation as well as the level of comfort. By having relevant information about the Umrah package travel at the earliest stage, the Umrah package travellers have an opportunity to make comparison between the Umrah package travels available in the market.

Some consumers (especially those who are educated and have high awareness towards the significance of information) these days do a lot of research before making purchase decisions. They read product descriptions, compare prices, and check reviews so that when they walk into traders'

²³ Luciano Rodrigues Maia Pinto, 'Consumer Protection In Brazil A General View' < <https://www2.gwu.edu/~ibi/minerva/Fall2002/Luciano.Maia.pdf> > accessed 23rd August 2017.

²⁴ See Package Travel and Linked Travel Arrangements Regulation 2018.

²⁵ Gov.uk, 'Policy Paper 2010 to 2015 Government Policy: Consumer Protection' < <https://www.gov.uk/government/publications/2010-to-2015-government-policy-consumer-protection/2010-to-2015-government-policy-consumer-protection> > accessed 11st April 2018.

premises, they already know a whole lot about what traders have to offer. Consumers who are well-informed about what they are buying are more confident.²⁶ Being an informed consumer is advantageous to the economy, market and consumers.²⁷ An informed consumer is capable of making sensible decisions, gains insight about a product prior to its purchase. In the ideal case, consumers would come to informed decision or choice when they have been presented with a set of sufficient information for the decision being made and understand what the reasonably expected consequences may be of making that choice. An informed decision can be said to have been made based upon a clear appreciation and understanding of the facts, implications, and future consequences of an action. Essential information relating to Umrah package travel received by the Umrah package travellers before the contract is signed is crucial for them in making well-informed decision.

Furthermore, Umrah package travellers could self-protect from unscrupulous traders and service providers if they were adequately informed and capable of understanding the information they received. However, consumers are a heterogeneous, rather than a homogeneous group.²⁸ Some are reasonably well informed, observant and circumspect.²⁹ Others may be ignorant, unthinking and credulous.³⁰ Most probably fall somewhere between these two positions. Some will be confident and assertive, others more easily persuaded. Protecting such a wide range of individuals (particularly vulnerable consumers) appropriately is a challenge. Burden argued that consumers may be vulnerable for two main reasons: first, because they may find it more

²⁶ Gov.uk (n25).

²⁷ Marylyn Carrigan and Ahmad Attalla, 'The Myth of The Ethical Consumer-Do Ethics Matter In Purchase Behaviour?' (2001) Vol 18, Iss 7, *Journal of Consumer Markets*, 560-578.

²⁸ Del I Hawkins, David L Mothersbaugh and Amit Mookerjee, *Consumer Behaviour* (17th edn, New Delhi: Tata Mc Graw Hill Education Private Limited, 2010); Peter Cartwright, 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' < <https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf>> accessed 23rd August 2017.

²⁹ European Court of Justice, 22 June 1999, *Lloyd v Loins*'s < https://www.ippt.eu/files/1999/IPPT19990622_ECJ_Lloyd_v_Loints.pdf> accessed 23rd August 2017.

³⁰ Peter Cartwright, 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' *Financial Services Research Forum* < <https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf>> accessed 23rd August 2017.

difficult to obtain or to deal with information needed to make appropriate purchasing decisions, and second, because they may suffer a greater loss than other consumers by making inappropriate purchasing decisions.³¹ If the vulnerability is caused by an information gap, then information remedy either by regulating information provision or education to disseminate information could be the most appropriate way to protect vulnerable consumers.

3.3.3 Information and Consumer Behaviour

‘Consumer behaviour... is the study of the processes involved when individuals or groups select, purchase, use or dispose of product, services, ideas or experience to satisfy needs and desire’.³²

The process by which a consumer chooses to purchase or use a product or service is defined as the consumer behaviour process.³³ This process encompasses the stages of searching for, purchasing, using, evaluating, and disposing of products and services.

Before consumers including Umrah package travellers decide to purchase a particular package travel, he or she will go through several steps as follows;

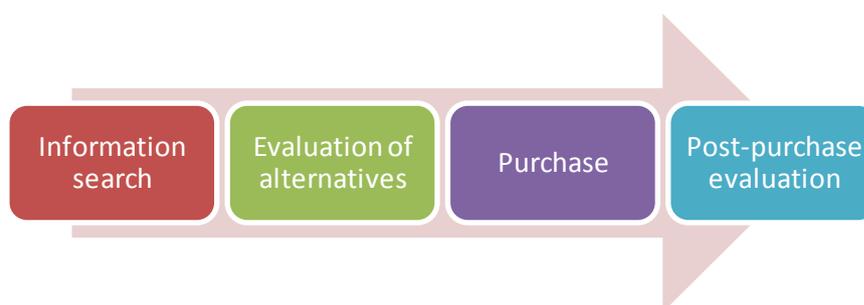


Figure 7: Consumer Decision Making Process

³¹ Ramil Burden, 'Vulnerable Consumer Group: Quantification and Analysis' (15th April 1998), OFT Research Paper, 5.

³² Micheal R.Solomon, Gary Bomossy, Prof Soren Askegaard and Margaret K.Hogg, *Consumer Behaviour: A European Perspective* (3rd ed, Harlow: Prentice Hall,2006) 6.

³³ Susan Horner and John Swanbrooke, *Consumer Behaviour in Tourism* (3rd edn, Routledge, 2016); Luiz Moutinho, 'Consumer Behaviour in Tourism' (1987) Vol. 21 Iss 10, European Journal of Marketing, 5-44.

Firstly, they try to get as much information about the products or services that they are interested in. Information search is a stage in the consumer decision process during which a consumer searches for internal or external information. During the information search, the options available to the consumer are identified or further clarified. The second step involves an evaluation of the alternatives available. Finally, they will go through the purchase stage and post-purchase stage. In all stages of consumers' transaction either at advertising, pre-contractual, performance or post-contractual stage, the consumers will go through all the process of collecting and engaging with information.

As for Umrah package travellers' decision, information acquisition at the pre-contractual stage is necessary and important for selecting the best choice among others.³⁴ Umrah package travellers who have awareness on the significance of information and access to the information will search for information through a variety of media including stored in memory and environment as to ensure that they acquire adequate and accurate knowledge about Umrah package travel. They will search for information through internal and external sources.³⁵ Internal search fundamentally involves the consumers identifying alternatives from their memory known as "memory scan" while in the external search, they search information through external sources such as brochures, magazines, newspapers, websites, friends, consultants as well as advisors in order to seek new and additional information. When the internal search provides sufficient information for making a decision, external search is obviously unnecessary.³⁶ However, if the internal search proves insufficient,

³⁴ Philip Nelson, 'Information and Consumer Behaviour' (1970) Vol 78, No.2, Journal of Political Economy, 311-329; Dogan Kursoy and Ken W. McCleary, 'An Integrative Model Of Tourists' Information Search Behaviour' (2004) Vol 31, Iss 2, Annals of Tourism Research, 353-373.

³⁵ Dale Fodness and Brian Murray, 'Tourist Information Search' (1997) Vol.24, No.3, Annals of Tourism Research, 503-523.

³⁶ Sharon E. Beatty and Scott M. Smith, 'External Search Effort: An Investigation Across Several Product Categories' (Jun, 1987) Vol. 14, No. 1, Journal of Consumer Research, 83-95.

consumers are likely to use external sources to gain more information about the products until reach its optimum level.

However, the information search method could be different when it involves 3 different goods; search goods,³⁷ experience goods³⁸ and credence goods³⁹. Klein states that search product is easy to predict in terms of quality and value in contrast with experience products.⁴⁰ Nevertheless, the credence goods such as expert services are more unpredictable, uncertain and risky than experience goods because there was no way to predict their value and quality even after consumers use and repeated purchase. Experience products such as Umrah package travel are difficult to predict in terms of value and quality before use and after one uses it. Zeithaml found that indeed consumers relied more on external information when dealing with experience products.⁴¹ Therefore, adequate and accurate information is needed to enable informed choices by package travel consumers⁴² because the quality of package travel is revealed only after purchase. Information which is sought and acquired at the search stage has a big influence on the consumers' choice.⁴³

³⁷ Nelson (n34). Nelson defines search good as a product or service with features and characteristics easily evaluated before purchase.

³⁸ An experience good is a product or service where product characteristics, such as quality or price, are difficult to observe in advance, but these characteristics can be ascertained upon consumption. The concept is originally due to Philip Nelson, who contrasted an experience good with a search good.

³⁹ Gaëlle Balineau and Ivan Dufeu, 'Are Fair Trade Goods Credence Goods? A New Proposal, with French Illustrations' (2010) Vol. 92, Supplement 2, *Journal of Business Ethics*, 331-345. Credence goods is described as product attributes which consumers cannot evaluate, even after having consumed the good.

⁴⁰ Lisa R. Klein, 'Evaluating the Potential of Interactive Media Through a New Lens: Search Versus Experience Goods' (1998) Vol 41, Iss 3, *Journal of Business Research*, 195-203.

⁴¹ Valarie A. Zeithaml, 'Consumer Perceptions of Price, Quality and Value: A Means-End Model and Synthesis of Evidence' (1988) Vol 52, No.3, *Journal of Marketing*, 2-22.

⁴² Micheal Hutter, 'Experience Goods' in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar Publishing Limited, 2011).

⁴³ Hong-Youl Ha, 'The Effects of Consumer Risk Perception on Pre-Purchase Information In Online Auctions: Brand, Word-of-Mouth, and Customized Information' (October 2002) Vol 8, Iss 1, *Journal of Computer-Mediated Communication* <

<http://onlinelibrary.wiley.com/doi/10.1111/j.1083-6101.2002.tb00160.x/full> > accessed 18 August 2017.

At some point in the buying process, after Umrah package travellers have recognised a need, conducted information research and create a final decision, then they must make a decision. One of the critical factors in decision making is the range of choices (including as quality, price, location, option etc.) presented to the consumers in the information search stage.

3.3.4 Information Obstacles

Along the way of searching and acquiring information, consumer information can encounter a number of obstacles such as consumers are unaware of and/or do not read consumer information or contract terms. Real-life consumers are only seldom disciplined and patient enough to read terms and conditions, and even if they do so, there are many, including cognitive, reasons why they will not understand the information, may not find it useful, or will be unable to translate it into sensible commercial decisions. There are several reasons why consumers omit from reading the information provided to them. One important reason for not doing so is that they underestimate the value of the information or their need for this information.⁴⁴ Secondly, part of the not-reading-problem is that people lack a rudimentary understanding of how laws and contracts work and, most importantly, what the law or regulatory authorities do not do (e.g. scrutinize terms and conditions on a regular basis). The lack of legal expertise or the inability to understand the legal implications are also reasons why people simply lack the incentive to invest effort in the reading of terms of use.⁴⁵

Dr Natali Helberger found in her study that among the (few) consumers that do actually try to read the information provided to them by suppliers,

⁴⁴ Natali Helberger, 'Forms Matter: Informing Consumers Effectively' (2013) <http://www.beuc.eu/publications/x2013_089_upa_form_matters_september_2013.pdf> accessed 15th August 2017.

⁴⁵ Helberger (n44); Ian Ayres, 'The No-Reading Problem in Consumer Contract Law' (2014) Vol 66, Iss 545, *Stanford Law Review*, 545-610; Thomas Wilhelmsson and Chris Willet, 'Unfair Terms and Standard Form Contracts' in Geraint Howells, Iain Ramsay and Thomas Wilhelmsson, *Handbook of Research on International Consumer Law* (2nd edn, UK: Edward Elgar Publishing Limited, 2018)142.

between 16% and 44% (depending on the access channel, age, and level of education of digital consumers surveyed) indicated that they did not understand the information.⁴⁶ The most frequently cited reasons for not understanding the information are the complexity of the language, the technicality of the language, the layout, the small font, as well as the length of the information provided.⁴⁷ In other words, one important reason why people, even if they try, fail to understand contract terms is that these are badly written: ancient grammar, an excess of legal terms, never-ending sentences.

Even in the event that consumers find and read the terms of use, consumers often do not act as could be expected from a rational and well-informed market participant. One obvious reason why people fail to act upon the information they received is that it is not the information that they were looking for or they do not consider it helpful, fail to remember it at the crucial moment, are influenced by cognitive biases or simply do not act rationally, even when well informed.³⁹ Yet, in order to be able to inform the consumers effectively, it is necessary to actually understand also the specific information needs of the consumers. Again, to effectively communicate information in a way that is actually useful for consumers requires helping them to better understand the outcome and likelihood of risks.⁴⁸

Furthermore, all information may have the tendency or capacity to deceive. For instance, information is considered as inadequate and inaccurate in a market when there is deception in the information provided, when information is too difficult for consumers to obtain or evaluate, when too little information or too much information of inconsistent quality have been provided to the consumers. These circumstances prevent an efficient quality of information from being provided to the consumers. If consumers are uninformed or misinformed about the quality of a product, they may derive less utility from it than they expected. Consumers' choices could be distorted by false advertising, by firms' failures to disclose relevant information about their

⁴⁶ *ibid* (n44).

⁴⁷ *ibid* (n44).

⁴⁸ Hong (n43).

products and services, and by a lack of information to assess accurately the safety of potentially risky products.

Moreover, too much information supplied by the traders could be oppressive because individuals have differing needs in relation to how information is presented to them. According to Annette Nordhausen Scholes, more information does not guarantee a better-informed consumer.⁴⁹ It may overwhelm the consumers, leading to the information overloading and poorer choice decision.⁵⁰ However, this does not mean that relevant information should not be made available to consumers.

3.4 The Concept of Consumer Protection

Having difficulty in obtaining and assimilating information exposed Umrah package travellers to vulnerable circumstances. Therefore, a lot of efforts by government and non-government organizations should be made to protect the interest of Umrah package travellers. Thus, consumer protection seeks to support and protect their interests. As such, it aims to promote the response of industry to consumer needs, the confidence of consumers in service quality, the extensive availability of services and the affordability of services, realized through the development and enforcement of consumer codes and standards, the resolution of consumer disputes, effective rate regulation, and a system of universal service provision.⁵¹

According to Maynes, consumer protection consists of policies and actions, usually involving intervention by the government, designed to ensure

⁴⁹ Annette Nordhausen Scholes, 'Behavioural Economics and the Autonomous Consumer' in Catherine Barnard, Markus W Gehring (eds), *Cambridge Yearbook of European Legal Studies* (Hart Publishing: Oxford and Portland, 2012).

⁵⁰ Jacob Jacoby, Donald E. Speller and Carol Kuhn, 'Brand Choice Behaviour As A Function of Information Load: Replication and Extension' (1974) Vol. 1, No. 1, *Journal of Consumer Research*, 33-42.

⁵¹ Malaysian Communication and Multimedia Commission, 'What is Consumer Protection' < <http://www.skmm.gov.my/FAQs/Complaints/What-is-Consumer-Protection.aspx> > accessed 10th September 2017.

that all consumers obtain what they would really want.⁵² Multiple studies done by Iain Ramsay⁵³, Geraint Howells and Stephen Weatherill⁵⁴, John Mickelburgh⁵⁵ as well as Robert B.Reich⁵⁶ have been conducted on consumer protection. Consumer protection embraces all goods and services, either public or private.⁵⁷ 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 put consumers, businesses and local communities at the heart of regulatory decisions.⁵⁸

For the most part, competitive markets are underpinned by generic consumer protection rules, voluntary accreditation and private measures that provide an adequate and appropriate level of consumer protection in the market.⁵⁹ The private law system of individual enforcement of rights was traditionally regarded as the counterpart to the market system of economic

⁵² Edwin Scott Maynes, 'Consumer Protection: The Issues' [1979] Vol 3, Iss 2, Journal of Consumer Policy, 97-109.

⁵³ Iain Ramsay, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (3rd edn, Hart Publishing, 2012) 128.

⁵⁴ Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Ashgate 2005).

⁵⁵ John Mickelburgh, *Consumer Protection* (Professional Books, 1979).

⁵⁶ Robert B.Reich, 'Towards a New Consumer Protection' [1979] Vol 28, Iss 1, University of Pennsylvania Law Review, 1-40.

⁵⁷ Department for Business Innovation & Skills, 'Empowering and Protecting Consumer: Consultation on Institutional Changes for Provision of Consumer Information, Advise, Education, Advocacy and Enforcement' (June 2011) <

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31394/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf > accessed 04 October 2015.

⁵⁸ The Scottish Government, 'Consumer Protection and Representation In An Independent Scotland: Options' < <https://www2.gov.scot/Publications/2013/08/2253/3> > accessed 27nd May 2018.

⁵⁹ PriceWaterhouse Cooper, 'Review of Consumer Protection in the Travel and Travel Related Services Market', Prepared for the Department of the Treasury, on behalf of the Standing Committee of Officials of Consumer Affairs,(Canberra, November 2010), Canberra < http://www.consumerlaw.gov.au/content/consultations/download/review_protection_in_travel_industry.pdf > accessed 16 December 2015.

exchange. However, according to Iain Ramsay, a major issue in consumer protection has been the perceived inadequacy of this system of individual private law litigation to secure performance in a mass-consumption economy where the impact of harm is large.⁶⁰ Since the transaction cost of enforcing individual consumer claims may often outweigh the expected recovery, the private law system fails either to deter socially wasteful activity or to compensate for violations of rights.

Likewise, Cartwright identifies four limitations of private law in the context of consumer protection⁶¹ which prevents this measure to adequately safeguard the interests of consumers. The first is that private law depends for its enforcement on the injured party taking action; however, the enforcement costs of bringing an action often mean that many breaches of the law will go uncorrected. Secondly, private law focuses primarily upon correcting harm that has already taken place by way of providing compensation. Private law only addresses the problem after the harm has occurred. It must be remembered that consumer protection should not ideally be left in the hands of individual consumer taking action after the harm has already been done. In other words, prevention is always better than reparation. Thirdly, according to Cartwright, sometimes there can be problems of external costs that might be suffered by third parties in private law transactions, in other words, externalities. Fourthly, although some rectifications can be made through the law of contract, as far as the law of contract is concerned, such law is hindered by the doctrine of privity of contract.⁶² Some of the limitations inherent in the law of contract can be addressed through the law of tort.

⁶⁰ Iain Ramsay, 'Framework for Regulation of the Consumer Marketplace' [1985] Vol 8, Iss 4, *Journal of Consumer Policy* 353-372.

⁶¹ Peter Cartwright, *Consumer Protection and the Criminal Law: Laws, Theory and Policy in United Kingdom* (Cambridge University Press, 2001).

⁶² The doctrine states that, in general, a contract cannot confer rights or impose obligations on someone who is not party to a contract. For example, a consumer cannot generally sue a manufacturer in contract for producing faulty goods, nor can he sue a retailer in contract for supplying faulty goods which were purchased on his behalf by a friend. In *Darlington Borough Council v Wilshier Northern Ltd*, Steyn LJ argued that there is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract for the benefit of a third party where that is the expressed intention of the parties.

However, tort law is subjected to its own limitation which may place obstacles in the way of consumer's obtaining access to justice.

Based on the above reasons and limitations, private law has not produced a perfect solution in protecting the consumers. This also can be applied to the issue facing by Malaysian Umrah package travellers where private law does not provide comprehensive protection to the Malaysian Umrah package travellers and it entails potentially substantial welfare costs. Therefore, it calls for intervention from other channels as to ensure that the Umrah package travellers could be comprehensively protected as early as the pre-contractual stage. Government intervention in the form of consumer protection is appropriate where consumers have less than the required amount of information to protect themselves.

3.4.1 Intervention In the Context of Consumer Protection

Empowered and well-informed consumers will not be created without the government intervening to protect them with an appropriate approach and adequate protection. The appropriateness of any intervention is considered on a case-by-case basis, taking into account a number of matters including the principles under which regulatory activities should be carried out: transparent, accountable, proportionate, consistent, and targeted only at cases where an action is needed.⁶³ In addition, the most appropriate approach that could be employed must be responsive to the main problems faced by Malaysian Umrah package travellers. It also should be carefully considered in terms of costs and benefits before adopting it in the current Malaysian legal framework of consumer protection.

⁶³ Department for Business, Enterprise & Reform, 'Regulatory Enforcement and Sanctions Act 2008: Guidance to the Act' < <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file47135.pdf> > accessed 5th November 2018.

In prosperous societies, there are constant demands for more government intervention through regulation to protect the consumers.⁶⁴ Sylvia Lane argues that consumer protection is a public good and like other public good (such as disease control), consumer protection, 'is not provided in socially optimal quantities in the absence of government intervention'.⁶⁵ Government intervention in the form of consumer protection is thus required in order to: diminish the consumers' risks of physical and economic loss, harm, or damage to public satisfactory standards; keep product liability and malpractice insurance premiums at levels authorizing firms or practitioners to operate at an acceptable level of quality performance and remain in the market.⁶⁶

Maynes claims that intervention by government in consumer protection⁶⁷ could restrict the behaviour of unscrupulous sellers and prevents the occurrence of certain undesirable activities.⁶⁸ Government intervention has been concerned with minimizing detriment to the consumer interest which is resulting from information failures, for example, a lack of consumer information, misleading information, mis-selling or the bounded rationality of consumer decision-making. In addition, according to Ardic, Abrihim and Mylenko,⁶⁹ government intervention in consumer protection is necessary as there are 'inherent information asymmetries and power imbalances in markets in which the consumer is left vulnerable.

Regulation is among the most common instruments of intervention employed by the government to pursue the interests of consumers. It has beneficial effects on society and a potentially important role in protecting

⁶⁴ Better Regulation Task Force, 'Principles of Good Relation' < <http://webarchive.nationalarchives.gov.uk/20100407173247/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf> > accessed 13rd September 2017.

⁶⁵ Sylvia Lane, 'The Rational For Government Intervention In Seller-Consumer Relationships' (1983) Vol 2, Iss 3, Review of Policy Research, 419–428.

⁶⁶ Lane (n65).

⁶⁷ Maynes (n52).

⁶⁸ Anthony I Ogus, *Regulation: Legal Form and Economic Regulation* (Hart Publishing 1994).

⁶⁹ Oya Pinar Ardic, Joyce A. Ibrahim, Nataliya Mylenko, 'Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set' (2011) Policy Research Working Paper No:WPS 5536, The World Bank.

consumers. It may also provide additional protection for those most vulnerable in society. In regulatory jurisdiction, the laws are designed to prevent the businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors. For example, a government may require businesses to disclose detailed information about products-particularly in areas where safety or public health is an issue, such as food or require licensing of approved suppliers. The regulation covers a huge variety of industrial and non-industrial activities which has been used as consumer protection tools.⁷⁰ It has become accepted that not only regulation is necessary to facilitate a well-functioning market, but that regulatory oversight remains essential in the running of public services.⁷¹

According to Howard Beales, Richard Craswell and Steven C. Salop, consumer protection regulation has come under increasing fire in the past.⁷² In some circumstances, it might be justified but demanding careful assessment of how and why this might be so and in addition, reflecting readiness to re-think an appropriate form of regulation. The popularity of various forms of regulation has risen and fallen over time. It can take place by direct regulation which relies on order, prohibition, legally binding standards or other command and control techniques. The regulatory approach offers many advantages to the wider society if the regulation is well performed with efficient enforcement from the regulatory bodies. What is needed a regulatory framework which is understandable to society, efficiently work within the industry and which delivers effective enforcement strategy for deterrence and compliance.⁷³ As spelled out by UK Better Regulation Task Force (BRTF), regulation must be balanced and avoid knee-jerk reactions, be relevant to current conditions, balance risks, costs and benefits, avoid unintended consequences, be easy to

⁷⁰ Ogus (n68).

⁷¹ *ibid* (n68).

⁷² Howard Beales, Richard Craswell and Steven C. Salop, 'The Efficient Regulation of Consumer Information' (1981), Vol.24, No.3, *The Journal of Law and Economics*, 491-539.

⁷³ OECD, *Public Consultation on Best Practice Principles For Improving Regulatory Enforcement and Inspection* (2013).

understand, be enforceable, have broad public support and identify accountability.⁷⁴

Undeniably, direct intervention by regulation may function to improve the flow of useful, truthful information and thus eliminate the cause of the problems, or it may act as to offset or eliminate the effects of the problems on the relevant product and information market.⁷⁵ However, when regulation is poorly designed or overly complicated, it can impose excessive costs and inhibit productivity.⁷⁶ Alternatively, an indirect intervention which is designed to give consumers better information, with which to make their own decisions about the types of products they wish to purchase, and ultimately on the allocation of society's resources could be employed instead. Alternative intervention is substantially different from direct regulation strategies. A number of alternative strategies as described in section 3.5.4 may be designed where the choice of which strategy should be used will depend, in part, on the goal of the intervention.

3.5 Theory of Regulation

In order to safeguard the interests of Umrah package travellers by being well-informed consumers, it is vital to examine how the protection through information could be delivered to them. This part scrutinizes the theoretical perspective of regulation. Despite its application as a protective instrument for consumers for several decades in many industries, its application remains complex. In this context, there are debates and criticisms made by academic scholars on the application of the regulation. In addition, the advantages and flaws of regulation will be diagnosed along this process

⁷⁴ Better Regulation Task Force (n64).

⁷⁵ Howard Beales, Richard Craswell, and Steven C. Salop, 'Information Remedies for Consumer Protection' (1980) Working Papers No.36 < <https://www.ftc.gov/system/files/documents/reports/information-remedies-consumer-protection/wp036.pdf> > accessed 5th April 2016.

⁷⁶ Ibid (n64).

and it will reveal whether or not regulation is the best approach for protecting the interests of consumers including Umrah package travellers.

Confirming to the objectives set up in Chapter One of this thesis, this research hypothesises that information regulation could be the best measure to be employed for the purpose of protecting the Umrah package travellers in Malaysia. This raises a preliminary question: what is regulation? Over the past 40 years, there has been a dramatic increase in both the volume of regulation⁷⁷ and the number of regulatory authorities in several countries including Malaysia, across both the economic and social sectors.⁷⁸ Regulation in traditional economic areas of commerce, corporations, finance and competition, and traditional social areas of health, safety, consumer protection and the environment have increased in number, breadth, reach and complexity.⁷⁹ There is no doubt that currently, we are living in the regulatory state, as regulation exists in nearly every domain across countries.⁸⁰ The scale and complication of regulatory systems in the modern world is such that its existence is often taken for granted.

3.5.1 Interpretation of Regulation

Regulation is a complex phenomenon that calls for a multi-disciplinary approach⁸¹ and the expression of regulation is frequently found in both legal

⁷⁷ Organisation for Economic Co-operation and Development, *OECD Reviews of Regulatory Reform: Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance* (2002); Government of Australia, 'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business' (2006) Report of the Taskforce on Reducing Regulatory Burdens on Business < <https://www.pc.gov.au/research/supporting/regulation-taskforce/report/regulation-taskforce2.pdf> > accessed 7th November 2018.

⁷⁸ Jacint Jordana, David Levi-Faur and Xavier Fernandez i Marín, 'The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion' (2011) Vol 44, Iss 10, *Comparative Political Studies*, 1343-1369.

⁷⁹ Eric Windholz and Graeme A Hodge, 'Conceptualising Social and Economic Regulation: Implications for Modern Regulators and Regulatory Activity' (2012) Vol 38, No. 2, *Monash University Law Review*, 212-237.

⁸⁰ Giandomenico Majone, 'The New European Agencies: Regulation by Information' (1997) Vol 4, Iss 2, *Journal of European Public Policy*, 262-275.

⁸¹ Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (2nd edition, Oxford University Press, 2012).

and non-legal contexts.⁸² It covers a huge variety of industrial and non-industrial activities.⁸³ Regulation can be interpreted in different senses, from narrow to broad.⁸⁴ For most lawyers, economists and academics, it is difficult for them to have a clear interpretation of the regulation. As claimed by Black, regulation is not a concept that travels well, in either a centred or 'decentred' form⁸⁵ and Levi-Faur observes that regulation means different things to different people with definitions varying according to professional discipline, political ideology and even geography.⁸⁶

In a fixed view, regulation is seen as a specific set of commands,⁸⁷ where it involves the promulgation of a binding set of rules accompanied by mechanisms for monitoring compliance and enforcement⁸⁸ performed through a specialist state agency.⁸⁹ In other words, it is also known as direct control over an industry or activity by legislation that states what is permitted and what is illegal, which represent quality standards or targets by a government authority that must be complied with. The classical model would reserve rulemaking to the legislature, monitoring compliance to an inspectorate, and enforcement to the criminal and administrative justice system. Novel conceptualizations of regulation not only encompass state institutions, but also involve second and third-party actors, such as firms, associations, and Non-Government Organizations (NGOs), acting as rule-makers as well as monitoring or enforcement agencies. Individuals or organisation are forced to comply with relevant rules setting prescribed behaviours, and the violation of

⁸² Patricia Park, *International Law for Energy and the Environment* (2nd Edition, CRC Press, 2013).

⁸³ *Ibid* (n68).

⁸⁴ Robert Baldwin, Martin Cave and Martin Lodge, 'Introduction: Regulation - The Field and the Developing Agenda', in Robert Baldwin, Martin Cave and Martin Lodge (eds) *The Oxford Handbook of Regulation* (Oxford University Press, 2010).

⁸⁵ Julia Black, 'Critical Reflections on Regulation' (2002)27, *Australian Journal of Legal Philosophy*, 1-35; CARR Discussion Papers, DP4. Centre for Analysis of Risk and Regulation, London School of Economics and Political Science.

⁸⁶ David Levi-Faur, 'Regulation & Regulatory Governance' in David Levi-Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar, 2011).

⁸⁷ Baldwin, Cave and Lodge (n84).

⁸⁸ Picciotto, Sol 'Introduction: Reconceptualizing Regulation in the Era of Globalization' (2002) Vol 29, No.1, *Journal of Law and Society*, 1–11; Colin Scott, 'Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance' (2002) Vol 29, No.1, *Journal of Law and Society*, 56–76.

⁸⁹ *ibid* (n84).

laws can result to various sanctions such as fines, disclosing of business, disqualification, imprisonment and publication of violations.

In contrast to this fixed view, the practice and study of regulation have increasingly moved towards a more flexible understanding, taking a range to non-governmental forces and influences. Regulation is interpreted as deliberate state influence⁹⁰ where it has a broader scope and covers all state actions that are designed to influence business or social behaviour.⁹¹ It also covers a wider set of regulatory arrangements that have economic or quasi-legal features.⁹² Indeed, for some authors, state regulation is a defining characteristic of modernisation.⁹³ It is a movement where the state attempts to steer or regulate economic activities through co-opting non-governmental actors. They are inextricably related to more general moves in public governance which veer to outsourcing and privatisation of public management functions.

Far away from these rigid interpretations, regulation encompasses all mechanisms of social control or influence affecting behaviour from whatever sources; whether they are intentional or not. Regulation is often thought of as an activity that restricts behaviour and prevents the occurrence of certain undesirable activities (a red light concept).⁹⁴ For instance, seat belts are mandated in cars and airplanes; drivers must provide proof of liability insurance; deceptive advertising is illegal; firms cannot run 'going out of business' sales forever; electrical and plumbing systems in new construction must be inspected and approved; packaged and prepared foods must carry certain information on their labels; cigarette packages must warn users of the dangers involved in smoking; gasoline stations must prevent gas spillage;

⁹⁰ *ibid* (n84).

⁹¹ *ibid* (n84).

⁹² Gary Lynch-Wood, David Williamson and David Horton, 'Perspective on Civil Regulations, Firms and the Environment' in Alberto Asquer, Franco Becchis, Daniele (eds) *The Political Economy of Local Regulation: Theoretical Frameworks and Internal Case Studies* (Palgrave: Macmillan).

⁹³ Leigh Hancher and Michael Moran, 'Introduction' in Leigh Hancher and Michael Moran (eds), *Capitalism, Culture, and Economic Regulation* (Clarendon: Oxford University Press, 2000).

⁹⁴ *ibid* (n68).

used-car odometers must be certified as accurate; security issues must be regulated to prevent from investor from any cheating and so on. The list of regulations is seemingly endless.

3.5.2 The Function of Regulation

In prosperous societies, there are constant demands for more regulation to change the behaviour of individuals or groups in ways that generate positive impacts in terms of solving societal and economic problems.⁹⁵ Black proffers regulation as a process involving the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes. According to Kenworthy Bilz and Janice Nadler, the ambition of regulation is classically to change behaviour.⁹⁶ Ironically, changing attitudes about the underlying morality of the behaviours could be the most efficient because if regulation changes moral attitudes, it reduces the need for the state to act on or even monitor regulated players.⁹⁷ Regulation could influence the behaviour of individuals and organisations through a range of policy tools, including legislation, sanctions, taxes and subsidies, the provision of information and guidance material.⁹⁸ Regulations to prevent collusive behaviour among businesses, for example, can result in lower prices and greater consumer choice.

Moreover, regulation has its own significance to restrict the behaviour of regulated parties. In most countries, public food safety regulation takes the form of standards (target and performance standard) tends to restrict the freedom of suppliers to control food safety in a manner that is most

⁹⁵ Better Regulation Task Force, *The Principles of Good Regulation* (London, 2003) 1.

⁹⁶ Kenworthy Bilz And Janice Nadler, 'Law, Moral Attitudes, and Behavioural Change' in Eyal Zamir and Doron Teichman (eds), *The Oxford Handbook of Behavioural Economics and the Law* (Oxford University Press, 2014).

⁹⁷ Bilz And Nadler (n96).

⁹⁸ Australian Government, 'Changing Behaviour: A Public Policy Perspective' < <http://www.apsc.gov.au/publications-and-media/archive/publications-archive/changing-behaviour> > accessed 8th September 2017.

appropriate to their operations, hampering efficiency and innovation.⁹⁹ The CPUTR 2008 is an example of regulation implemented by the UK for the purpose of restricting the behaviour of advertisers. It restricts the advertiser from misleading or harassing consumers by false or deceptive messages, leaving out important information or using aggressive sales techniques.¹⁰⁰ This is relevant to be applied in the context of Malaysian Umrah package travel, where it could be used to restrict the behaviour of local tour operators, travel agents and pious men from disseminating or providing insufficient information to the Umrah package travellers before the contract of Umrah package travel is entered.

The regulation also can give people rights (e.g. equal opportunities). An equal opportunity arises from the similar treatment of all people, unhampered by artificial barriers or prejudices or preferences, except when particular distinctions can be explicitly justified. Equal opportunities promote equality of opportunity for all, giving every individual the chance to achieve their potential, free from prejudice and discrimination. It is to be seen as a form of social regulation. For instance, the UK has always strived to promote equality in the workplace. The Equality Act 2010 implemented to ban unfair treatment and helps achieve equal opportunities in the workplace and in wider society. The Act prohibits unfair treatment in access to employment and private and public services regardless of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.¹⁰¹ In relation to the Umrah package travel, consumers who are purchasing Umrah package travels from the local tour operators or travel agents should be entitled to equal opportunities in acquiring information regardless of their social, financial, education and geographical background. In other words, regulation should be a medium to the concept of equal opportunities towards the consumers which simultaneously could protect consumers' interests.

⁹⁹ Spencer Henson and Julie Caswell, 'Food Safety Regulation: An Overview of Contemporary Issues' (December 1999) Vol 24, Iss 6, Food Policy, 589-603.

¹⁰⁰ Gov.uk, 'Marketing and Advertising: The Law' < <https://www.gov.uk/marketing-advertising-law/regulations-that-affect-advertising> > accessed 21st September 2017.

¹⁰¹ Gov.uk, ' Policy Paper 2010 to 2015 Government Policy: Equality' < <https://www.gov.uk/government/publications/2010-to-2015-government-policy-equality/2010-to-2015-government-policy-equality> > accessed 10th April 2018.

3.5.3 Criticisms of Regulation

Regulation has attracted much criticism for several reasons. Prosser argues that regulation is always a second best.¹⁰² According to Shleifer, regulation is only necessary when the level of disorder is too high for private ordering and even the courts to deal with successfully.¹⁰³ The application of regulation is criticised further by Benston who makes an assumption that non-financial consumer products and services that do not directly affect people's health or safety should not be regulated and even he found less justification for regulating financial services.¹⁰⁴

Bayer criticizes regulation as costly and economically irrational.¹⁰⁵ Public intervention is not costless and policymakers must estimate the effect of the failure on the price, quality, and quantity of goods or services provided in a market and in addition to identify the financial and economic costs of remedying the failure.¹⁰⁶ These include compliance, rule formulation, and enforcement costs. It adds to the cost of producing goods and services and thus boosts prices. Those who demand, and are willing to pay the price for high-quality, safe, warranted products and services can do so. But some argue that people who demand and prefer to pay (presumably) lower prices for lower-quality products and services that may have risks associated with their use should also be allowed to exercise this preference.¹⁰⁷ By increasing the costs of goods and services, consumer protection law may adversely

¹⁰² Tony Prosser, *The Regulatory Enterprise: Government, Regulation, and Legitimacy* (Oxford University Press, 2010).

¹⁰³ Andrei Shleifer, 'Understanding Regulation' (2005) Vol 11, No.4, *European Financial Management*, 439-451.

¹⁰⁴ George J. Benston, 'Consumer Protection as Justification for Regulating Financial-Services Firms and Products' (2000) Vol 17, Iss 3, *Journal of Financial Services Research*, 277-301.

¹⁰⁵ Stephen Breyer, 'Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reform' (1979) Vol 92, No.3, *Harvard Law Review*, 547-609.

¹⁰⁶ Iain Ramsay, 'Framework for Regulation of Consumer Marketplace' (December 1985) Vol 8, Iss 4, *Journal of Consumer Policy*, 353-372 < <https://link.springer.com/content/pdf/10.1007%2FBF00380247.pdf> > accessed 13rd January 2018.

¹⁰⁷ Libby Rittenberg, *Principles of Microeconomics* (New York: Flat World Knowledge Inc, 1797) 415.

affect the poor, who are forced to purchase higher-quality products or rather cannot afford to do so; the rich would presumably buy higher-quality products and services in the first place.

In addition, Julia Black also critiques regulatory approach by command and control and summarizes that government has insufficient knowledge to be able to identify non-compliance, implementation is inadequate and/or that those being regulated are insufficiently inclined to comply.¹⁰⁸ In modern times policymakers appear to be caught on the horns of a dilemma (in a risk-obsessed society) there is an ever-increasing expectation that governments will provide citizens with protection, and yet there is a greater degree of scepticism of the ability of governments to regulate a particular subject successfully. According to Braithwaite, the state simply cannot afford to do an adequate job on its own through direct governmental regulation which needs for an appropriate alternative.¹⁰⁹

3.5.4 Alternatives to Traditional Regulatory Approach

The challenge for government is to ensure that the regulations and instruments it uses to achieve public objectives are both effective and efficient: effective in the sense that they resolve the problem they are introduced to address; and efficient in the sense that they minimise both the direct compliance costs borne by those subject to the regulation, and other, often more indirect, costs which may be imposed on the public. The effectiveness and efficiency of traditional command and control regulation¹¹⁰ have been

¹⁰⁸ Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-Regulatory World' (1 January 2001) Vol 54, Iss 1, *Current Legal Problems*, 103-146.

¹⁰⁹ John Braithwaite, 'Enforced Self-Regulation: A New Strategy For Corporate Crime Control' (1982) Vol.80, No.7, *Michigan Law Review*, *Articles on Corporate and Organizational Crime*, 1466-1507.

¹¹⁰ Beatriz Junquera and Jesús Ángel Del Brío, 'Preventive Command and Control Regulation: A Case Analysis' (2016) *Sustainability*, 1-17. Command and Control (CAC) regulation can be defined as the direct regulation of an industry or activity by legislation that states what is permitted and what is illegal. This approach differs from other regulatory techniques, e.g. the use of economic incentives, which frequently includes the use of taxes and subsidies as incentives for compliance. The 'command' is the presentation of quality

criticised by academic scholars (as discussed in section 3.5.3). However, it cannot be abandoned without close consideration of the alternatives. An alternative to regulation or alternative intervention aims at supplementing or replacing classical rule-based instruments by widening the breadth of tools applied.¹¹¹ Thus, it is formulated as an alternative to traditional regulation. Hence, it encompasses a range of policy instruments which essentially are heterogeneous, but which share the feature that they are being perceived as new, modern and rational alternatives.¹¹² Alternative policy instruments can often achieve policy objectives at lower cost and more effectively than traditional command and control instruments.¹¹³ In many situations, there may be a range of options other than traditional ‘command and control’ regulation available, including co-regulation and self-regulation schemes, incentive and market based instruments (such as tax breaks and tradable permits) and information approaches.¹¹⁴

Self-regulation and co-regulation are instruments with no or limited government involvement. Self-regulation typically involves a group of economic agents, such as firms in a particular industry or a professional group, voluntarily developing rules or codes of conduct that regulate or guide the behaviour, actions and standards of its members.¹¹⁵ The firm or professional group is responsible for developing self-regulatory instruments, monitoring compliance and ensuring enforcement.¹¹⁶ Examples of self-regulation include codes of practice; industry-based accreditation

standards/targets by a government authority that must be complied with. The ‘control’ part signifies the negative sanctions that may result from non-compliance.

¹¹¹ Hanne Foss Hansen and Lene Holm Pedersen, ‘The Dynamics of Regulatory Reform’ (2005) Stanford University, California, USA.

¹¹² Hansen and Holm (n111)

¹¹³ Glen Hepburn, ‘Alternatives To Traditional Regulation’ (OECD Report) < <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 7th November 2018.

¹¹⁴ Hepburn(n112); National Audit Office, *Using Alternatives To Regulation To Achieve Policy Objectives* (London, 2014) < <https://www.nao.org.uk/wp-content/uploads/2014/06/Using-alternatives-to-regulation-to-achieve-policy-objectives-1.pdf> > accessed 8th November 2018.

¹¹⁵ National Audit Office (n114).

¹¹⁶ As defined in Taskforce on Industry Self-Regulation Draft Report (2000) and Victorian Guide to Regulation 2007- Guidelines for the measurement of change in administrative burden, Department of Treasury and Finance; Ian Weber and James Johnson, ‘Media self-regulation in the Pacific Islands: a survey of media professionals’ (2016) Vol. 158(1) Media International Australia, 99–111.

arrangements; and voluntary adoption of standards. The specific types of instruments or mechanisms that may be created under a self-regulatory regime are similar under a co-regulatory framework, but co-regulation entails explicit government involvement. It is the degree of government involvement and legislative backing that determines the difference between these two. When used in the right circumstances these instruments can offer significant advantages over traditional command and control regulation, including greater flexibility and adaptability; potentially lower compliance and administrative costs; an ability to address industry-specific and consumer issues directly; and quick and low-cost complaints handling and dispute resolution mechanisms.¹¹⁷ Both self and co-regulatory approaches have the potential to be very efficient policy instruments because of their flexibility. They can be tailored to the specific issue they are designed to address and can change quickly in response to changing circumstances. However, there can also be negative consequences: there must be adequate protection in place to ensure that the regime is not captured by the industry or professional association and so promote narrow interests rather than the wider community interest.¹¹⁸

Market-based regulatory instruments act to change or modify behaviour through the economic incentives facing citizens and businesses.¹¹⁹ They primarily operate through changing relative prices or making trading opportunities available where they did not previously exist. Fiscal measures such as the use of taxes and subsidies are also commonly used market-based instruments. Taxes are often imposed on harmful activities to make them relatively more expensive. For example, in many countries, high tax rates are imposed on tobacco products to discourage their consumption. Alternatively, subsidies can be used to encourage production or consumption of activities or

¹¹⁷ Australian Government, 'Optimal Conditions for Effective Self and Co-Regulatory Arrangement' (June 2010) Occasional Paper < <https://www.acma.gov.au/-/media/Office-of-the-Chair/Report/pdf/ACMA-Self-and-CoRegulatory-Arrangements-Occasional-Paper-Optimal-Conditions-for-Effective-Self-and-CoRegulatory-Arrangements-June-2010.PDF?la=en> > accessed 7th November 2018.

¹¹⁸ Glen Hepburn, 'Alternatives To Traditional Regulation' (OECD Report),6 < <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 7th November 2018.

¹¹⁹ Glen Hepburn, 'Alternatives To Traditional Regulation' (OECD Report),5 < <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 7th November 2018 .

products which are considered desirable. The key advantage of market-based instruments is that they reflect decisions made by citizens and businesses in response to the incentives they face. The decisions taken will reflect the preferences of the individuals involved. The degree of government intervention involved in using market-based instruments to achieve policy objectives varies widely. In some cases, the instrument may involve very direct government intervention. The government is responsible for determining the overall objective of the policy. In addition, governments have an important role in establishing the regulatory and institutional environment within which market-based instruments operate. The challenge for governments and policymakers is to ensure that the framework of incentives created by the market-based instruments achieves the policies specified objectives. Market-based instruments have a long history in dealing with environmental problems and natural resource management issues, but not package travel business.

Another approach of regulatory intervention by requiring a specific type of information to be provided to the public also works to change behaviour.¹²⁰ The businesses and consumers can make more informed decisions when information is available to them.¹²¹ Information campaigns, labelling requirements, or requirements to disclose other information to the market are amongst the instrument of this approach. This type of instrument is not directly imposed legally binding rules on the behaviour of consumers or businesses. They may, however, impose quite stringent requirements on businesses to collect and disseminate information to the public that they may not otherwise have chosen to disclose, and this may impose compliance costs on the producer. In terms of their effectiveness, these information requirements often address clearly specified objectives and can be well integrated with other regulations.¹²² Information approaches are very flexible instruments in the

¹²⁰ Glen Hepburn, 'Alternatives To Traditional Regulation' (OECD Report),⁷ <
<https://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 7th November 2018.

¹²¹ OECD Reviews of Regulatory Reform: Brazil (2008).

¹²² Glen Hepburn, 'Alternatives To Traditional Regulation' (OECD Report) <
<http://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 10th September 2017.

sense that they do impose or require certain actions to achieve their objectives.¹²³

3.6 Information Regulation: A Particular Form of Intervention for Consumer Protection

Direct regulation has received many criticisms from the scholars so far due to its rigidity, costly and insufficient knowledge of government for implementation. In fact, a good deal of empirical evidence suggests that other approaches within regulatory framework particularly regulation by information is often more effective than direct government intervention.¹²⁴ However, this part will explore further how a specific measure of regulatory approach could protect the consumers. An explanation will be given on 'information regulation' by analysing the definitions made by academic scholars. In the process of justifying that regulating the information in relation to Umrah package travel could be the best consumer protective measure, this research evaluates the cost and benefits of information regulation.

Ogus¹²⁵, Baldwin, Scott and Hood¹²⁶ stress that intervention by information regulation is an approach that seeks to overcome the information deficit by providing a right to information which will minimize the consumers' detriment arising from the activities of rogue traders, scam operators and other businesses tempted to treat consumers unfairly.¹²⁷ An analysis done in the early consumer protection law emphasized that information regulation could

¹²³ Hepburn (n122)

¹²⁴ Majone (n80).

¹²⁵ *ibid* (n68).

¹²⁶ Robert Baldwin, Colin Scott and Christopher Hood, *A Reader On Regulation* (Oxford University Press, 1998).

¹²⁷ Office of Fair Trading, 'Government in Markets: Why Competition Matters – A Guide for Policymakers' <

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284451/OFT11_13.pdf > accessed 13 November 2015.

protect consumers against bad deals if they were adequately informed and capable of understanding the information they received.¹²⁸

3.6.1 Information Regulation: It's Notion and Role In the Context of Consumer Protection

Information regulation is recognised as a step to improve the level of information received by the less informed buyers to a greater extent than by those more sophisticated consumers who may already possess and be able to process the requisite information.¹²⁹ In some cases, it can be generated simply by removing some restraint on the flow of information. Otherwise, the only alternative is to somehow, affirmatively increase the amount of information available to consumers and perhaps, this alternative will improve the level of information provided by the traders to consumers. Traditionally, this has usually taken the form of a requirement for sellers to provide certain information to consumers at the pre-contractual stage, right after the conclusion of the contract as well as before the performance of a contract.

By requiring particular types of information to be made available to consumers, the law serves to bridge the information gap, permitting the consumers to choose between the different types of products in an informed manner and to know on what terms they are purchasing a product. The availability of relevant information is essential to all economic activity including Umrah package travel business. Information is a deciding factor for consumers when making their choices and affects both consumer interests and their confidence in the products and services circulating within the

¹²⁸ Gillian K. Hadfield, Robert Howse and Micheal J. Trebilcock, 'Information Based-Principles for Rethinking Consumer Protection Policy' (June 1998) Vol 21, Iss 2, Journal of Consumer Policy, 131-169. Two policies responses of information regulation through information provision and regulation (included statutorily mandated contract terms and greater legal intervention via statutory) could protect the consumers from bad deals.

¹²⁹ Patrick Xavier, 'Consumer Information Requirements and Telecommunications Regulation' (2008) Vol 24, Iss 5, The Information Society, 342-354.

market.¹³⁰ More particularly, consumers need three items of information about the product or service they are buying; information about the price, quality and the terms on which they are buying.¹³¹ Without knowing the price, cost, quality, availability, and the like, consumers cannot make rational and efficient decisions.¹³² Lack of information is a market imperfection that distorts otherwise efficient outcomes. Much government regulation attempts to correct this imperfection by gathering and disseminating information that otherwise would not be available to market actors at all or at a reasonable price. Filling any gap of information by information provision could safeguard the interests and welfare of consumers from economic, emotional as well as spiritual loss.

In addition, regulating the information provision in pursuit of public interest of consumers would be one of the bases of intervention though Mike Feintuck indicates that the public interest will always be a fragile basis for intervention, so long as it remains theoretically unspecified.¹³³ This approach seems as a precautionary measure that should be taken at the earlier stage before the customers enter into any contract with any traders.

3.6.2 Information Provision: Specific Technique of Information Regulation

Ultimately, it is not about how much information is provided but rather how appropriate and meaningful the information actually is. Information regulation could take place in many forms depending on the objectives that have been set up. Traditionally, there are three techniques (scoring system, consumer education efforts, required disclosure) to increase the amount of

¹³⁰ EUROPA, 'Consumer Information' < http://eur-lex.europa.eu/summary/chapter/consumers.html?root_default=SUM_1_CODED%3D09.SUM_2_CODED%3D0902&locale=en > accessed 13 April 2017.

¹³¹ Colin Scott and Julia Black, *Cranton's Consumer and the Law* (3rd edn, London Edinburgh Dublin: Butterworths, 2000).

¹³² Beales, Craswell, and Salop (n75).

¹³³ Mike Feintuck, 'Regulatory Rationales Beyond The Economic: In Search Of The Public Interest' in Robert Baldwin, Martin Cave and Martin Lodge, *The Oxford Handbook of Regulation* (Oxford University Press, Sept 2010) 39-63.

information available to the consumers.¹³⁴ Depending on the circumstances, any of these three techniques may represent the most efficient remedy. This research pays specific attention to the regulation through information as the most appropriate approach for protecting the interests of Umrah package travellers.

Provision of certain information is so common today and it also may be regarded as another form of regulation which stands on its own.¹³⁵ It requires more than just presenting a set of facts which it anticipates that the facts will be presented in a way in which they can be understood by the audience to which they are presented.¹³⁶ It goes on to specify the information that must be provided to the consumers in a document. It is presented here as an alternative regime¹³⁷ because it does not regulate the production processes, output, price, allocation of products, or otherwise restrict the influence of individual choice in the marketplace by banning of products or setting product standard as directly as the traditional regulatory forms do. What it does regulate the content, communication and dissemination of information through a less rigid approach which leaves consumers free to make their own choice.¹³⁸

It is also necessary to distinguish a duty to provide information from a duty to disclose information. It has been noted by Ruth Sefton-Green that where a person is under a duty to inform, the focus is on transparency towards that person's contracting partners, whereas a duty to disclose seems to assume that the person subject to such a duty has something to hide which this duty forces him to reveal.¹³⁹ Whilst the dividing line between the two circumstances may be a fine one, it is an important distinction to draw and one

¹³⁴ Ramsay (n53).

¹³⁵ Stephen Breyer, *Regulation and Its Reform* (Harvard University Press, 1982) 164; Cass R. Sunstein, 'Informational Regulation and Informational Standing: Akins and Beyond', (1999) Vol 147, No.3, University of Pennsylvania Law Review, 613-675.

¹³⁶ Linda Lanam, 'Consumer Disclosure as Consumer Protection' (2008) National Association of Insurance Commissioners, 7-10.

¹³⁷ Sunstein (n135); Breyer (n135).

¹³⁸ Beales, Craswell, and Salop (n72).

¹³⁹ R. Sefton-Green, 'General Introduction', in R. Sefton-Green (ed), *Mistake, Fraud and Duties to Inform* (Cambridge: Cambridge University Press, 2005).

that should not be ignored. It is, however, a distinction that is often blurred, and one may see reference to a 'pre-contractual duty to disclose information' when the main focus is simply on transparency, rather than enforced disclosure. It should also not be overstated, because even a simple obligation to provide information may cause a person to reveal something that he might have preferred to keep to himself and thereby become a duty of disclosure.

A duty to provide information, that is, the duty to enhance transparency by automatically providing certain items of information to the other party, builds on a different set of purposes. Even though this duty also has a relationship to the purpose of protecting real consent, here the focus obviously more generally is on equipping the other party for rational market behaviour. As duties to provide information are usually used in a protective manner, the underlying purpose of such rules is often also to contribute to substantive fairness of the contract. In addition, they may strive to uphold informational clarity. As there is not any natural moral duty behind the rules that could guide their application, they are often formulated in a detailed manner.

One of the classic reasons for adopting information provision as a specific measure for consumer protection is that consumers are insufficiently informed about all the relevant aspects of the transactions they may wish to enter into. Indeed, Ramsay seminally observed that 'imperfect consumer information is a fundamental rationale for consumer protection measures'.¹⁴⁰ It is therefore not surprising that the imposition of pre-contractual information duties has been a particularly popular tool in the consumer protection arsenal. The justification for this seems attractive in its simplicity: starting from the premise that the trader is better informed than the consumer, and that this informational imbalance should be corrected, an obligation is imposed on the seller to make available information which he possesses (or is assumed to possess) in order to redress this imbalance. Yet, this kind of reasoning is also deceptive. It presupposes that the trader is actually in possession of the information which the consumer might require, but this will not inevitably be

¹⁴⁰ Ramsay (n54).

the case in all circumstances. A requirement to provide information may impose a burden on the trader to collate such information first, which could impose a cost on the trader. In considering whether to impose a duty to provide information, the balance between benefiting consumers and increasing costs to traders is therefore relevant. The extent to which consumers may benefit is influenced by a range of factors.

3.6.3 Costs and Benefits of Information Regulation

The costs and benefits of intervention must be considered before a specific approach of intervention is adopted. Cost can be defined as any item that makes someone worse-off or reduces a person's well-being, and as such includes also those opportunities that are foregone because a particular policy measure has been implemented.¹⁴¹ The social cost has been suggested as the most comprehensive measure¹⁴² intended as a reduction of social welfare arising as a consequence of a legal rule. Simply put, social cost represents the total burden that a regulation will impose on the economy and is defined as the sum of all opportunity costs incurred as a result of a regulation, where an opportunity cost is a value lost to society of any goods and services that will not be produced and consumed as a result of a regulation.¹⁴³ There are three major categories of costs which should be assessed when evaluating the appropriateness of information regulation as a measure of consumer protection.

¹⁴¹ Andrea Renda, Lorna Schrefler, Giacomo Luchetta, Roberto Zavatta, 'Assessing The Costs And Benefits Of Regulation' (Brussels, 10 December 2013) 1-221.

¹⁴² Renda, Schrefler, Luchetta and Zavatta (n141).

¹⁴³ Department for Business, Energy & Industrial Strategy, 'Evaluating Costs and Benefits for Regulatory Purposes: Direct and Indirect Impacts of Regulation on Business' (April 2015) A Working Paper Prepared for the Regulatory Policy Committee and the Better Regulation Executive by Brian Titley Consulting Ltd <

https://regulatorypolicycommittee.weebly.com/uploads/7/8/8/5/78855130/direct_and_indirect_impacts_of_regulation_on_business_dec_2016_version.pdf > accessed 8th November 2018.

A compliance cost is referring to an expenditure of time or money in conforming with government requirements such as legislation or regulation.¹⁴⁴ For example, people or organizations registered for value-added tax have the extra burden of having to keep detailed records of all input tax and output tax to facilitate the completion of VAT returns.¹⁴⁵ This may necessitate them having to employ someone skilled in this field, which would be regarded as compliance cost. It normally includes all costs associated with obeying the law, including planning and administration, in addition to the direct time and money spent filing paperwork the affected firms' costs of complying¹⁴⁶ with the regulation. It borne not by the government budget but mostly by the regulated parties.¹⁴⁷ The regulated parties will comply with the regulation if the cost of penalties for noncompliance is lower. Scholarly evidence and regulatory best practice suggest that regulators should generally use mixes of regulatory styles or strategies to improve compliance, rather than relying on deterrence alone.¹⁴⁸

Furthermore, we also have to consider the costs of enforcing the remedy where legal rules have to be monitored and effectively enforced. Monitoring and enforcement are the final crucial steps in the implementation phase. Regulation that is not or insufficiently enforced, risks becoming impotent. Effective though not necessarily severe enforcement is, therefore, a necessary (but insufficient) condition for effective regulation. However, monitoring and enforcement are very costly, hence the need to weigh costs

¹⁴⁴ European Commission, 'Better Regulation' < http://ec.europa.eu/smart-regulation/guidelines/tool_52_en.htm > accessed 31st August 2018; CTI Reviews, Economics (8th edn, Content Technologies Inc., 2017).

¹⁴⁵ CTI Reviews (n144).

¹⁴⁶ Pierre Legrand Jr, 'Pre-Contractual Disclosure and Information: English and French Law Compared' (1986) Vol. 6, No. 3, Oxford Journal of Legal Studies, 322-352.

¹⁴⁷ David Levi-Faur, 'Regulation & Regulatory Governance' in David Levi-Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar, 2011).

¹⁴⁸ Neil Gunningham, Peter Grabosky, Peter N. Grabosky, Darren Sinclair, *Smart Regulation: Designing Environmental Policy* (Oxford, UK: Clarendon Press, 1998); Neil Gunningham & Richard Johnstone, *Regulating Workplace Safety: Systems and Sanctions* (Oxford, UK: Oxford Univ. Press, 1999); Peter J. May, 'Compliance Motivations: Perspectives of Farmers, Homebuilders, and Marine Facilities' (2005) Vol 27, Iss 2, Law & Policy, 317-347; Soren C. Winter & Peter J. May, 'Motivation for Compliance with Environmental Regulations' (2001) Vol 20, Iss 4, Journal of Policy Analysis and Management, 675-698.

and find cost-effective methods (e.g., the severity of punishment versus the probability of getting caught).

Monitoring costs include the costs of check-ups, inspections or data-analysis of observed behaviour. Whilst, enforcement costs comprise, for example, the inputs of the police and justice system. The volume of enforcement costs is heavily dependent on the regulatory system. Depending on the type of rule and the regulatory option chosen, enforcement might be very cheap or very costly for public authorities. For example, administrative fines tend to be less costly than penal fines. Enforcement cost covers one-off adaptation costs,¹⁴⁹ information costs and administrative burdens,¹⁵⁰ monitoring costs,¹⁵¹ pure enforcement costs,¹⁵² adjudication or litigation costs¹⁵³. There may be substantial differences in the cost of enforcement society bears if it intervenes at one stage rather than another. For example, prevention of an act may be cheaper than the sanctions to deter when the former can be accomplished by use of a physical barrier. But where prevention requires enforcement agents, prevention may be expensive relative to the use of sanctions (recall the example of preventing drivers from making improper turns). With regard to enforcement costs and act based versus act-harm-based sanctions, harm-based sanctions appear to possess an advantage in that they are applied less often, only when acts actually result in harm, rather than regardless of whether harm occurs.

¹⁴⁹ This is typically the case in which a new legal rule forces administrations to re-train their personnel or change equipment (e.g. buy personal computers, cars, etc.)

¹⁵⁰ These are the costs of gathering and collecting information needed to effectively monitor compliance. When these activities entail the production of information to be delivered to third parties according to a legal provision, they are called “administrative burdens”; however information costs can also be related to activities that are essential for carrying out enforcement actions, but do not entail any information obligation.

¹⁵¹ The cost of monitoring compliance with the legislation, e.g. patrolling streets, collecting statistics, etc.

¹⁵² These include the cost of running inspections, processing sanctions, handling complaints by the enforcing authority.

¹⁵³ These are the costs of using the legal system, or an alternative dispute resolution mechanism, to solve controversies generated by the new legal rule.

To a greater extent, the costs of any unintended side effects to buyers and sellers¹⁵⁴ also should bear reference in designing the most appropriate remedies. Unintended side effect costs may manifest in the form of inhibited business competitiveness, reduced investment, decreased competition, derailed economic growth, heightened job losses and an increased cost of doing business.¹⁵⁵ However, careful analysis of buyer and seller reactions to the regulation will often permit accurate prediction of these costs. For instance, if the costs associated with message development are increased by regulation, a seller will tend to avoid dissemination of this type of message. Thus, if comparison advertisements are required to disclose more detailed information than single product ads, it is probable that the number of comparative advertisements will be reduced since they are more heavily burdened. Since many consumer advocates view comparative ads as providing better information, the disclosure requirements in this example could be viewed as having deleterious side effects.

Meanwhile, benefits are defined as increases in human wellbeing or utility¹⁵⁶ which explicitly means that the benefits of information provision should include all the direct and indirect positive advantages generated to the society as a whole.¹⁵⁷ The identification of benefits is a long process during which all positively affected parties should be nominated presuming that the information provision will hold added value to their life, environment or wealth.¹⁵⁸ This information provision offers three broad benefits particularly enhancing information so that consumers can make an informed choice, modifying the behaviour traders as well as improving social welfare of the public in Malaysia.

¹⁵⁴ *ibid* (n18) Unintended side effect cost is also known as indirect cost.

¹⁵⁵ F.K. Sibanda, 'Regulatory Excess: The Role Of Regulatory Impact Assessment And The Competition Commission' (Conference on "Pro-Poor Regulation & Competition" University of Manchester, 7-9 September 2004) < <http://regulatoryreform.com/wp-content/uploads/2015/02/South-Africa-The-role-of-regulatory-impact-assessment-and-the-Competition-Commission-2004.pdf> > accessed 15th August 2018.

¹⁵⁶ OECD, *Cost – Benefit Analysis and the Environment Recent Developments* (OECD Publishing, 2006),

¹⁵⁷ Attila Gyorgy, Nicoleta Vintila And Florian Gaman, 'Quantifying Benefits For Cost-Benefit Analysis' Proceedings of the 8th International Management Conference (Management Challenges for Sustainable Development, November 6th-7th, 2014, Bucharest, Romania).

¹⁵⁸ Gyorgy, Vintila And Gaman (n157).

At first, information provision offers for better consumer protection in terms of consumer choice. The information must be provided before the contract is formed, example through a website, and then, after the contract is entered into, confirmed in a durable medium.

The complete information is valuable if it either results in a better outcome or has a significant probability of modifying behaviour. In an aggregate sense, information must result in some behaviour change for it to have any value. As examined before, the Umrah package travellers are prone to be cheated by the unscrupulous tour operators and travel agents due to their weaknesses in acquiring adequate and accurate information of Umrah package travel from the local tour operators and travel agents. However, by requiring the tour operators and travel agents to provide essential information about the Umrah package travels to the consumers, encourage the prospect travellers to acquire as much as information relevant to their Umrah package travels and help the Umrah package travellers to fully utilize and understand the information that they have before enter into a particular contract could protect themselves from any potential information vulnerabilities. This strategy is hoped to change the behaviour of local tour operators and travel agents in providing essential information to the Umrah package travellers and change the behaviour of Umrah package travellers in dealing with information provided to them.

Besides, essential information relating to Umrah package travel which should be provided by the tour operators and travel agents to the Umrah package travellers also could improve the social welfare of other Muslims in Malaysia. The information provision is not only an instrument that could protect the interests of Umrah package travellers, but it may help the other Muslims who are planning to perform the Umrah in future to be provided with the essential information before they agree to enter into any Umrah package contract. Each and every Umrah package travel might offer different accommodation and transportation services. But, there are several things that

are common between all Umrah package travels offer by the tour operators and travel agents. For instance, visa application, vaccination, places to be visited in Mecca and Medina as well as Mutawwif are amongst the things that should have in every Umrah package travel. By having general knowledge on that matter, it could help them from being victimised by the unscrupulous tour operators and travel agents.

This research would say that the benefits offered by information regulation (efficient choice, change consumer's behaviour and social welfare) do exceed the cost of compliance, enforcement, unintended side effect.

3.7 Conclusion

Consumers are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard. The former US President, John F. Kennedy delivers his special message to the Congress on Protecting the Consumer Interest;

‘[The] rights [of the consumer] include . . . the right to be informed—to be protected against fraudulent, deceitful, or grossly misleading information, . . . and to be given the facts he needs to make an informed choice.’¹⁵⁹

In this historic message, Kennedy identified four basic consumer rights; the right to be informed, the right to safety, the right to choose and the right to be heard.

As been discussed in Chapter Two of this thesis, Malaysian Umrah package travellers are vulnerable due to several factors such as different social, economy and education background. Malaysian Umrah package travellers come from the different level of ages; older, youngsters, children as

¹⁵⁹ Legrand (n146).

well as babies. Some of them are living in big cities while the rests are coming from rural areas. They have different financial status; high, middle and lower income. They also come from the different level of educational background; well-educated, poor and illiterate. Those who are well-educated, financially stable, living in a big city and young could get optimum access to detail information on Umrah package travel compared to uneducated, poor and older Umrah package travellers. Limitations of acquiring essential information on Umrah package travel and understanding information given¹⁶⁰ detriment the Umrah package travellers for making a good decision and protect themselves from unscrupulous tour operators and travel agents.

Consumers have the right to be informed with accurate and adequate information to make an informed choice, and to be protected against dishonest traders. Umrah package travellers relied so much on the pious men who act as the representative of local tour operators and travel agents. When they have been supplied with inadequate information about Umrah package travel, it exposes them to many risks including fraudulent packages and bad performance of services. In addition, without sufficient information acquired by the consumers, they unable to make efficient decision making. Moreover, they might suffer economic loss, emotional loss as well as spiritual loss. In other words, the consumers cannot contract in their own best interests.

Consumers are facing increasingly complex and wide-ranging threats, in particular from the rise in e-commerce. They need comprehensive protection in order to safeguard their interests from being exploited by the traders. In relation to the interests of Umrah package travellers in Malaysia, the researcher has explored private law as a measure for consumer protection. However, some limitations of private law have been highlighted which prevent it to comprehensively safeguard the interests of Malaysian Umrah package travellers.

¹⁶⁰ Peter Catwright, *Consumer Protection and The Criminal Law: Laws, Theory and Policy in United Kingdom* (Cambridge University Press, 2001).

In order to solve that problem, government regulatory intervention is carefully diagnosed to remove or reduce information imperfections, to facilitate the availability of information (describe the type of information that must be provided), as well as to help consumers evaluate the information that is being supplied. In respect to this research, government intervention could be used as a measure to minimize the economic, social, emotional as well as spiritual loss that might be suffered by the Umrah package travellers in the case where the unscrupulous tour operators and travel agents sell the fraudulent Umrah package travels. Government interventions have an impact on us all, both at home and workplace.¹⁶¹

Despite the view that using classical regulatory approaches such as command-and-control or product banning which is rigid, restrictive, and costly in nature, this research is opted to employ a particular regulatory approach that requires pre-contract information provision. This approach can be applied to a greater extent as to remove or reduce information imperfections and to facilitate the availability of information. In addition, it is desired to prescribe the type of information that must be provided, as well as to help consumers evaluate the choice available. In the earlier discussion, this research has determined to use a particular intervention by regulating the information that should be provided to the Umrah package travellers to protect their interests from any detriments. To be more specific in solving the problem facing by the Umrah package travellers, this chapter explores required information provision as a measure for protecting the interests of Umrah pilgrims. By carefully considering the costs and benefits of information regulation as a measure of consumer protection, it could be a great effort to protect the interests of consumers particularly the Umrah package travellers in Malaysia.

¹⁶¹ S.H.Bailey, *Cases, Materials and Commentary on Administrative Law* (4th edn, London: Sweet & Maxwell, 2003).

Chapter 4 : European Union (EU) and United Kingdom (UK) Protective Measure on Information Provision In The Sphere of Package Travel

4.1 Introduction

Tourism is the third largest socio activity in the European Union (EU)¹ and makes an important contribution of €669.5 billion to the EU's gross national product (GDP) in 2016.² With a rich cultural heritage and diversity, and comprising some of the largest destination and main source markets in the world, Europe continues to stand as the most visited region, welcoming half of the world's international tourist arrivals.³ Traditional package (pre-packaged deals containing several elements such as transportation and accommodation that are sold together, sold within same booking process and covered by one contract)⁴ is one of the contributors to the total travel market.⁵ Innovation in technology and processes in the travel industry have led to the popularisation of a new form of package travel being bought by the consumers. Nowadays, a majority of EU citizens (56% of holidaymakers across the EU organise their holidays themselves, rather than purchase pre-

¹ Maria Juul, 'Tourism and the European Union: Recent Trends and Policy Development' (September 2015) (European Parliamentary Research Service) 1 < [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/568343/EPRS_IDA\(2015\)568343_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/568343/EPRS_IDA(2015)568343_EN.pdf) > accessed 10th November 2018.

² World Travel and Tourism Council, 'Travel and Tourism: Economic Impact 2018 Europe' (March 2018) London: World Travel and Tourism Council, 1 < <https://www.wttc.org/-/media/files/reports/economic-impact-research/regions-2018/europelcu2018.pdf> > accessed 10th November 2018.

³ United Nation World Tourism Organization, *European Union Tourism Trends* (UNWTO) 5 < <https://www.e-unwto.org/doi/pdf/10.18111/9789284419470> > accessed 21st October 2018.

⁴ European Commission, 'Consumers: EU Set To Extend Holiday Travel Protection' < http://europa.eu/rapid/press-release_IP-09-1824_en.htm > accessed 16th August 2018

⁵ European Commission, 'Package Travel: Key Facts and Figures' < http://europa.eu/rapid/press-release_MEMO-09-524_en.htm > accessed 15th August 2018.

defined packages.⁶ Increasingly, a large volume of bookings is made by consumers who have put together their own packages (dynamic packages), where travellers themselves put together two or more services, such as flight and accommodation from one supplier or from commercially linked suppliers or websites offering packages with partner websites. Recently, the concept of linked travel arrangements (LTA) has been introduced in the EU and UK travel industry where travellers buy travel services from different traders in a separate contract but are linked.

The EU and UK tourism industry are developing due to the rapid changes in customers' lifestyle. New market trends and technical innovations, such as websites allowing EU travellers to put together their own customised travel arrangements, have created legal grey areas and uncertainty for both businesses and consumers.⁷ The continuous evolution of the EU and UK travel services market and in particular the development that took place in the online market in the last 10 years call for comprehensive protection framework. The purpose of this chapter is to critically analyse and evaluate the specific approaches employ by the EU and UK in relation to the information protection for the package travellers and to investigate whether that approach could be utilised to frame a new approach in Malaysia.

EU and UK have developed legal framework purposely for protecting the interests of package travellers through information paradigm. It is significant for having an overview of the EU legal framework which is exceptionally designed for the purpose of protecting package travellers. Therefore, it is useful to explore how the EU protect the interests of package travellers in terms of information, what are the approaches adopted by them and how they have developed the protection mechanism for package travellers until today. This chapter also going to answer a number of specific questions as below;

⁶ European Commission (n5).

⁷ European Commission, 'Package Travel Directive' < https://ec.europa.eu/info/law/law-topic/consumers/travel-and-timeshare-law/package-travel-directive_en > accessed 16th April 2018.

- a. Does the Directive (EU) 2015/2302 of the European Parliament and of the Council On Package Travel And Linked Travel Arrangements (PTD 2015) considers the element of adequacy and accuracy of information provision and is there any gap?
- b. Does PTD 2015 design any specific method in quantifying the adequacy of information and qualifying the accuracy of information?
- c. The extent to which the existing information provisions protect the EU package travellers?
- d. Is there any difference specifically on the level of information protection offer between the Package Travel Directive 90/314/EEC and PTD 2015?

EU Directive requires transposition into the domestic legal system of the Member States in order to become effective. Consequently, this chapter scrutinises how the EU Directive on the protection of package travel is implemented in the UK legislation, to what extent the existing legislation protects the UK package travellers, does the UK legislation copies out the EU Directive and do the UK Regulations provide a wider scope of protection compared to PTD 2015. Furthermore, this chapter pays special attention to the approach employs by the UK to protect their package travellers in terms of information as to know how the interests of UK travellers for relevant information is protected. Is it by the traditional regulation, information regulation, self-regulation, co-regulation or any other methods? This chapter also addresses the information that needs to be disclosed by the tour operators and travel agents to the UK package travellers and why specific information should be disclosed at a specific time to them.

An appropriate measure for law enforcement is vital as to deter the unscrupulous tour operators and travel agents selling package travels to the consumers without adequate and accurate information and compliance by the local tour operators and travel agents. Thus, this research examines how the EU and UK enforce their laws particularly on information provision and who is responsible to enforce those laws. This part also examines further the

consequences that might be faced by the organisers and retailers in the case where they fail to provide information as required by existing laws.

The last part of this chapter analyses how the EU Directives and UK set of regulations protect the EU and UK Umrah package travellers on information and more specifically examine whether the approach adopted by EU and UK could be employed for protecting the interests of Umrah package travellers in Malaysia. This part examines whether Umrah package travellers is within the protection of EU and UK laws. In order to answer that question, this research has to revisit the interpretation of package travel as given by the PTD 1990, PTD 2015, Package Travel, Package Holidays and Package Tours Regulations (PTRs) 1992, Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 and taking consideration on the concept of Umrah as discussed in Chapter Two. This step also exposes the strength and weakness of the existing legal framework in protecting the Umrah package travellers that may help this research in designing the best instrument to protect Malaysian Umrah package travellers.

4.2 The Protection of EU Package Travel Consumers: How It Evolved?

The Treaty of Rome (Treaty) was agreed in 1957 and entered into force in 1958 aimed to achieve integration via trade with a view to economic expansion.⁸ Six Member States including France, Germany, Italy, Belgium, The Netherlands and Luxembourg signed for that Treaty which established the European Economic Community (EEC).⁹ The Treaty of Rome did not provide a specific legal basis for consumer protection and it made only a few references

⁸ EUR-Lex, 'Treaty Establishing the European Economic Community, EEC Treaty - original text (non-consolidated version)' < <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Axy0023> > access 17 January 2016.

⁹ Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Ashgate Publishing Limited, 2005).

to the position of the consumer.¹⁰ Despite the limitations of that Treaty, the first action through political instruments and soft laws took place in the 1970s. Although consumer interests were gradually addressed by the EEC in the 1970s, it remained unclear whether the Community had the competence to take specific measures of consumer protection. Then, the European Community adopted the Council Resolution of 14 April 1975 on a Preliminary Programme of the EEC constituted the formal inauguration of a consumer protection and information policy.¹¹ This Preliminary Programme recognized that the needs of consumers required special consideration in the development of the EEC where it summed up consumer interests through a statement of five basic rights that transparently inspired by President Kennedy.¹² In the atmosphere which followed the launch of the Programme, many important legislative initiatives were proposed which eventually resulted in Directives relating to misleading advertising, safety of cosmetic, financial service, rules of protecting consumers of doorstep selling and a framework for labelling food adequately, clearly and uniformly.

The 1975 Resolution was followed in 1981 by the Council Resolution of 19 May 1981 on a second programme of the EEC for a consumer protection and information policy.¹³ In December 1991, the Member States agreed for a major revision to the structure of the system and the Treaty on European Union (TEU) at Maastricht in the Netherlands. The Maastricht Treaty amended important aspects of the EEC Treaty as provided in the Art 129A¹⁴

¹⁰ Katalin Judit Cseres, *Competition Law and Consumer Protection* (Kluwer Law International, 2005); 'Forty Years of EU Consumer Protection: Where Does It Stand Now?' (2015) Vol 42, Iss 3, Legal Issue Economic Integration, 195-200 < <https://www.kluwerlawonline.com/document.php?id=LEIE2015012> > accessed 2 Jan 2017.

¹¹ Jana Valant, 'Consumer Protection in the EU: Policy Overview' (September 2015) European Parliamentary Research Service < [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf) > accessed 10th November 2018.

¹² Five basic rights that followed President Kennedy's famous message to the US Congress in 1962: the right to protection of health and safety, the right to protection of economic interests, the right of redress, the right to information and education and the right of representation.

¹³ Stephen Weatherill, *EU Consumer Law and Policy* (2nd ed, Edward Elgar Publishing Limited, 2013)7.

¹⁴ Art 129A, Treaty of Rome:

"The Community shall contribute to the attainment of a high level of consumer protection through:

and renamed the EEC to the European Community (EC). In the 1990s, the EC started to develop comprehensive plans in the area of consumer policy and within short time intervals, several Directives on consumer protection were enacted such as Doorstep Selling Directive 85/577/EEC342, Consumer Credit Directive 87/102/EEC343, Package Travel Directive 90/314/EEC344, Unfair Terms in Consumer Contracts Directive 93/13/EEC345, Distance Selling Directive 97/7/EC346, Consumer Sales Directive 1999/44/EC347 and Service Directive 2006/123/EC348. All of the Directives were based on the basic consensus that the consumer, as weaker party in a contract, had to be protected by legal instruments.¹⁵

According to the Treaty on the Functioning of the European Union (TFEU), consumer protection issues are a shared competence of EU and the Member States. Article 169 TFEU defines specific objectives of the consumer protection policy:

‘ In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promote their right to information, education and to organize themselves in order to safeguard their interests’.¹⁶

In order to improve the level of protection and maximize harmonisation, the Commission carried out a review of consumer acquis in 2004 comprising of eight Directives (Sale of Consumer Goods and Guarantees, Unfair Contract Terms, Distance Selling, Doorstep Selling, Price Indication, Injunctions,

(a) measures adopted pursuant to Article 100A in the context of the completion of the internal market;

(b) specific action which supports and supplements the policy.

¹⁵ Heiningner, C-481/99 [2001] ECR I-9945, para 38; Hans M.Wolfgang, ‘The Targeted Full Harmonisation Approach: Looking Behind The Curtain in Geraint Howells and Reiner Schulze, *Modernising and Harmonising Consumer Contract Law* (Muhich, Sellier European Law Pub, 2009) 47, 83; Klaus Tonner and Kathleen Fangerow, ‘ Directive 2011/83/EU On Consumer Rights: A New Approach In European Consumer Law? (2012) Vol 1, Iss 2, *Journal of European Consumer and Market Law*, 67-80.

¹⁶ Art 169, Treaty on the Functioning of the European Union.

Package Travel, and Timeshare).¹⁷ The final proposal for a Directive on Consumer Rights encompassed only four of the previously reviewed Directives, namely the Distance Selling Directive, the Doorstep Selling Directive, the Unfair Terms in Consumer Contracts Directive and the Consumer Sales Directive. And finally, this proposal was once again cut to half, so that only the Distance Selling Directive and the Doorstep Selling Directive were included in the final version of the Consumer Rights Directive (CRD) 2011/83/EU. As a result, the CRD 2011/83/EU came into force on 12 December 2011 and implemented by the Member States by 13 December 2013.¹⁸

4.3 The Exclusion of Council Directive 90/314/EEC from CRD 2011/83/EU

The package travel sector was exempted from the scope of the CRD 2011/83/ because it was subjected to detailed and specific regulation under EU legislation¹⁹ which was Council Directive 90/314/EEC of 13 June 1990 on Package Travel, Package Holidays and Package Tours (PTD) 1990. The PTD 1990 has represented a major legislative change as for the first time there was a law specifically governing EU package travel industry.²⁰ Its aim was to approximate the laws and regulations of the Member States relating to the sale, or offer for sale of package travel and holidays. The Directive's objective was the establishment of safeguards for those on package travel, package

¹⁷ House of Lords, 'EU Consumer Rights Directive: Getting It Right-European Union Committee' <
<http://www.publications.parliament.uk/pa/ld200809/ldsselect/ldcom/126/12604.htm> >
accessed 28 April 2016.

¹⁸ European Commission, 'The Directive on Consumer Rights' <
http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm >
accessed 14 December 2016.

¹⁹ Recital (32) of the Consumer Rights Directive states that the 'existing Union legislation, inter alia, relating to consumer financial services, package travel, and timeshare contains numerous rules on consumer protection. For this reason, this Directive should not apply to contracts in those areas.'

²⁰ Tracy Hodiernne and David Botterill, 'The EC Travel Directive-for Better or Worse?' (1993) Vol 14, Iss 5, *Tourism Management*, 331-334.

holidays and package tours as well as to provide a legal framework which equally shares out the risks associated with tourism. This Directive provides 3 main protections for the consumers of package travel including information provision protection, performance protection as well as insolvency protection.

The tourism market in the EU has undergone considerable changes since the adoption of the PTD 90/314/EEC. According to European Federation of Travel Agents and Tour Operators Associations (ECTAA), consumer patterns have changed over the last 23 years, and new distribution channels have emerged due to the technological developments and the widespread usage of internet.²¹ Today, European consumers have access to multiple distribution channels from the classical paper brochure to mobile applications. Taking into consideration these market changes and the importance of information, the European Commission published a proposal for revision of the PTD 1990 in order to protect the consumers.²² In addition to traditional distribution chains, the internet has become an increasingly important medium through which travel services are offered or sold. Travel services are not only combined in the form of traditional pre-arranged packages, but are often combined in a customised way. Many of those combinations of travel services are either in a legal 'grey zone' or clearly not covered by Directive 90/314/EEC. The Commission proposed to replace the current PTD 1990 with a new directive which was intended to update consumer protection legislation as it applies to holiday arrangements to reflect the impact of technological

²¹ European Federation of Travel Agents and Tour Operators Associations, 'The Revision of the Package Travel Directive: ECTAA's Position Paper', Ref. BC13-086/4400 < <http://www.ectaa.org/files/cms/bc13-086-4400--revised.pdf> > accessed 14 June 2018.

²² Civil Aviation Authority, 'Proposal for a Directive on Package Travel and Assisted Travel Arrangements - Insolvency Implementers' View' (January 2014) Report on the outcome of a workshop held by implementers and enforcers of the Package Travel Directive CAP1147 < <https://publicapps.caa.co.uk/docs/33/CAP%201147%20Proposal%20for%20a%20Directive%20on%20Package%20Travel.pdf> > accessed 17th March 2018; European Commission, Proposal For A Directive Of The European Parliament And Of The Council on Package Travel and Assisted Travel Arrangements, Amending Regulation (EC) No 2006/2004 of the European Parliament and the Council and Directive 2011/83/EU and Repealing Council Directive 90/314/EEC (12 July 2013) < <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjedibuhr9oj> > accessed 10th November 2018; The European Travel Agents' and Tour Operators' Association (n21).

developments facilitated by the internet, and the emergence of low cost airlines.²³

In 2007, the Commission published a working document and consulted stakeholders on issues related to the PTD 1990.²⁴ The consultation showed strong support for a revision of the PTD 1990 which sought to identify the main regulatory problems in the area of package travel and it focused on possible ways of solving the identified problems.²⁵ It also aimed to quantify the impact of various possible legislative options.²⁶ The outcome of the consultation was presented in the summary of responses.²⁷ Later on, in January 2009, the Commission launched a 'Study on Consumer Detriment in the Area of Dynamic Packages'²⁸ focusing on the measurement of consumer detriment in the area of so-called dynamic packages. Against this background, the

²³ Department for Business Innovation and Skills, The European Commission's Proposal for A new Directive on package Travel and Assisted Travel Arrangement: Call for Evidence (Sept 2013) < <https://www.hbaa.org.uk/sites/default/files/bis-13-1153-european-directive-on-package-and-assisted-travel.pdf> > accessed 14th January 2018.

²⁴ European Commission, 'Package Travel' < http://ec.europa.eu/consumers/consumer_rights/travel/package/index_en.htm > accessed 13 March 2016; Working Document on the Council Directive 90/314/EEC of 13 June 1990 on Package Travel, Package Holidays and Package Tours (Brussels, 26 July 2007) < https://www.travellawquarterly.co.uk/wp-content/uploads/resources/working_document_on_the_Council_Directive_90-314-EEC_on_package_travel.pdf > accessed 15 February 2018.

²⁵ European Commission, 'Consumers: EU Set To Extend Holiday Travel Protection' < http://europa.eu/rapid/press-release_IP-09-1824_en.htm > accessed 15th August 2018. 6 issues that have been identified for review were; 1) the scope of package travel directive 2) information 3) Liability for substandard services and assistance for consumers 4) contract changes 5) insolvency and 6) travel protection label.

²⁶ European Commission, 'Package Travel Rights: Commission Examines Options' < http://europa.eu/rapid/press-release_MEMO-13-42_en.htm > accessed 13 March 2016.

²⁷ The International Forum of Travel and Tourism Advocates (IFTTA), 'European Union: Summary of Responses to the Consultation on the Council Directive 90/314/EEC' < <https://iftta.org/content/european-union-summary-responses-consultation-council-directive-90314eec> > accessed 21st October 2018. The commission published a summary on the basis of the contributions to the Working document that was published on the SANCO web page in July 2007. All replies sent in until mid November have been considered. 65 responses were received of which 12 from Member States, 1 from an EFTA state, 29 from business stakeholders, 20 from consumers stakeholders and 3 from academics/private persons.

²⁸ European Commission, 'Package Travel Directive' < http://ec.europa.eu/justice/newsroom/consumer-marketing/opinion/091101_en.htm > accessed 12 March 2016.

Commission launched a public consultation on the revision of the Directive in November 2009.²⁹

The Commission held a further conference with stakeholders and Member States on the revision of the PTD 1990 on 5 June 2012³⁰ and later on, on 9 July 2013, the Commission made a proposal for a revised Directive on 'Package Holidays and Assisted Travel Arrangements'³¹ which received the support of the European Parliament in March 2014. In between of February and May 2015, negotiations took place between the Council and the European Parliament, facilitated by the Commission.³² On 28 May 2015 the EU Council backed the new Package Travel Directive.³³ The Directive (EU) 2015/2302 of the European Parliament and of the Council On Package Travel And Linked Travel Arrangements (PTD 2015) was adopted on 25 November 2015, bringing it up to date with the developments in the travel market.³⁴ The PTD 2015 is a maximum harmonisation measure which has been adopted in EU as to provide additional protection to the travellers who are purchasing package travels from the tour operators or travel agents. The PTD 2015 was entered into force on 31 December, 20 days after its publication. The Member States were obliged to transpose it by 1 January 2018 and they shall apply the transposition measures from 1 July 2018. By the same date, the PTD 1990 was repealed.

²⁹ European Commission, Commission Acts To Improve Consumer Rights For 120 Million Holiday Makers < http://europa.eu/rapid/press-release_IP-13-663_en.htm > accessed 12 March 2016.

³⁰ European Commission (n24).

³¹ *ibid* (n24).

³² *ibid* (n24).

³³ *ibid* (n24).

³⁴ *ibid* (n24).

4.4 EU Directives: Specific Protective Instrument for EU Package Travellers

A comparison between the PTD 1990 and PTD 2015 is vital for identifying the development of protection designed by the EU Commission for package travellers. Additional protection specifically on the information provision provided by the PTD 2015 also requires further examination.

4.4.1 Information Provision Requirement by the Council Directive 90/314/EEC of 13 June 1990 on Package Travel, Package Holidays and Package Tours (PTD): Does It Comprehensively Protect the EU Package Travellers?

The PTD 1990 was adopted as an instrument for protecting the interests of EU package travellers for having adequate and accurate information from the organiser and retailer. By virtue of Article 2(2) of PTD 1990, an organiser is a person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer. On the other hand, a retailer is defined as a person who sells or offers for sale the package put together by the organizer.³⁵ According to the PTD 1990, the organisers and/or retailers should under obligations to ensure that any descriptive matter concerning a package, the price of the package and any other conditions applying to the contract, supplied by any means, must not contain any misleading information.³⁶ Misleading information can relate to the products being sold but also such matters as the price, the sales process, the business itself or the consumers' rights. It can happen by omitting material information, hiding information or presenting information in an unclear, unintelligible, ambiguous or untimely manner at the pre-contractual stage.

³⁵ Art 2(3), Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC).

³⁶ Art 3, Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC).

When the organisers and/retailers provide a brochure to the consumers, they are required to provide the consumers adequate information concerning the destination, transportation, accommodation, meal plan, itinerary of the trip, passport and visa requirement as well as timetable for payment.³⁷ Furthermore, according to Article 4(1) (a) of PTD 1990, the organisers and retailers are obliged to provide the consumers with the general information on passport and visa requirements, information on the health formalities required for the journey either in writing or other appropriate forms before the contract is concluded. The organisers and retailers should also provide the consumers with essential information in good time before the journey starts.³⁸

4.4.2 How Does Directive (EU) 2015/2302 of the European Parliament and of the Council on Package Travel and Linked Travel Arrangements (PTD) 2015 Define the Concept of Package Travel?

The PTD 2015 modernises the 1990 PTD, in particular by expanding its scope to certain dynamic packages as well as stipulating detail information provision for transparency enhancement. Previously, the concept of package travel is restricted to the pre-arranged combination of at least two of the following components (accommodation, transport or other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package) sold or offered for sale at an inclusive price and the service covers a period of more than twenty-four hours or includes overnight accommodation.³⁹ Things are going to be different now, however. The

³⁷ Art 3(2), Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC).

³⁸ Art 4(1)(b), Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC). The general information that is required to be provided by the organiser and retailer can be referred further in the Appendix.

³⁹ Art 2, Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC).

concept of a package has been widened by the implementation of the new Directive.⁴⁰

Article 3(2) of PTD 2015 provides that:

‘package means a combination of at least two different types of travel services for the purpose of the same trip or holiday...’

This provision does not restrict the scope of a package to cover the combination of travel services for holiday purposes only, but the word ‘trip’ as stated in the above provisions generally can be interpreted as any journey for a short period for other purposes including business. According to Recital 7 of PTD 2015, this Directive also should be applied to any trip for business or profession, but not for travel arrangements on the basis of general agreement.

Under Article 3 of the PTD 2015, there are no less than six ways in which what a trader sells will be a package if at least two travel services are combined. In accordance to the judgment of the case of the Club Tour,⁴¹ the ECJ court decided that it should make no difference whether travel services are combined before any contract with the customer or at the request of or in accordance with the selection made by the customer. In the case where the travel services combined after the conclusion of a contract by which the traders entitles a traveller to choose among a selection of different types of travel services, such as in the case of holiday gift box⁴², still can be constituted as a package. Moreover, a combination of travel services should be considered to be a package when the customer’s name, payment details and

⁴⁰ Commission for Aviation Regulation, ‘Transposition of Directive (EU) 2015 2302 on Package Travel and Linked Travel Arrangements’ (March 2018) Commission Paper 5/2018 < <https://www.aviationreg.ie/fileupload/2018/Transposition%20of%20EU%20Directive%202302%20of%202015%20on%20package%20travel%20and%20linked%20travel%20arrangements.pdf> > accessed 9th August 2018.

⁴¹ Club Tour, Viagens e Turismo SA v Alberto Carlos Lobo Goncalves Garrido and Club Med Viagens Lda, C-400/00, ECLI:EU:C:2002:272.

⁴² European Commission, ‘Proposal For A Directive Of The European Parliament And Of The Council On Package Travel And Assisted Travel Arrangements, Amending Regulation (EE) No 2006/2004, Directive 2011/83/EU And Repealing Council Directive 90/314/EEC’ < http://ec.europa.eu/justice/consumer-marketing/files/com_2013_512_en.pdf > accessed 16 March 2017. Holiday gift box is referred to a holiday package which consist of at least two different type of travel services offered by the organisers or retailers which allows the vacationer to choose further element in a later date.

email address are transmitted between the two websites, and the customer books the second service within 24 hours of the first.⁴³

Furthermore, Article 3 (2) of the PTD 2015 illustrates that the concept of package travel covers broader area than before where it would not just encompass all holidays which include two or more travel services (transport, accommodation, car hire and other tourist services) that are booked under a single contract with an organiser or a retailer, but it also includes holidays where the services are booked with separate suppliers where the customers select the travel services from one shop, call centre or website (including through a travel agent) before agreeing to pay. Article 3(2)(a) of PTD 2015 implies that combination of travel services tailor made according to the needs of the customers (or also known as tailor-made or dynamic packages) has been recognised as a part of packages. In addition, as clearly defined by Article 3(2)(b)(v), a contract of linked travel arrangement also constitutes a new form of packages covered by PTD 2015. In other words, the definition of package travel by PTD 2015 is extended to cover traditional pre-arranged package, dynamic package as well as linked travel arrangement.

4.4.3 Information Provisions Protection By Directive (EU) 2015/2302 of the European Parliament and of the Council on Package Travel and Linked Travel Arrangements (PTD) 2015.

This new Directive contributes for high level of consumer protection by concentrating certain aspects including information provision, performance and insolvency in respect of contracts between package travellers and traders (organisers, retailers, trader facilitating linked travel arrangements or travel service provider) relating to package travel and linked travel arrangements ⁴⁴

⁴³ Recital 11, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁴⁴ Art 3, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements defines a traveller as any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of this Directive. The majority of travellers buying packages or linked travel

which is expected to reduce detriment to consumers. This part is going to examine the scope of protection provided by the new PTD 2015 through examining its differences compared to PTD 1990.

4.4.3.1 Measurement of Information Accuracy and Adequacy

Article 3(2) of PTD 1990 clearly required the organisers and/or retailers to provide adequate information in accurate manners when the brochure is made available to the consumers. However, there is no provision of PTD 2015 that requires information to be accurate. But, it has been highlighted in Article 7(4) of PTD 2015 that all pre-contractual information supplied by the tour operators and travel agents must be legible, clear, comprehensible and prominent manner. This means that the information should not be ambiguous, must be precise and must be reasonable to avoid leaving room for different interpretation.

Then how to evaluate the information provided by organisers or retailers is adequate? In order to reduce any risk that may be detrimental to consumers' interests due to inadequate and inaccurate information, the PTD 2015 imposes new information requirements that must be observed by the organisers and retailers at the pre-contractual stage. The organisers and retailers must provide all standard information to the package travellers as well as dynamic package consumers concluded either by traditional pre-arranged,⁴⁵ telephone,⁴⁶ and linked travel arrangement⁴⁷ as outlined in Article 5(1)(a) of PTD 2015. Amongst the information that should be provided are the main characteristics of the travel services, trading name and geographical

arrangements are consumers within the meaning of Union consumer law. For the purpose of this research, the researcher will use the word tourists, pilgrims and travellers interchangeably as to refer to the consumers who are buying package travels from the local tour operators or travel agents.

⁴⁵ Part A or Part B of Annexe I, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁴⁶ Part B of Annexe 1, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁴⁷ Part C of Annexe 1, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

address of the organiser, total price of the package inclusive of taxes, arrangements for payment, minimum number of persons required for the package to take place and the time-limit, general information on passport and visa requirements, termination of the contract at any time before the start of the package in return for payment of an appropriate termination fee and insurance to cover the cost of termination of the contract by the traveller.

4.4.3.2 The Extent to Which the PTD 2015 Protects Package Travellers Through the Provision of Information?

The PTD 2015 outlines 3 stages of information that should be provided by the organisers and/or retailers to the package travel consumers; at the pre-contractual stage, before the package travel starts and when the contract is concluded.⁴⁸ In order to increase clarity for consumers and enable them to make informed choices as to the different types of travel arrangements on offer, organisers or retailers are required to state clearly and prominently whether they are offering a package or a linked travel arrangement, and provide information on the corresponding level of protection at the pre-contractual stage.

The PTD 2015 protects the package travellers right before the package travels is started. It can be evidenced when the organisers and/or retailers are required to provide a copy of confirmation of the contract which set out all of the information as highlighted in the Article 5(1) points (a) to (h) and Article 7(2) points (a) to (h). In addition, the organisers and/or retailers shall provide the travellers with the necessary receipts, vouchers and tickets, information on the schedule times of departure, the deadline for check-in, as well as the scheduled times for intermediate stops, transport connections and arrivals.⁴⁹ Since packages are often purchased a long time before their performance, unforeseen events may occur. Therefore the travellers should, under certain

⁴⁸ Art 5, Art 7 and Art 16, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁴⁹ Art 7(5), Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

conditions, be entitled to transfer a package travel contract to another person, where the organisers and/or retailers should inform the transferor about the actual cost of the transfer.⁵⁰ Moreover, the organisers and/or retailers may not unilaterally change package travel contract terms other than the price in accordance with Article 10 of PTD 2015, unless they inform the consumers of the change in a clear, comprehensible and prominent manner on a durable medium. Information on any changes made by the organisers and/or retailers which affect the term of the contract is important to be disclosed to the consumers as to protect them from suffering any loss later on.⁵¹

From the earlier discussion, it illustrates that although the scope of the PTD 2015 has been enlarged compared to the PTD 1990, the extent of the information obligations imposed on organisers and/or retailers as such has not changed very much. This could signal that this information obligation has functioned well since the implementation of the PTD 1990.

4.4.3.3 Gaps in the Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements

One of the gaps that have been found by this research is on the list of information that should be provided by the organisers and/ retailers to the package travellers as well as linked travel arrangements consumers. There is no single provision in PTD 2015 which require the organisers and retailers to provide any information and warn on the terrorist threat to the package travellers at the pre-contractual stage or before the journey starts. However, this research would argue that information on the terrorist threat is vital to be provided by the organisers and retailers because the safety of tourism destination is amongst the main concern of package travellers and very crucial

⁵⁰ Preamble (30) and Art 9, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁵¹ Art 11(1)(c), Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

for their personal safety. This shortcoming may detriment the safety of EU package travellers and place them at high risk.

Global terrorism is less of a threat when the PTD 1990 was created. However, the situation is different nowadays where attacks are everywhere. The attacks of 11st September 2001 known as 9/11, marked a turning point in world history and the beginning of the 'War on Terror'.⁵² The subsequent war on terror led to the invasion of Afghanistan in 2001 and Iraq in 2003. Terrorism post 9/11 has been concentrated in predominantly Muslim countries as a result of radical Islam ideologies.⁵³ In 2017, militants conducted 22,487 attacks worldwide according to the annual Jane's Terrorism and Insurgency Centre (JTIC) Global Attack Index.⁵⁴

In the past few years, suicide bombers and terrorist groups have targeted specific areas and arenas that gave them a world stage and a chance to strike travel at its heart. There were attacks in a commercial area of Jakarta frequented by tourists and expats, tourist attraction destination for holidays such as in Tunisia,⁵⁵ Turkey,⁵⁶ Pakistan,⁵⁷ Burkino Faso,⁵⁸ Paris,⁵⁹ Brussels,⁶⁰

⁵² Max Roser, Mohamed Nagdy and Hannah Ritchie, 'Terrorism' < <https://ourworldindata.org/terrorism> > accessed 16th August 2018.

⁵³ Roser, Mohamed and Ritchie (n52).

⁵⁴ HIC Markit, 'Attacks in 2017 down 7.1% on 2016' < <https://ihsmarkit.com/Info/0317/2017-global-attack-index.html> > accessed 15th August 2018.

⁵⁵ The Telegraph, 'Tunisia beach massacre: Report questioned security at Sousse hotel before terror attack, inquest hears' < <http://www.telegraph.co.uk/news/2017/01/17/tunisia-beach-massacre-report-questioned-security-sousse-hotel/> > accessed 25 February 2017. The shooting accident by a gunman on 2016 killed thirty Britons who are holidaymakers on a Tunisian beach.

⁵⁶ Mario Ledwith and Mark Palmer, 'Warning Over Threat to British Tourists in Turkey: Further Attacks Are Likely After Airport Bombers Kill 42, Say Officials' < <http://www.dailymail.co.uk/news/article-3666964/Warning-threat-British-tourists-Turkey-attacks-likely-airport-bombers-kill-42-say-officials.html> > accessed on 16 February 2017.

Three suicide bombers opened fire on terrified passengers at the Turkey's Ataturk Airport before blowing themselves up, in which 42 died and 239 were injured.

⁵⁷ Tom Bathcelor, 'Egyptian Pyramids Bombing - Six Dead in Attack Near Major Tourist Attraction' < <http://www.express.co.uk/news/world/741644/Egypt-Giza-Great-Pyramids-bombing-dead-attack-entrance-tourist-attraction> > accessed 17 February 2017. A least six people have been killed in a bomb attack on a road leading to the Great Pyramid of Giza - a tourist attraction popular with British holidaymakers. The explosion appeared to have come from a rubbish bin in Cairo along a route used to access the entrance to the world heritage site, which lies in a western suburb of the capital. Giza, one of the seven wonders of the world and the only one to remain largely intact, welcomes thousands of British tourists every year.

and the Ivory Coast⁶¹. Meanwhile, the safety of tourists who are travelling to the holy places for religious purposes also insecure when Yemeni rebels did a ballistic missile attack on Mecca in 2016. Those attacks killed many people including pilgrims, scared off thousand pilgrims and threaten the pilgrims' safety.

Thereupon, British holidaymakers picked safer destinations such as Spain and Greece over France and other terrorism-struck countries such as Turkey, Egypt and Tunisia.⁶² In January 2016, a survey by Travelzoo, a travel deals site, found that 30 percent of UK travellers rate the general safety and security of a destination as the most important factor when deciding where to go on holiday.⁶³ In the inquests into the Tunisian shootings, the question of whether the travel operator gave adequate warnings about terrorist threats to the consumers has been raised up. Lawyers representing families of 20 of the Britons who died are to accuse TUI of "practically hiding and keeping out of the limelight" FCO warnings about terrorism in Tunisia.⁶⁴

Secondly, this research found that the concept of vulnerability as defined by PTD 2015 is very limited when the concept of vulnerability is

⁵⁸ Tom Wyke, 'Terror in Burkina Faso: Al Qaeda Jihadists - Including Two Female Fighters - Are Killed After Murdering 28 People From 18 Different Countries As Commandos Storm Hotel And Rescue Hostages' < <http://www.dailymail.co.uk/news/article-3401845/Reports-explosion-gun-battles-upmarket-tourist-hotel-capital-Burkina-Faso.html> > accessed 17 February 2017. A 15-hour terror attack by four jihadists at a luxury hotel in Burkina Faso killed 28 people from 18 different countries. As many as 33 of the 156 survivors were also wounded during the attack.

⁵⁹ Zlata Rodionova, 'Paris Loses £644m As Tourists Steer Clear Of The City After Terror Attacks' < <http://www.independent.co.uk/news/business/news/paris-isis-tourism-attacks-impact-money-lost-aftermath-a7205121.html> > accessed 16 February 2017. [130 people were killed in Paris](#) in November 2015. Days after Euro football championship in July, a gunman drove a truck into crowd celebrating in Riviera Resort City of Nice killed 86 people.

⁶⁰ Rodionova (n59); The Guardian, 'Terrorism Fears See UK Tourists Opting For 'Safer' Holiday Destinations' < <https://www.theguardian.com/travel/2016/jan/27/terrorism-fears-see-uk-tourists-opting-for-safer-holiday-destinations> > accessed 15 February 2017.

⁶¹ BBC, 'Ivory Coast: 16 Dead In Grand Bassam Beach Resort Attack' < <http://www.bbc.co.uk/news/world-africa-35798502> > accessed 25 February 2017.

⁶² The Guardian, 'Terrorism Fears See UK Tourists Opting For 'Safer' Holiday Destinations' < <https://www.theguardian.com/travel/2016/jan/27/terrorism-fears-see-uk-tourists-opting-for-safer-holiday-destinations> > accessed 15 February 2017.

⁶³ The Guardian (n62).

⁶⁴ The Guardian, 'Tunisia Terror Attack : Inquest To Resume With Tui Under Scrutiny' < <https://www.theguardian.com/law/2017/jan/15/tunisia-terror-attack-inquests-resume-tui-sousse-mass-shooting> > accessed 26 February 2017.

mainly concerned on age and physical mobility. For a certain type of tourism, the concept of vulnerability might be wider than interpreted by the PTD 2015 and should not be restricted for consumers with reduced mobility. As discussed in Chapter Three of this research, a vulnerable consumer might include physically old, disabled, poor, illiterate, uneducated as well as sick people. Furthermore, in Islam, women are considered as a vulnerable group of people and need to have mahram (male relative with whom she is permanently forbidden to marry because of blood ties, breastfeeding or tie through marriage) companions while travelling. The concept of vulnerability has been recognised by Islam with the specific intention of protecting the honour of women, their dignity and reputation. Hence, when a Muslim woman plans to perform Umrah and decides to purchase Umrah package travel, the organisers and/or retailers should provide information about the requirement ruled out by Saudi Arabia which requires woman pilgrims below than 45 years old to perform Umrah with her mahram.

This research believes that the concept of vulnerability should be wider than interpreted by the existing PTD 2015, but it fails to address this matter. By expanding the concept of vulnerability to include woman, poor, illiterate, uneducated etc., it will provide better protection to package travellers including Umrah package travellers and help to deal with specific issues of Umrah travellers.

4.4.4 Pre-contractual Information Obligations under Unfair Commercial Practices Directive (UCPD) 2005.

Information relating to package travel is required or must comply with the UCPD 2005, and for some extent these 2 directives should be read together. The UCPD 2005 protects consumers from the consequences of such unfair commercial practices including misleading actions and aggressive practices. In addition to the information provision of PTD 2015 which requires the organisers and/or retailers to provide essential information in relation to the package travel to the consumers, they are also under the obligation to

provide material information (including the main characteristics of the product, geographical address and identity of the trader, the price including tax of the product, the arrangement for payment, delivery, performance etc.) to the consumers as set out in Article 7 paragraph 4 of UCPD 2005 when there is an 'invitation to purchase'. According to Article 2(i) of the UCPD 2005, an invitation to purchase means 'a commercial communication, which indicates characteristic of the product and the price in a way appropriate to the means of the commercial communication used, and thereby enables the consumer to make a purchase'. The European Court of Justice has clarified that such an invitation to purchase exists as soon as the information on the advertised product and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product, or for it to appear in connection with such an opportunity.⁶⁵ Since the contact details are needed to clearly establish the identity of the organisers and/or retailers to the contract and it seems likely that a cautious consumer would value this information, in order to decide whether she wishes to conclude a contract with this particular organiser or retailer, the omission of the contact details in an invitation to purchase indeed constitutes a misleading omission.

This means that as soon as the combination of the characteristics of the package travel and the price is sufficiently clear for the consumers to make their decision whether or not to conclude the contract, any information which is considered to be 'material' must be made available to the consumers. Where this information is not provided to the consumers, this is considered to be a misleading omission, if the average consumers would need this information in order to make a transactional decision. Similarly, Article 7(5) of UCPD 2005 adds that information requirements established by Community law in relation to commercial communication including advertising or marketing are considered as material.

⁶⁵ *Konsumentombudsmannen v Ving Sverige AB* (C122/10); [2011] WLR (D) 181.

In the non-exhaustive list of Annex II of the UCPD 2005, the information requirements of Article 3 of the PTD 1990 – including the obligation to inform the consumers of passport and visa requirements – are expressly listed. Moreover, in the *Ving Sverige*-case,⁶⁶ the Court of Justice explicitly stated that the information listed in Article 3 of the PTD 1990 is to be considered as essential information and, therefore, must be disclosed at the stage of the invitation to purchase. This implies that the information as to passport and visa requirements is to be regarded as material information that must be disclosed to the consumers when the organisers and/or retailers give the consumers an invitation to purchase. Therefore, it signifies its importance to the consumers' decision whether or not to conclude the contract. The omission of such information will constitute a misleading and, therefore, unfair commercial practice.

4.5 The Package Travel and Linked Travel Arrangements Regulations 2018: Safeguard the Interests of UK Package Travellers For Adequate and Accurate Information.

In order to protect the interests of consumers who are buying package travels from the tour operators and travel agents, UK implemented the PTD 1990 by introducing the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992 No. 3288) (PTRs) in December 1992. However, it was badly criticised due to a restrictive definition of packages and limited protection covered by this regulation which detriment the rights of consumers in consequence. This research found that the concept of package travel as defined by the PTRs 1992 was very restrictive and provide limited protection.⁶⁷ The PTRs 1992 was seem outdated with the current changes of

⁶⁶ [2011] WLR (D) 181 (n65).

⁶⁷ Bruce Treloar, '10-Step Guide: The Package Travel and Linked Travel Arrangement Regulation 2018' < <http://www.journaloftradingstandards.co.uk/wp-content/uploads/2018/08/PTR-10-step-guide.pdf> > accessed 10th November 2018.

the UK tourism industry where it did not cover any type of package travel other than traditional pre-arranged and tailor-made package travel. When the type of package recognised by the PTRs 1992 was only limited to pre-arranged package travel and tailor-made package travel, it affects the boundary of protection. Consumers who were purchasing package travel from the UK organisers and/or retailers through their website also need for protection same like those who were purchasing package travel through a brochure. The table below indicates that the share of holidays booked via the internet is increasing, but also indicates that a larger number of package holidays are still booked in retail travel agent outlets.

	2005/06	2006/07	2007/08	2008/09	2009/10
Internet booking	4.4	4.8	4.9	4.6	4.4
Booking at the outlet	8.2	7.9	7.3	6.7	6.3
Total Package holiday	19.1	18.8	18.1	15.1	14.0
% PAX online	23.1	25.8	27.0	30.3	31.2
% PAX outlet	42.8	42.0	40.4	44.0	45.1

Table 1: Overall Passengers (PAX) for Bookings in Retail Travel Agent Outlets and Online⁶⁸

In 2015 the EU published the final version of Package Travel Directive 2015/2302. It requires the Member States to have their implementing regulations in place by 1st January 2018, and those Regulations must come into force on 1st July 2018. This is primarily a maximum harmonization directive where the national regulation cannot vary. In June 2016 the UK voted to leave the EU and in July 2016 the UK government confirmed it will conduct the UK exit, colloquially known as Brexit. The UK remains a member of the EU until Article 50⁶⁹ negotiations is concluded. The outcome of the negotiations for leaving the EU will determine the future arrangements that will

⁶⁸ Thomas Cook/ Co-operative Group/Midland Co-operative 'A Report on the Anticipated Travel Business Joint Venture Between Thomas Cook Group Plc, The Co-operative Group Limited and the Midlands Co-operative Society Limited' (Competition Commission, 2011) 18.

⁶⁹ Art 50, the Lisbon Treaty.

apply, in relation to EU legislation, when the UK has exited the EU. However, up to this date, the existing legislations by which EU law is brought into the body of UK law remain in force and not known yet whether likely to be repealed or not. In other words, the application of UK legislations that control the tourism industry and protect the UK tourists which derived from EU directives will remain as before.

In August 2017, the UK set out a proposal for transposing the requirements of the new PTD 2015 which has been introduced to update the PTD 1990. This proposal also pays a specific concern on the information requirements. The new broadened scope is underpinned by information requirements that will enable travellers to clearly identify whether they are being offered a package or not, as well as the corresponding level of protection. These new requirements will help travellers make informed choices and are particularly useful in a market where certain packages have financial protection and repatriation provided, but other products do not. The UK government finally published its new Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018. As from 1st July 2018, the new PTRs 2018 came into force and replaces the PTRs 1992.

4.5.1 PTRs 2018: Mechanism for Protecting UK Package Travellers

PTRs 2018 implement the 2015 PTD and provide important protection for package travellers to cover unique characteristics of package holidays. Under the 2018 PTRs, a traveller can be any individual, and can include some business travellers. The definition of traveller is therefore wider than that of 'consumer' in other consumer legislation.

The Regulations apply to packages and linked travel arrangements (LTAs) sold or offered for sale by traders to travellers throughout the United

Kingdom.⁷⁰ According to Regulation 2(5) of PTRs 2018, package is defined as;

‘a combination of at least two different types of travel services for the purpose of the same trip or holiday, if—

(a) those services are combined by one trader, including at the request of, or in accordance with, the selection of the traveller, before a single contract on all services is concluded; or

(b) those services are—

(i) purchased from a single point of sale and selected before the traveller agrees to pay,

(ii) offered, sold or charged at an inclusive or total price,

(iii) advertised or sold under the term “package” or under a similar term,

(iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or

(v) purchased from separate traders through linked online booking processes where—

(aa) the traveller’s name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders, and

(bb) a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service, irrespective of whether the traveller concludes separate contracts with one or more travel service providers in respect of the services’.

The UK PTRs 2018 is replicate in full the new definition of package travel and linked travel arrangements from the PTD 2015.⁷¹ This is to avoid any inconsistency which may have arisen between any alternative wording.⁷² Compared to the PTRs 1992, the 2018 PTRs therefore have a broad scope

⁷⁰ Department for Business, Energy and Industrial Strategy, ‘The Package Travel and Linked Travel Arrangements Regulations 2018 : Guidance for Businesses’ (July, 2018) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749498/package-travel-regulations-2018.pdf > accessed 14th August 2018.

⁷¹ Department for Business, Energy and Industrial Strategy, *Updating Consumer Protection in the Package Travel Sector: Government Responses* (April 2018) 6 < https://www.ukinbound.org/wp-content/uploads/2018/05/Package_Travel_Directive_Government_Response.pdf > accessed 21st October 2018.

⁷² Department for Business, Energy and Industrial Strategy (n71).

intended to cover modern methods of buying package holidays where six different categories governing the circumstances in which travel services combine to create a package (as stated in Regulation 2(5) of PTRs 2018). Furthermore, there are four types of travel services that have been recognised by PTRs 2018; carriage of passengers, accommodation, motor vehicle hire and any other tourist service.⁷³ These Regulations are not restricted for the holiday purpose only, but it is definitely cover different purposes such as business travel arrangements, conference arrangements, educational weekends, school trips and definitely pilgrimages. Package holidays could also include holidays where the accommodation and the flights are supplied by two different suppliers, but organised or put together by the same party.

However, the 2018 PTRs do not apply to packages and LTAs that last less than 24 hours, packages and LTAs that are organised occasionally and on a not for profit basis and for a limited group of travellers packages and LTAs purchased on the basis of a general agreement.⁷⁴

4.5.2 Information Protection Offers by the Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018

PTRs 2018 is amongst the key legislations that provide information protection to the UK package travellers which have a considerable impact on the interests of package travellers in the UK. This instrument works to protect the consumers through the provision of greater information at all stages (advertising, pre-contractual, pre-departure and post contractual) as to ensure that the package travellers receive relevant information about their package travel and prevent from any action that may detriment them. This part exclusively examines information protection provides by the PTRs 2018 at the

⁷³ Reg 2, Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018.

⁷⁴ Reg 3(2), Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018; Reg 3(3), Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018. In paragraph (2)(c), a general agreement means an agreement which is concluded between a trader and another person acting for a trade, business, craft or profession, for the purpose of booking travel arrangements in connection with that trade, business, craft or profession.

pre-contractual stage though information provision bear significance at each and every stage of a contract.

4.5.2.1 Information Duties

The Regulation 4(1) of PTRs 2018 explicitly provides that when a package is sold through a retailer, organiser and retailer must ensure that all required information relating to the packages, the price or any other conditions applying to the contract of package travel, both before and after a package is sold, is provided to the travellers. To avoid duplication, they may decide between themselves who will provide this information but must ensure that it is provided. However, in the case where a package is not sold through the retailer, it is the organiser's responsibility to provide the information.⁷⁵ The party who is responsible for discharging the information will be referred to as the relevant person. These new regulations are more explicit in describing information duties owe by the organisers and the retailers compared to the PTRs 1992.

4.5.2.2 Information Requirement at Pre-Contractual Stage

By virtue of Regulation 5(1) of PTRs 2018 which is read together with Schedule 1, the organisers and retailers are required to provide general information on passport and visa requirements, including an approximate period for obtaining visa and information on health formalities of the country of destination. In relation to Umrah, the Saudi government requires Umrah pilgrims to apply visa for Umrah by using approved travel agents and the Umrah pilgrims should present a vaccination certificate against Meningococcal Meningitis before entering Saudi Arabia. Therefore, the UK organisers and/or retailers who are selling Umrah package travel to Muslims should inform their prospect customers about visa and health requirement imposed by Saudi Arabia towards each and every Umrah pilgrims. This is to ensure that pilgrims

⁷⁵ Reg 4(1)(b), the Package Travel and the Linked Travel Arrangements Regulations 2018.

could enter Saudi Arabia without any problems at the immigration counter, prevent from any infectious disease and perform lesser pilgrimage as they wished.

By examining and comparing the substance of PTRs 1992 and PTRs 2018, this research found that the new PTRs 2018 are more explicit and clearly list down all of the essential information that should be provided by the retailers and/or organisers to the package travellers and linked travel arrangements consumers. This is an effort by the UK as to reflect the EU approach for enhancing the level of protection for package travellers. In addition, it also evidently shows that the PTRs 2018 try to provide the optimum protection to all package travellers who may purchase the package travels by using different medium; brochure, phone call or website. Part 2 of Schedule 2 PTRs 2018 require the retailers and organisers to provide a set of information which is slightly different compared to information that consumer will get when they are buying package travel by using brochure. For instance, considering the nature of contract concluded by a hyperlink which is risky than a normal package travel contract, the PTRs 2018 require the organisers or retailers to provide an emergency number or details of contact point where they can get in touch with the organisers or retailers.

All the related information should be provided in a clear, comprehensible and prominent manner⁷⁶ and if it is put in writing, it must be in legible form.⁷⁷ According to Regulation 6(1)(a) of the PTRs 2018, all information agreed before the conclusion of a contract will form as an integral part of the contract and binding upon the traders as well as package travellers. The pre-contractual information must not be altered unless the travellers expressly agree.⁷⁸ Any changes on the information specified in Regulation 5 of PTRs 2018 must be communicated in a clear, comprehensible and prominent manner before the conclusion of the contract.⁷⁹

⁷⁶ Reg 5(4)(a), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁷⁷ Reg 5(4)(b), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁷⁸ Reg 6(1)(b), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁷⁹ Reg 6(2), the Package Travel and the Linked Travel Arrangements Regulations 2018..

4.5.2.3 Information Requirement After Sale

Once a sale has been concluded, the relevant person must provide the travellers with a copy or confirmation of the contract.⁸⁰ The contract should be in plain language and be legible if in writing. If the contract is concluded face to face the relevant person must provide a paper copy of the contract if the traveller requests one.⁸¹ If a contract is concluded off-premises, the relevant person must provide a copy of the contract on paper, or on another durable medium if the traveller agrees.⁸² This contract should contain the key information listed in Schedule 1 of 2018 PTRs alongside additional important information listed in Schedule 5. This includes information on the entity in charge of insolvency protection and contact details for the traveller in the case where they encounter any issues, including whom the traveller should contact in the event of a lack of conformity issue.

The relevant person must, in good time before the start of the package, provide the traveller with necessary receipts, vouchers and tickets, information on the scheduled times of departure and check-in where applicable, as well as the scheduled times for intermediate stops, transport connections and arrival.⁸³

4.5.2.4 Information Requirements for Linked Travel Arrangements (LTAs)

One of the biggest difference bring by the PTRs 2018 is when it allocates protection for the travellers who buy linked travel arrangements (LTAs). LTAs are travel combinations that have looser commercial connections than that of a package. This type of arrangement, where a trader

⁸⁰ Reg 7(3), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁸¹ Reg 7(4), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁸² Reg 7(5), the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁸³ Reg 7(9), the Package Travel and the Linked Travel Arrangements Regulations 2018.

has facilitated the combination of travel services (travel services defined in para 5), but where the ties between the businesses concerned do not fully constitute a package that is sold or offered for sale, should also be subject to some level of regulation. Travellers who purchase LTAs will receive some protection although they will not benefit from the same rights that they would do if they bought a package. For instance, there is no requirement for any one party (such as the trader that facilitates the LTA) to be liable for the performance of all the travel services that are part of an LTA.

Traders who facilitate LTAs are required to give clear information to the travellers specifying that what they are buying is not a package and that only the individual service providers are responsible for the individual travel services. Traders must state this in a clear, comprehensible and prominent manner, along with details on the insolvency protection. 2018 PTRs set out a number of standard information forms that should be used to comply with this information requirement in different scenarios.⁸⁴ That standard information should be provided to the traveller before they are bound to any contract leading to the creation of an LTA.

4.6 Sanction

According to Article 24 of PTD 2015, Member States shall bring into force the measures necessary to comply with the Directive. Therefore, the Member States shall ensure that adequate and effective means exist to ensure compliance with information provision as required by the PTD 2015.⁸⁵ Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure for compliance. The penalties

⁸⁴ Reg 26, the Package Travel and the Linked Travel Arrangements Regulations 2018; Schedule 6,7,8,9 and 10, the Package Travel and the Linked Travel Arrangements Regulations 2018.

⁸⁵ Art 24, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

provided shall be effective, proportionate and dissuasive.⁸⁶ The relevant enforcement authorities should intervene when traders do not provide adequate and accurate information to the package travel consumers as required by law.

If the organisers and/or retailers fail to provide adequate and accurate information about the package to the consumers before the contract is entered, it prevents the consumers from making well-informed decision which the consumers might not choose it if sufficient and accurate information is supplied to them. The Consumer Protection from Unfair Trading Regulations (CPUTR) 2008 provides that a trader is guilty of an offence if he engages in a commercial practice which is a misleading action under regulation 5 of CPUTR 2008.⁸⁷

Furthermore, as discussed earlier, the organisers and/or retailers are required by the PTRs 2018 to disclose certain information to the consumers before they decide to buy any package travel. If they fail to comply with that obligation, they may be found guilty of committing a criminal offence. If the intending consumer is not provided with the information required before a contract is concluded (pre-contractual information), the organiser or retailer shall be guilty of an offence and liable (a) on summary conviction, to a fine not exceeding the statutory maximum; and (b) on conviction on indictment, to a fine as deliberately stated in Regulation 5(5) of PTRs 2018.

In other words, the organisers and/or retailers will be penalised if they fail to provide sufficient information as required by the Regulation (regardless whether at the pre-contractual stage or before the journey start) and criminal penalty which is fine will be imposed against them. The Regulations do

⁸⁶ Art 25, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

⁸⁷ Reg 9, The Consumer Protection from Unfair Trading Regulations 2008.

prescribe the limitation for the summary conviction where it should not exceed the statutory maximum.⁸⁸

Other than the PTRs 2018, consumers who are purchasing the services such as package travel from the organisers and/or retailers are also entitled to protection under Consumer Rights Act (CRA) 2015. The CRA 2015 which received royal assent on 26 March 2015, consolidates and reforms the myriad of UK legislation, provides protections and rights for the consumers, into a single Act and also brings into effect certain online rules from the 2013 Regulations into all consumer contracts. The CRA 2015 became law on 1st October 2015, replacing three major pieces of consumer legislation as it pertains to consumers which are the Sale of Goods Act 1979, Unfair Terms in Consumer Contracts Regulations 1999 and the Supply of Goods and Services Act 1982.⁸⁹ It is the biggest shake-up in consumer law in a generation.⁹⁰ It was introduced to simplify, strengthen and modernise the law, giving the consumers clearer shopping rights and sets out the basic rules which govern how consumers buy and businesses sell to them. It controls the contract to supply goods, digital content and service between traders and consumers including package tours and holidays.⁹¹

CRA 2015 make changes to the current regime of consumer protection law in the UK which requires that services provided by the traders including tour operators and travel agents to the consumers should be performed in accordance with the contract, with reasonable care and skill,⁹² within a

⁸⁸ Reg 5(5)(a), The Package Travel and Linked Travel Arrangements 2018.

⁸⁹ legislations.gov.uk, 'Consumer Rights Act 2015 Explanatory Notes' < <http://www.legislation.gov.uk/ukpga/2015/15/notes?view=plain> > accessed 4th August 2018; Lorraine Conway, 'Consumer Rights Act 2015' (Briefing Paper, 18th May 2017)5; CMS EEIG, 'UK Consumer Rights Act – An Overview of the New Consumer Rights Regime' (16 November 2015).

⁹⁰ gov.uk, 'Biggest Overhaul of Consumer Rights in a Generation' < <https://www.gov.uk/government/news/biggest-overhaul-of-consumer-rights-in-a-generation> > accessed 4th August 2018; Ofcom, 'New Consumer Rights Act Comes Into Force' < <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/test-news/consumer-rights-act> > accessed 4th August 2018

⁹¹ Sect 1(1), Consumer Rights Act 2015.

⁹² Sect 49, Consumer Rights Act 2015.

reasonable time,⁹³ at a reasonable price.⁹⁴ The CRA 2015 does not require any standard information to be disclosed by the traders to the consumers on the services provided by them. However, if they provide any verbal or written information at the pre-contractual stage which has been relied upon by the consumers when deciding to enter into a contract or making any decision, that information could be considered as an implied term of the contract. It is clearly stated in Section 50 of CRA 2015 that:

‘ Every contract to supply service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service if-

It is taken into account by the consumer when deciding to enter into the contract, or

It is taken into account by the consumer when making any decision about the service after entering into the contract.’

The principle behind this requirement is very simple: if a trader tells a consumer something about himself or the service, then that “something” should hold true. For example, if the organisers and/or retailers provide information to the consumers about themselves or their services, which the consumers then rely on when entering into the contract, or making decisions under the contract, then they should ensure that the services meet the earlier description. The information is an integral part of a contract between the traders and consumers.

If the consumers rely on this information and the services do not live up to that, this right has been breached. According to Section 54(3) of CRA 2015, if the service does not conform with the contract, consumers have a right to: 1) require repeat performance⁹⁵ and 2) require price reduction⁹⁶ even may be full amount of price⁹⁷. Section 54 of CRA 2015 also does not prevent the

⁹³ Sect 52, Consumer Rights Act 2015.

⁹⁴ Sect 51, Consumer Rights Act 2015.

⁹⁵ See Sec 55, Consumer Rights Act 2015.

⁹⁶ See Sec 56, Consumer Rights Act 2015.

⁹⁷ Sec 56(2), Consumer Rights Act 2015.

consumers from seeking other type of remedies for a breach of a term⁹⁸ including claiming damages, seeking to recover money paid where the consideration for payment of the money has failed, seeking specific performance, seeking an order for specific implement, relying on the breach against a claim by the trader under the contract and exercising a right to treat the contract as at an end.⁹⁹

4.7 Do EU and UK Regulations Exhaustively Protect the UK Umrah Package Travellers?

As examined and discussed in the earlier chapter on the concept of Umrah and package travel, this research found that nothing can impede the Umrah package travel which is intentionally performed for religious purposes to be recognised as a part of packages under PTD 1990, PTD 2015, PTRs 1992 and PTRs 2018. When the interpretation of Umrah package travel is within the concept of package travel as defined by EU Directives and UK Regulations, it means that the UK consumers who bought Umrah package travel from the organisers and/or retailers are entitled to the protection similar to the other type of package travellers. They are entitled to get sufficient and accurate information about their Umrah package travel from the organisers and/or retailers before the Umrah package travel contract is concluded as well as before the journey is started as required by the PTRs 2018.

In recent years, UK Muslims have fallen victim to Umrah fraud, losing thousands of pounds. Some organisers and retailers offer very cheap 'Umrah Tours' but shut down before the Umrah pilgrims depart, leaving people with no tour and no way of getting their money back. A Birmingham-based Hajj travel company has been ordered to pay £70,235 at Birmingham Crown Court. Umrah & Hajj Specialist Ltd, based on Coventry Road, Small Heath, pleaded

⁹⁸ Sec 54(6), Consumer Rights Act 2015.

⁹⁹ Sec 54(7), Consumer Rights Act 2015.

guilty to five offences under the CPUTR 2008 and one under the PTRs 1992. The travel firm has been ordered to pay £38,740 in compensation to seven victims, plus £25,995 costs and a £5,500 fine. The offences relate to the description of and standard of the hotel in Medina, transport, meals and guides provided, failing to give information about insurance needed, and aggressive practice by company representatives trying to stop dissatisfied customers from complaining.¹⁰⁰

In addition, the latest report issued by the UK government on inspection and investigation of Hajj or Umrah tour and travel operator is shocking. During their recent inspection, officials discovered tour and travel operators' non-compliance on a large scale. Out of 182 Hajj or Umrah inspected businesses, 147 travel operators were found to be non-compliant with the UK legislation.¹⁰¹ According to the Council of British Hajjis (CBHUK), only 88 travel agents companies approved by the Ministry of Hajj.¹⁰² Lord Toby Harris, Chairman National Trading Standards Board in a letter to Association of British Hujjaj (Pilgrims) UK said that 129 businesses were issued letter of warnings and trader notices by the authority.¹⁰³ It was also stated that formal enforcement action was undertaken in 17 cases.¹⁰⁴ 13 prosecutions are pending while a further 4 businesses were issued with formal cautions.¹⁰⁵

When the organisers and/or retailers fail to provide adequate and accurate information in relation to Umrah package travel to the travellers, it may detriment the interests of Umrah package travellers for performing religious obligations as well as tarnish the whole image of religious tourism

¹⁰⁰ Association of British Hujjaj (Pilgrims) UK (ABH), 'Hajj Tour Operator Ordered to Pay £70,235' < <https://www.abhuk.com/hajj-tour-operator-ordered-to-pay-70235/> > accessed 5th October 2018.

¹⁰¹ Ozgur Tore, 'Serious Violation of UK Law by a Large Number of Hajj/Umrah Tour operators' < <http://www.arabturkishtravel.com/2015/uncategorized/serious-violation-of-uk-law-by-a-large-number-of-hajjumrah-tour-operators/> > accessed 23 February 2017.

¹⁰² The Council of British Hajjis, 'Approved Hajj Travel Agents: United Kingdom' < http://dobuy.co.uk/cbhuk/?page_id=523 > accessed 24 February 2017.

¹⁰³ Association of British Hujjaj (Pilgrims) UK (ABH), 'Letters From Lord Toby Harris, Chairman National Trading Standards Board' < <http://www.abhuk.com/letter-from-lord-toby-harris-chairman-national-trading-standards-board/> > accessed 16 March 2017.

¹⁰⁴ Association of British Hujjaj (Pilgrims) UK (ABH) (n103).

¹⁰⁵ *ibid* (n103).

industry particularly Islam. Therefore it is appropriate to diagnose what is the main cause that results to that problem before find out the best solution to overcome the current problem that is facing by the UK Umrah package travellers.

Normally, customers will search for information about the Umrah package travel either from the brochure, internet, advertisement as well as magazines. But, not all of them try to get as much information about their package travels before deciding to purchase or before the journey starts. Their lack of awareness for having adequate and accurate information about their Umrah package travels at the pre-contractual stage, before the conclusion of the contract as well as before the journey starts could be the main reason why they have been exploited by the unscrupulous tour operators and travel agents. Information provision is no good if the consumers do not engage with it. The new information protection provides by the PTD 2015 and PTRs 2018 will help the package travellers, but they need to be told about them.

4.8 Conclusion

Critical analysis has been made on the EU and UK laws on the protection of package travellers including the Package Travel Directive (PTD) 1990, the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992 No. 3288) (PTRs), the Directive (EU) 2015/2302 of the European Parliament and of the Council On Package Travel And Linked Travel Arrangements (PTD 2015) and the Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018.

EU legislation in relation to package travel has been in place since the past 25 years. The most important sectoral directive that protects the consumers who purchase services of package travel was the PTD 1990. However, with the development of internet technology and the increase in services by low-budget airlines, the nature of consumer behaviour has

changed dramatically from a brochure-driven environment to a digital one. As a result, the PTD 1990 falls short of covering the rights of around 120 million European travellers. In 2015, a new PTD 2015 was adopted on 25 November. The new directive broadens the scope of package travel to include dynamic package and linked travel arrangements. Requirements regarding pre-contractual information have been extended in order to enhance the level of consumer protection.

From the earlier discussion, it illustrates that the information obligations imposed on organisers and retailers have not changed very much though the scope of package travel is enlarged. The PTD 1990, PTD 2015, PTRs 1992 and PTRs 2018 require the organisers and retailers to disclose similar information to the package travel consumers as follows;

- a. Travel destination;
- b. Transportation;
- c. Accommodation;
- d. Price of a package;
- e. Minimum of person;
- f. Address of organisers (tour operators and travel agents);
- g. Payment schedule and method of payment;
- h. Special requirement;
- i. Meal;
- j. Passport and visa requirement;
- k. Health formalities;
- l. Itinerary;
- m. Insurance;
- n. Period to make a complaint;

This could signal that this information obligation has functioned well since the implementation of the PTD 1990.

However, the examination on the information provision required by the PTD 1990, PTD 2015, PTRs 1992 and PTRs 2018 clearly portrays one potential loophole in the existing legislation which evidenced that the existing

legislations do not exhaustively protect the consumers of package travel. No information on the safety of the travel destination has been required to be disclosed by tour operators and travel agents. The string of horrific terror attacks in 2016 left everyone worried about their own safety. And in the past year many Britains have cancelled holidays to destinations like Turkey and Spain, following atrocities. The organisers and retailers should warn about a destination danger that they knew about or should have known about but the customers would not ordinarily have known about. Information about the safety of travel destination should be required by law to be provided by the organisers and retailers before any contract of package travel is concluded between the tour operators, travel agents and the consumers.

For the Umrah package travels, only approved travel agents could apply for Umrah visa from the Saudi Arabia for the Umrah pilgrims. This requirement is ruled out by the Saudi Arabia government to deter any unscrupulous tour operators and travel agents from exploiting the consumers for the business benefit. Therefore, information about the health formalities is really significant to be disclosed to the Umrah pilgrims before the contract is concluded because they are required to produce a certificate of vaccination against meningococcal meningitis infection ACWY to mitigate the risk of infection.

Although the EU and UK regulate their information provision as to guarantee for compliance and deterrence, the analysis presented in Section 4.7 of this chapter discloses that the existing legislations do not effectively deter the tour operators and travel agents from committing the offence and secure the compliance on the information obligation as required by the laws. As discussed in Chapter 3 of this research, there are many opinions from the scholars, academicians and practitioners on enforcement strategies. Some of them argue that severe punishment should be imposed to secure compliance and deterrence but the others might disagree with that approach. This matter has to be taken into consideration as to ensure that the Malaysian legislations

could work effectively and protect the package travel consumers comprehensively. This issue will be discussed in Chapter Six of this thesis.

By discussing and examining the protective measure by the EU and UK as to protect their package travel consumers, this research found that the EU and UK existing legislations function well though some pitfalls exist. It could be good guidance in designing the best structure of information regulation as to protect Malaysian Umrah package travellers with some modifications as to fit with the current needs and issue facing by Malaysian Umrah package travellers.

Chapter 5 : Protection Measures for Umrah Package Travellers In the Context of Malaysian Legal Paradigm

5.1 Introduction

An exploration of the current issue facing by Malaysian Umrah package travellers in Chapter Two reveals that a comprehensive and an effective consumer protection measure is essential for protecting Malaysian Umrah package travellers from any detriment. Thus, it is vital to critically analyse the current Malaysian legal framework (policies, laws and regulations) in relation to consumer protection, as pertains to Umrah package travellers and approaches adopted by Malaysian tourism industry for the purpose of protecting the interests of Malaysian consumers including the Umrah package travellers.

Consumer protection, in the broader sense, refers to the laws and regulations that ensure fair interaction between service providers and consumers.¹ Consumer protection seeks to support and protect consumers' interests. As such, it aims to promote the response of industry to consumers' needs, the confidence of consumers in service quality, the extensive availability of services and the affordability of services, realized through the development and enforcement of consumer codes and standards, the resolution of consumer disputes, effective rate regulation, and a system of universal service provision.² Consumer protection in Malaysia is carried out in

¹ 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.

² Mohamad Fazli Sabri, 'The Development of Consumer Protection Policies in Malaysia' (2014) Vol4, No.6, International Journal of Business and Social Research (IJBSR), 98-108; Malaysian Communication and Multimedia Commission, 'What Is Consumer Protection?' <

a variety of ways. These include the formulation and implementation of national policies pertaining to consumer protection, the implementation of legislation in relation to consumer protection as well as the establishment of regulatory bodies and consumer movements. Hence, the first part of this chapter will examine and discuss the development of consumer protection policies in Malaysia.

An effective consumer protection framework includes three complementary effects. First, it includes laws and regulations governing the relation between service providers and consumers ensuring fairness, transparency and rights for remedy. Second, it requires an effective enforcement mechanism. Third, it includes promotion of consumer self-awareness as to protect consumers' interests. In order to evaluate whether the current laws and regulation effectively protect the interests of Umrah package travellers, the second part of this Chapter will critically examine how the government intervention through legislation and enforcement of Consumer Protection Act (CPA)1999 protect the interests of Umrah package travellers by using the above effects as a measurement. Furthermore, it will explore and discuss the shortcomings of existing laws and regulations to demonstrate the needs for improvement in the existing legal framework and where the future reform is appropriate.

Government policies and consumer protection laws are not the only instruments that provide protection to the Malaysian Umrah package travellers, but the formation of government agencies and self-regulating business organizations also promote consumer protection for Malaysian consumers including Umrah package travellers. Thus, the third and fourth part of this chapter will examine further what are the approaches adopted by the tourism industry to protect the interests of Umrah package travellers and the extent to which it works. The findings of the above examinations will explain Malaysia direction towards consumer protection, the adequacy of the existing

legal framework and the mechanism that we still in need of protecting the welfare of Umrah package travellers.

5.2 Malaysian Legal Framework of Consumer Protection

Malaysia is widely held as a great success story in the developing world. Notwithstanding the massive economic contraction experienced during the 1997-1998 financial crisis, Malaysia's economic performance has been impressive throughout the post-independence period.³ The Malaysia economy has progressed in the last 30 years from an agrarian-based economy to an industrialized economy, and now is trying to develop into the knowledge economy.⁴

Globalization⁵ is one of the major factors to Malaysia's phenomenal economic development and growth. Defining globalization is rather difficult. However, one can point out the features that characterise the present form of globalisation. There are (a) more inter-state connections (b) the development of increased transnational communication and activities (c) a decline in the importance of the nation-state (d) the emergence of global political, economic and cultural organisations and bureaucracies (e) the emergence of global cities as local sites of global interaction (f) a huge increase in the flow of commodities and cultural products and the worldwide spread of western-style consumer behaviour.⁶

³ Prema-Chandra Athukorala, 'Trade policy in Malaysia: Liberalisation, Process, Structure of Protection and Reform Agenda' (2005) Vol 22, No.1, ASEAN Economic Bulletin, 19-34.

⁴ See Hoon Peow, 'Globalization and the Malaysian Experience : Upsides and Downsides' (2011) Vol 2, No1, Journal of Asia Pacific Studies, 1-27.

⁵ Joseph E. Stiglitz, *Globalisation and Its Discontents* (New York : Norton & Company Inc.2012); Joseph E. Stiglitz, *Making Globalization Work* (New York: Norton and Company, Inc., 2006). In fact, globalisation has been defined by Stiglitz as closer integration of countries and people of the world and the growing importance of internationally active corporation moving capital, goods and technology across borders.

⁶ Josie M. Fernandez, 'Inception Report-Consumer Master Plan 2003-2013 For Ministry of Domestic Trade and Consumer Affairs' (2002)17.

Driven by technological advances, globalisation has positive effects by promoting competition on the supply side and widening choice in terms of quality and services on the demand side of a consumer market.⁷ As a result, consumers have more choices than ever and are able to compare products and services globally.⁸ They become empowered consumers and their bargaining power is enhanced through the wider menu of opportunities available to them. On the other hand, it also adds a layer of complexity and risk in some respects.⁹ Consumers are exposed to many risks in buying a particular product. There are monetary risks, functional risks, social risks, and psychological risks associated with product purchase and use which consumers must consider.¹⁰ Globalization also may be associated with anti-competitive behaviour, or give rise to new forms of such behaviour and be detrimental to consumers' welfare.¹¹

Changing trends in the marketplace in the face of globalisation and liberalisation, the needs of consumers, the accelerating curve of change in the ICT field, the increase in unsustainable consumption patterns, privatisation, adverse economic trends and the multiplicity of consumer issues pose major challenges to any government in ensuring the highest level of consumer protection.¹² As a result, the Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC) has been established on 27 October 1990 for

⁷ Obadi Saleh Mothana, 'Globalisation and Competitiveness: A Comparative Analysis of Selected Developing Countries vs Industrial Countries' in Robert E. Westerfield, J. Abbink (eds), *Current Issues in Globalization* (Nova Science Publisher Inc., 2004)30; Larry Dwyer, 'Globalization of Tourism: Drivers and Outcomes' (2015) Vol 40, Iss 3, *Tourism Recreation Search*, 326-339.

⁸ Deloitte, *The Deloitte Consumer Review: The Growing Power of Consumers* (Deloitte LLP, 2014)2 < <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/consumer-business/consumer-review-8-the-growing-power-of-consumers.pdf> > accessed 17th August 2018.

⁹ Kathryn Dunn, 'Globalization and the Consumers: What The Marketer Needs To Know' < www.neumann.edu/about/publications/NeumannBusinessReview/journal/.../Dunn.pdf > accessed 12nd March 2018.

¹⁰ John Kozup, 'Risks of Consumer Products' in Gerard Emilien, Rolf Weitkunat and Frank Ludicke (eds) *Consumer Perception of Product Risks and Benefits* (Springer International Publishing, 2017) 23-38.

¹¹ Gheorghiu Gabriela, Bunda Nicoleta Ramona and Popovici Veronica, 'Globalisation and Consumer Protection' < iecs.ulbsibiu.ro/.../Gheorghiu%20G,%20Bunda%20N%20R,%20Popovici%20V.pdf > accessed 16th March 2018, 272-275.

¹² Gabriela (n11).

advocating and protecting the interests of consumers.¹³ This includes the development of an ecosystem of consumers and businesses that complements each other towards self-regulation, in line with the aspirations of people in a developed country.¹⁴ It is hoped that well-informed consumers, confident consumers as well as good ethical business practice can be developed, with the outcome of an economically and socially balanced nation.¹⁵ The MDTCC is divided into 2 main divisions; domestic trade and consumer affairs division. The structure as follows;

¹³ Azmah binti Othman, *Essays On The Co-Operatives' Performances In Malaysia* (Universiti Sains Malaysia, 2014).

¹⁴ Official Portal Ministry of Domestic Trade and Consumer Affairs, 'Background Information' < <https://www.kpdnkk.gov.my/kpdnkk/about-kpdnkk-2/?lang=en> > accessed 16th August 2018.

¹⁵ Official Portal Ministry of Domestic Trade and Consumer Affairs (n14).

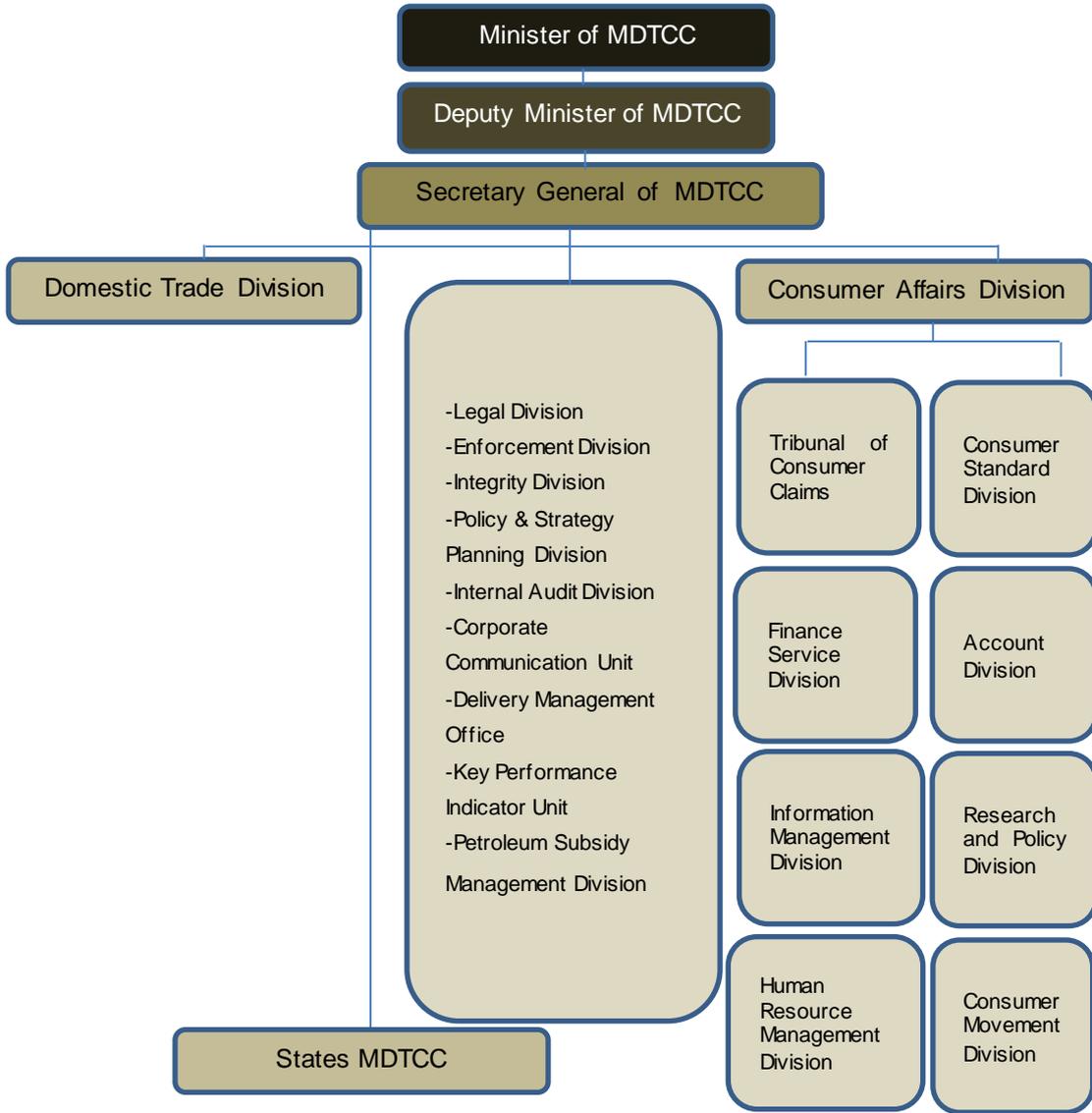


Figure 8: Organisational Structure of MDTCC¹⁶

The Ministry aims to provide an exposure on the consumer market for all levels of society throughout the country in order to achieve its aspiration of an educated, informed and compassionate consumer society.¹⁷ To achieve this end, the Ministry takes several actions including the formulation and

¹⁶ Ministry of Domestic Trade, Co-operatives and Consumerism, 'Background Information' < <https://www.kpdnkk.gov.my/kpdnkk/about-kpdnkk-2/?lang=en> > accessed 16th April 2018; Josie M.Fernandez, 'Consumer Master Plan 2003-2013' (Inception Report, August 2002) 65-66.

¹⁷Fernandez (n6).

implementation of national policies pertaining to consumer protection;¹⁸ the enforcement of existing legislations related to consumer protection; the formulation of new legislation and amendments to old laws;¹⁹ the conduct of education programmes for the public, school children and university students; the promotion of school consumer clubs, seminars and conventions; the allocation of grants, smart partnerships and joint programmes with consumer organisations; and redress mechanisms.²⁰

5.3 National Policies on Consumer Protection

The word ‘policy’ is not a tightly defined concept but can have a number of meanings. Policy can be in the form of specific principles adopted by the government, states, organisations, or even teams. It can simply be defined as ‘a principle or course of action adopted or proposed as desirable, advantageous, or expedient; especially one formally advocated by a government, political party, et cetera.’²¹ Policy differs from rules or law but can lead to new laws. Government policy outlines what a government is going to do and what it can achieve for society as a whole. While the law can compel or prohibit behaviours (e.g. a law requiring the payment of taxes on income), policy merely guides actions toward those that are most likely to achieve the desired outcome.

The public policy-making systems in Malaysia are designed through one or a combination of three processes. Firstly, the public policy is made by way of political channels, initiated through Cabinet orders or through the recommendation of one of several political parties. Public policy in Malaysia

¹⁸ The formulation and implementation of national policies pertaining to consumer protection will be discussed in detail in part 5.3 of this chapter.

¹⁹ These two aspect of legislation will be discussed in Part 5.4 of this chapter.

²⁰ Mohd. Hamdan Adnan. *Perjuangan Perundangan Pengguna* (Petaling Jaya, Selangor: IBS Buku Sdn. Bhd, 2005).

²¹ ‘Policy’ (OED Online, OUP December 2016)

<<http://www.oed.com/view/Entry/146842?rskey=xkBKaE&result=1#eid>> accessed 5 July 2017.

mirrors the 'top-down' process and to a great extent made behind the closed door (formulated with little consultation with the public). Even though the formulation process is open to public opinion and interest group, it is nevertheless a relatively autonomous administrative act, mostly directed by the political elite,²² in this instant either by the federal or state governments. The comment by a long time observer of Malaysian politics on the policy-making process is indicative: 'Increasingly, the processes of public policy-making and evaluation have been centralized and cloaked in secrecy'.²³ Secondly, it is made through administrative processes at the ministerial level. Since a policy has implications for the administrative machinery, the draft policy is discussed at several high-level government meetings. Alternatively or thirdly, the policy is made through the combination of both processes by way of integrated approach or interaction. To achieve this, Special Committees may be set up to study the policy in-depth before presenting it to the Cabinet.²⁴ The Malaysian Cabinet then will deliberate the proposed policy and, if agreed, the policy will be approved and implemented.²⁵

Malaysian public policy is implemented by Malaysian public service, which is divided into the federal government, the state governments, federal statutory bodies and state statutory bodies, as provided in the Article 132 of Federal Constitution.²⁶ The demarcation of legislative powers between the federal and state governments is stated in the Article 74 of Federal Constitution and enumerated in the ninth schedule among others the federal (list I), state (list II) and concurrent (list III) lists. There are 27 matters covered

²² Ho Khai Leong, 'Dynamics of Policy Making in Malaysia: The Formulation of the New Economic Policy and the National Development Policy' (1992) Vol 14, No.2, *Asian Journal of Public Administration*, 204-227.

²³ Gordon Means, 'The Politics of Ethnicity in Malaysia' (April 1987) 86 *Current*, 168.

²⁴ Muslihah Hasbullah, 'Policy Making' <

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0ahUKEwii0NPUisLVAhVLWRQKHQ1LAtkQFggxMAA&url=http%3A%2F%2Fwww.vodppl.upm.edu.my%2Fuploads%2Fdocs%2FFEM3106%2520TOPIC%25202.ppt&usg=AFQjCNFC7MySLRw2T346BRewNPSq2z2nSg> > accessed 28th July 2017.

²⁵ Ching Thoo Kim, *Malaysian Water Sector Reform: Policy and Performance* (Wageningen Academic Publishers, 2012).

²⁶ The Federal Constitution Art 132 provides for the public services to include the armed forces; the judicial and legal service; the general public service of the federation; the police force; the joint public services mentioned in Art 133 comprising the joint services between the federation and states; the public service of each state; and the education service.

by the federal government: external affairs, defence, internal security, citizenship, finance, trade, commerce, shipping, navigation, fisheries, civil and criminal law and procedure, industry, communication, transports, survey, education and publications. Protection for consumer welfare shall be administered under the federal list by the federal government.

The involvement of non-governmental organisations (NGOs) and civil society in policy implementation is gaining prominence. Previously, their voice and movement were not given high priority, because the government often viewed that they were encouraged by foreign entities and could hinder economic development in the country.²⁷ However, the role of NGOs and civil society began to develop in recent years, such as the establishment of the Federation of Malaysian Consumers Association (FOMCA). FOMCA is a national non-governmental organisation, which is voluntary, not-for-profit, non-political, and civic-oriented. It is the umbrella body for 13 consumer associations in Malaysia.²⁸ It's establishment towards strengthening consumer protection, is apparently as a result of NGOs and civil societies' persistent campaigns and pressure on the government.²⁹

Malaysian policy is generally built upon the requirement of the political, social structures and the future demand of the nation as a whole. Since the end of British colonial rule, the Malaysian government, as part of its national development agenda, has given high priority to consumer welfare and protection.³⁰ In the early years of independence, Malaysia's economy was primarily based on agriculture. Seventy per cent (70%) of the population lived

²⁷ Robert S Milne and Diene K Mauzy, *Malaysian Politics Under Mahathir* (London: Routledge, 1999) 104.

²⁸ Consumers International, 'Federation of Malaysian Consumers Association (FOMCA)' < <http://www.consumersinternational.org/members/members/federation-of-malaysian-consumers-associations-fomca/> > accessed 15th October 2017.

²⁹ Kua K Soong, 'Introduction: Reform of the Malaysian Police' in Kua K Soong (ed) *Policing the Malaysian Police* (Petaling Jaya: SUARAM 2005) 2.

³⁰ Josie M.Fernandez, 'Protecting Consumers' < http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=10852 > accessed 17th August 2018.

in rural areas and they constituted a large number of the poor.³¹ Consumer welfare, therefore, focused on providing basic needs such as shelter, food, access to water and sanitation, health and education.³² Then, the government's modernisation programme, accompanied by capital intensive economic development, began to take root in the 1970s.³³ This pattern of development changed the consumer demographics and led to the expansion of a large urban-based middle class. As incomes rose, there was also a corresponding and dramatic increase in the consumption of goods and services. Consumers and businesses began treading new ground where established norms and standards for goods and services were not available. In consequence, the government recognised that consumer policies needed to be integrated with national development policies to improve quality of life.

The Malaysian government has formulated and implemented several policies on consumer protection such as National Consumer Policy (NCP) 2002 and Consumer Master Plan (CMP) 2003-2013 that will be discussed in section 5.3.1 and 5.3.2 of this Chapter. This significant movement towards improving the consumers' welfare, consumer education and consumer protection measures as well as to develop and maintain strong consumer protection which balancing the interests of the traders and consumers welfare. Practical and policy-setting measures indicate the close attention that the government has paid to consumers' interests and paves the way for the development of comprehensive and effective consumer protection regime.³⁴

5.3.1 National Consumer Policy (NCP) 2002

The Eighth Malaysia Plan (2001-2005) witnessed the launching of the National Consumer Policy (NCP) 2002 on 26th July 2002 to achieve an

³¹ The Malaysian Bar, 'Protecting Consumers' http://www.malaysianbar.org.my/echoes_of_the_past/protecting_consumers.html?date=2018-02-01> accessed 16th April 2018.

³² The Malaysian Bar (n31).

³³ *ibid* (n31).

³⁴ (Fernandez, 2004).

effective level of consumer protection.³⁵ The NCP 2002 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’.³⁶

It was later adopted by the National Consumer Advisory Council (NCAC) established under CPA 1999. The ultimate goal is to improve the quality of life of the people who are also consumers. The focal objective of the NCP 2002 is to provide the highest form of consumer protection which provides an environment that is conducive for the establishment of a fair market and sustainable developments in tandem with the local and global economic developments.³⁷ It serves as a foundation or basis to guide the formulation of policies and legislation spanning all forms of transactions and activities affecting consumers. It focuses mainly on the formulation of national economic and social policies, aimed at ensuring consumer welfare, raising the quality of life standards and encouraging lifelong consumer education for all.

The NCP 2002 has been formulated with three main goals and can be summarized in the diagram as follows;

³⁵ Sabri (n2); Fernandez (n30).

³⁶ *ibid* (n2).

³⁷ *ibid* (n2)

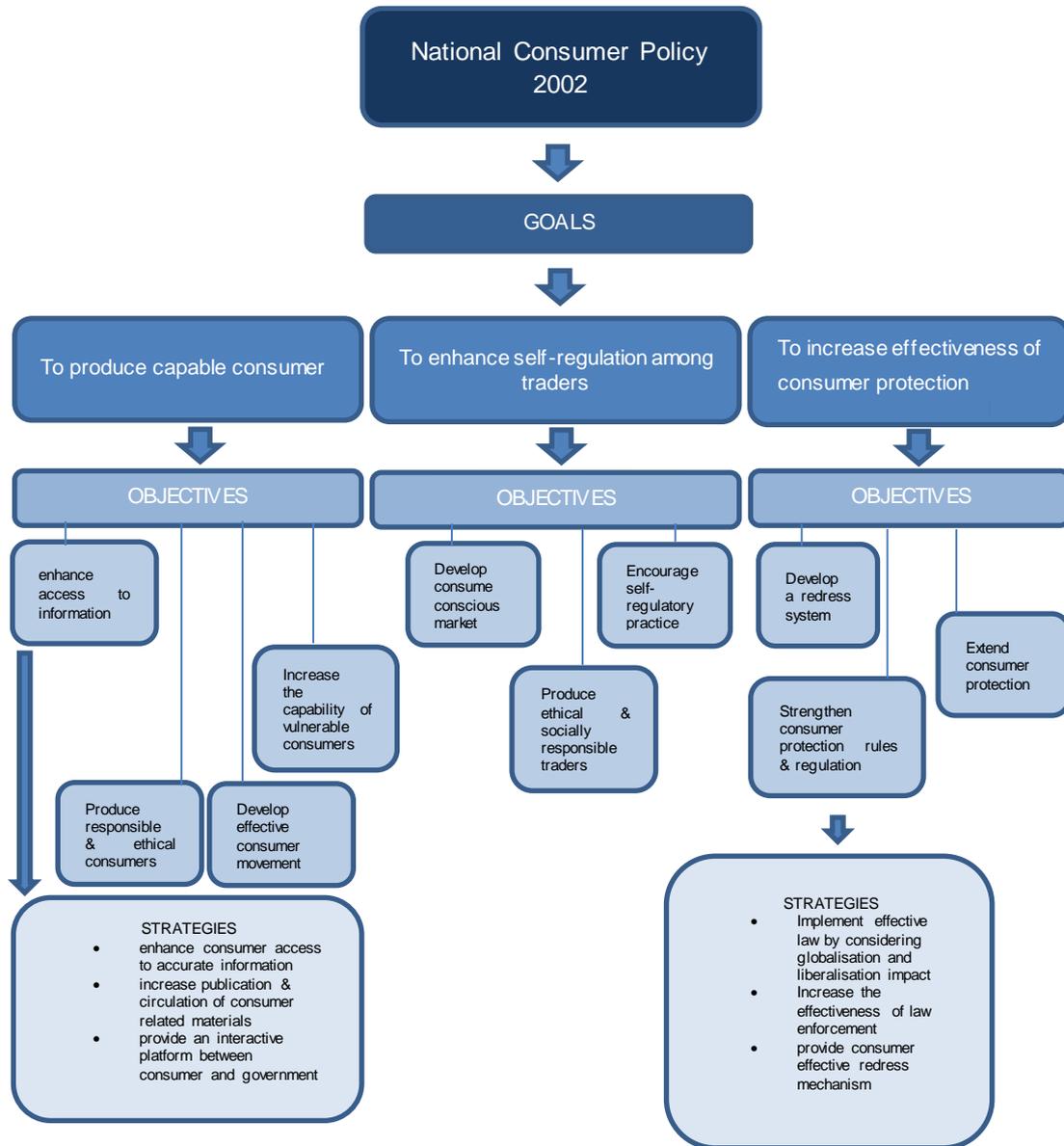


Figure 9: National Consumer Policy³⁸

5.3.1.1 1st Goal: To Produce Capable Consumer

The first goal is to produce capable consumers by changing consumer behaviour, promoting and fostering an ability to practice self-protection. Capable consumers are those who have access to information and benefit from competitiveness in utilizing information, knowledge and self-reliance,

³⁸ Wan Nurheriza Ab Halim, *Dasar Pengguna Negara* (Ilmu Media Trade, 2010).

those who are able to protect themselves and are aware of every decision when dealing in the market. It requires the consumers to be well informed, smart planners and good decision makers to protect their interests.³⁹

This concept of self-protection is built on sufficient, non-misleading market communication mainly provided by the suppliers and perceives the consumer as an active, as well as critical participant and is formed on the basis that a well informed person is capable of protecting himself by processing the market-related information and searching efficiently for goods and services.⁴⁰ With the correct information, consumers will make rational choices for their optimal wellbeing.⁴¹ However, many behavioural economists disagree and point out that individuals do not always make rational utility-maximising decisions. They also suggesting man has many biases and examples of irrational behaviour. Man not always self-interested but can act on the basis of altruism and from the perspective of community or society.⁴²

Self-protection is an important component that has been outlined under the NCP 2002. It is essential to achieve the government's vision through promoting the community of consumers who are constantly aware and knowledgeable of their rights and responsibilities. As recognised by MDTCC, there are eight (8) basic rights entitled by a consumer; (1) right to get basic needs (2) right to safety (3) right to information (4) right to choose (5) right to representation (6) right to redress (7) right to consumer education (8) right to healthy environment.⁴³ In Malaysia, based on the study of the consumerism

³⁹ *ibid* (n2).

⁴⁰ Katalin Judit Cseres, *Competition Law and Consumer Protection* (Kluwer Law International, 2005).

⁴¹ Rational Choice Theory is an economic principle that assumes that individuals always make prudent and logical decisions that provide them with the highest amount of personal utility.

⁴² Robert E.Schenk, 'Altruism As A Source of Self-Interested Behaviour' (1987) Vol 53, No.2, *Public Choice*, 187-192; Tejvan Pettinger, 'Rational Economic Man: Homo Economicus' < <https://www.economicshelp.org/blog/27358/concepts/rational-economic-man-homo-economicus/> > accessed 2nd October 2018.

⁴³ Nurazlina Dol, Elistina Abu Bakar and Aini Mat Said, 'Consumer Legal Literacy, Values and Consumerism Practices Among Members of Consumer Association in Malaysia' (2015) Vol 11, No.12, *Asian Social Science*, 189-199.

practices conducted by Jariah et al.⁴⁴ among the rural consumers, it was found that almost half of the respondents responded all eight consumer rights correctly, but there were respondents responded to other statements that are not consumer rights. This study indicates that the level of consumer knowledge is still at a low level. According to Jariah et al.⁴⁵ the low levels of consumer knowledge in consumer rights makes it difficult for them to act as savvy consumers. Thus, consumers must actively participate in supporting the enforcing process by knowing and insisting on their rights against exploitation market. This is because the low level of consumerism cause difficulties in self-defence against the deceitful merchants and may cause deterioration of the consumers' ability to carry out their rights as consumers.⁴⁶

According to Josie M.Fernandez, the most effective tool in consumer protection is consumer education as it helps to develop skills to enable consumers to function as socially-responsible consumers. Consumers must make an effort to avail themselves of the existing consumer education on offer in order to be fully equipped to play their part as a consumer in the real world. Even, Malaysia is adopting education as one of the approaches to increase the effectiveness of consumer protection. Various programmes and activities such as seminars, forums and conventions, or specific programmes for consumers are commonly conducted in Malaysian schools and universities.⁴⁷ In the Malaysian school syllabus, consumer-centred topics are incorporated into various subjects. At the tertiary level (colleges and university), consumer law and consumer education are offered as subjects. Establishment of school consumer clubs, for instance, is one of the key initiatives being encouraged and supported. The Student Consumer Movement comprises structured

⁴⁴ Jariah Masud, Mohamad Fazli Sabri and Sharifah Azizah Haron, 'Cabaran Pengguna Luar Bandar' in Z.Zumilah, Elistina Abu Bakar and Nor Rashidah (eds), *Malaysia Negara Maju: Realiti dan Cabaran Pengguna* (Malaysia: Serdang, 2013) 54-57.

⁴⁵ Masud, Sabri and Haron (n44).

⁴⁶ Suraiya Ishak & Nur Faridah M. Zabil, 'Impact Of Consumer Awareness And Knowledge To Consumer Effective Behavior' (2012) Vol 8, No.13, *Asian Social Science*, 108-114 <

[file:///C:/Users/HP-](file:///C:/Users/HP-PC/Downloads/Impact_of_Consumer_Awareness_and_Knowledge_to_Cons.pdf)

PC/Downloads/Impact_of_Consumer_Awareness_and_Knowledge_to_Cons.pdf > accessed 4th November 2017.

⁴⁷ Consumers International Kuala Lumpur Office, 'Roadmapping Capacity Building Needs In Consumer Protection In Asean' (Country Report: Malaysia, 3 June 2011).

groups of university students working together, helping each other and sharing resources in conducting consumerism-related activities which include seminars, magazine publishing, consumer campaigns, mini expos, consumer competitions, and forums.⁴⁸ Furthermore, school consumer clubs are the driving force of consumer education in secondary schools since 1992.⁴⁹ These clubs were set up by the MDTCC in cooperation with the Ministry of Education (MOE). The focus is on prudent spending, diet and the environment. Moreover, consumer associations and organisations are also active in conducting consumer education and awareness programmes at the state and district levels. Among these are the FOMCA, Consumers Association of Penang (CAP), Muslim Consumers Association of Malaysia (PPIM), Malaysian Consumers Protection Association (PPPM), Malaysian Consumer and Family Economics Association (MACFEA), Consumers Safety Association Kuala Lumpur (PKPKL) and various other state consumer organisations.⁵⁰

5.3.1.2 2nd Goal: To Enhance and promote Self-Regulation

Malaysia government in the last four decades has also emphasised that businesses have a social and moral responsibility to consumers for ensuring that consumers obtain fair and safe deals in the marketplace.⁵¹ To this end, in addition to the many laws that govern businesses, the government has promoted the practice of self-regulation within the business to safeguard the rights of traders. Self-regulation can work to avoid, anticipate, supplement or implement legislation. Self-regulation has its advantages over government legislation, but it has pitfalls as well. The term self-regulation has to be viewed with great circumspection. Self-regulation is an increasingly popular policy approach, whether driven by a government policy to have minimal involvement

⁴⁸ NST Online, 'Five Ways to Empower Consumer Roles in Malaysia' < <https://www.nst.com.my/news/nation/2017/06/246450/five-ways-empower-consumer-roles-malaysia> > accessed 24th August 2018.

⁴⁹ Ministry of Domestic Trade, Cooperatives and Consumerism, 'Consumer Education and Awareness Programme' < <https://www.kpdnkk.gov.my/kpdnkk/consumer-education-and-awareness-programme/?lang=en> > accessed 16th April 2018.

⁵⁰ *ibid* (n2).

⁵¹ *ibid* (n31).

in the structuring of the private sector or because it is chosen as an efficient method of regulation.⁵² The government might only set standards but leave it to the industry itself to monitor compliance. Alternatively, the government may require that standards, then check the adequacy of those standards and leave policing compliance to the industry. This type of self-regulation still involve government role, but at the minimum degree.

In contrast, Gunningham, Anil and Lawrence view self-regulation as the controlling of a process or activity by the people or organization that are involved in it rather than by an outside organization such as government⁵³ in which government intervention does not exist at all. Likewise, the National Consumer Council (NCC) in the UK interpret self-regulation as:

‘rules which govern behaviour in the market that are developed, administered and enforced by the people (or their direct representatives) whose behaviour is to be governed’.⁵⁴

Self-regulation is an important mechanism for governing industry practices and has many benefits over government regulation for consumers, producers, the government, and the economy as a whole. To many scholars such as Price and Verhulst,⁵⁵ Sinclair,⁵⁶ Streeck and Schmitter⁵⁷ and

⁵² The Manitoba Law Reform Commission, ‘Regulating Professions and Occupations’ (1994) Report 84 < http://www.manitobalawreform.ca/pubs/pdf/archives/84-full_report.pdf > accessed 11st November 2018.

⁵³ Neil Gunningham, ‘Investigation of Industry Self Regulation In Workplace Health and Safety In New Zealand’ (Gunningham & Associates Pty Ltd, 2011) < http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-04/NG_investigation-industry-self-regulation-whss-nz_0.pdf > accessed 11st November 2018; Anil K. Gupta and Lawrence J. Lad, ‘Industry Self-Regulation: An Economic, Organizational, and Political Analysis’ (1983) Vol 8, No.3, The Academy of Management Review, 417.

⁵⁴ National Consumer Council (NCC) ‘Self-Regulation’ (National Consumer Council, London, 1986)1. The definition given by NCC on self-regulation is similar to what has been defined by OECD, Industry Self Regulation: Role And Use In Supporting Consumer Interests (2015) OECD Digital Economy Papers, No.247, OECD Publishing, Paris.

⁵⁵ Monroe Edwin Price, Stefaan G. Verhulst, *Self Regulation and the Internet* (Kluwer Law International, The Netherlands, 2005).

⁵⁶ Darren Sinclair, ‘Self-Regulation Versus Command and Control? Beyond False Dichotomies’ (1997) Vol 19, Iss 4, Law and Policy, 529–559.

⁵⁷ Wolfgang Streeck and Philippe C. Schmitter, ‘Community, Market, State-and Associations? The Prospective Contribution of Interest Governance to Social Order’ (1985) Vol. 1, No. 2, European Sociological Review, 119-138.

Pitofsky,⁵⁸ self-regulation offers a number of benefits that cannot be achieved by the command and control approach of regulation. The benefits of a self-regulatory scheme could be immense. For instance, by reducing reliance on statutes, self-regulatory schemes generally offer a speedier and more flexible means of solving problems.⁵⁹ Furthermore, it complements existing laws by imposing supplemental rules to govern the behaviour of firms.⁶⁰ Also, by utilising the skills of those involved in the business, self-regulation schemes may be able to overcome the information problems sometimes faced by government regulatory bodies, and standards can conceivably be set higher than in a statutory scheme.⁶¹ Finally, the costs of self-regulatory regimes are normally internalised in the trade and lower compared to classical regulation.⁶² When used in the right circumstances, self-regulation is able to address industry and consumer issue directly.⁶³ According to Darren Sinclair, self-regulation has been presented as being tailored to the particular circumstances of individual firms as to suit the specific characteristics of particular issues. The private sector relies on self-regulation to address a range of issues, from establishing industry standards to developing and applying codes of professional ethics, to ensuring consumer confidence.⁶⁴

However, there can also be negative consequences if inadequate protection is in place. The regime could be captured by the industry or professional association and results to narrow interests rather than the wider

⁵⁸ Robert Pitofsky, 'Self-Regulation and Antitrust' < <https://www.ftc.gov/public-statements/1998/02/self-regulation-and-antitrust> > accessed 15th July 2017.

⁵⁹ Office of Communication, 'Identifying Appropriate Regulatory Solutions: Principles For Analysing Self- And Co-Regulation' (2008); OECD, 'Alternative to Traditional Regulation' < <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> > accessed 19th November 2018; Anthony Ogus, 'Self-Regulation' (1999)587-602; Robert Pitofsky, 'Self-Regulation and Anti-Trust' < <https://www.ftc.gov/public-statements/1998/02/self-regulation-and-antitrust> > accessed 21st July 2017.

⁶⁰ Jean J. Boddewyn, 'Advertising Self-Regulation: Private Government and Agent of Public Policy' (1985) Vol 4, *Journal of Public Policy & Marketing*, 129-141.

⁶¹ Iain Ramsay, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (2nd edn, Oxford and Portland, 2007)11.

⁶² In the case of independent public agencies, such costs are usually borne by taxpayers (Ogus, 1995)98.

⁶³ Glen Hepburn, 'Alternatives To Traditional Regulation' < www.Oecd.Org/Gov/Regulatory-Policy/42245468.Pdf > Accessed 6th Aug 2017.

⁶⁴ Daniel Castro, 'Benefits and Limitations of Industry Self-Regulation for Online Behaviour Advertising' (2011) The Information Technology & Innovation Foundation.

community interest.⁶⁵ It has been claimed that self-regulation has a poor record of enforcing their standards against disobedient members.⁶⁶ Geraint Howells and Stephen Weatherill argue that even subconsciously the industry may come to regard self-regulation as a cosy arrangement, largely for its own benefit rather than consumers.⁶⁷ It can also be seen as undemocratic, closed to outside scrutiny and open to abuse by the very interests who devise the rules. At the very least, self-regulation will always be open to challenge by outside interests who feel that the standards and rules are not primarily geared towards reducing the impacts of undesirable activities. For others, it is self-serving, self-interested, lacking in sanctions, beset with free rider problems, and simply a sham.⁶⁸

A particular self-regulatory scheme may not be appropriate in circumstances where other forms of regulation are able to provide better outcomes at a lower cost.⁶⁹ For example, the costs involved with a complex customer dispute resolution mechanism may not be justified if the scheme only receives a few complaints per year. Further, the costs involved in administering such a scheme may be translated into higher prices for consumers so, in this case, would not constitute a better market outcome for either business or consumers. According to the Australian government, there is no single 'best practice' model for self-regulation because a successful model depends on particular market characteristics and needs to be designed accordingly.⁷⁰

The purpose of self-regulation is to develop and manage the regulations and practices in the market imposed by the traders or operators

⁶⁵ Hepburn (n63).

⁶⁶ Chibuikwe Ugochukwu Uche, 'Banking Developments In Pre-Independence Nigeria: A Study In Regulation, Control And Politics' (ProQuest LLC, 2014).

⁶⁷ Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Ashgate Publishing Limited, 2005)74.

⁶⁸ Philip Selznick, *The Moral Commonwealth: Social Theory and the Promise of Community* (University California Press, 1994); Neil Gunningham and Joseph Rees, 'Industry Self-Regulation: An Institutional Perspective' (1997) Vol 19, Iss 4, *Law and Policy*, 363-413.

⁶⁹ Australian Government, 'Industry Self-Regulation in Consumer Market' <<http://archive.treasury.gov.au/documents/1131/html/docshell.asp/URL=07>> accessed 14th June 2018; *ibid* (n63).

⁷⁰ Australian Government (n69).

themselves. It is a collective activity with the involvement and support from all sectors to comply with the regulations which have been formulated and mutually agreed upon. The trading community plays a very important role in determining the well-being of consumers. In particular, traders who are ethical, practise self-regulation responsible and honest will be able to contribute to the welfare and well-being of the consumers. Self-regulation has been used to support consumer policy and has been pursued principally through the development of codes and standards.⁷¹ Malaysia has promoted the practice of self-regulation within the industry through the adoption of codes of practice and ethics for various businesses and professional bodies such as the Malaysian Business Code of Ethics, the Malaysian Communications and Multimedia Content Code, the General Consumer Code of Practice for the Communications and Multimedia Industry Malaysia, the Direct Selling Association of Malaysia Code of Conduct and the Malaysian Code of Advertising Practice.⁷²

5.3.1.3 3rd Goal: To Increase the Effectiveness of Consumer Protection

The third goal of NCP 2002 is to increase the effectiveness of consumer protection.⁷³ According to what has been drafted in NCP 2002, effective consumer protection will be materialised by implementing effective laws (by taking into consideration the globalisation and liberalisation impact), increasing effective law of enforcement as well as providing consumer effective redress mechanism.

In order to ensure that the laws governing consumer protection are up-to-date, few new laws have been implemented and few amendments on the existing statutes have been made. For instance, the CPA 1999 has been

⁷¹ Organisation for Economic Co-operation and Development, 'Industry Self-Regulation: Role And Use In Supporting Consumer Interests' (23 March 2015) Directorate For Science, Technology And Innovation Committee On Consumer Policy, DSTI/CP(2014)4/FINAL < [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2014\)4/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2014)4/FINAL&docLanguage=En) > accessed 5th October 2017.

⁷² Ibid (n31).

⁷³ National Consumer Policy 2002.

amended four (4) times in the year 2002, 2003, 2007 and 2010 since its enactment to include emerging consumer concerns.⁷⁴ These include listing the types of Future Services Contract, increasing membership of the Tribunal for Consumer Claims Malaysia's membership, widening the scope of the Act to include electronic commerce transactions and expanding existing provisions for protecting consumers from unfair contract terms.⁷⁵

Consumers who have problems with goods or services have recourse to the Tribunal for Consumer Claims Malaysia (TCCM) or the Small Claims Courts. TCCM is an independent judicial body established under the CPA 1999 and came into force on 15 November 1999 (Laws of Malaysia Act 212). It was set up as a simple, cheap and fast alternative channel for consumers to claim losses not exceeding MYR25,000 connected with goods purchased or services obtained from traders or service providers. Whereas, the aggrieved consumers whose claims do not exceed MYR5000 can resort to the small claims procedure of the magistrate's court which was set up in 1987. Those with problems with developers can seek the Tribunal for Homebuyers Claims. The tribunal is a form of Alternative Dispute Resolution (ADR) and has all the powers of a civil court. While those with banking or insurance problems can resort to the Franchise Mediation Bureau (FMB), an industry-initiated ombudsman scheme set up to resolve problems between consumers and financial service providers. The decision of the FMB is not binding on the complainant, but it is binding only on the financial service provider. In insurance-related cases, FMB has jurisdiction over disputes or claims relating to insurance policies up to MYR100, 000.

According to MDTCC the success towards the achievement of the NCP 2002 goal is dependent on the concerted efforts of all parties;

⁷⁴ Official Portal Ministry of Domestic Trade and Consumer Affairs, 'Consumer Protection' < <https://www.kpdnkk.gov.my/kpdnkk/consumer-protection/?lang=en> > accessed 15th September 2018.

⁷⁵ Naemah Amin, 'Protecting Consumers Against Unfair Contract Terms In Malaysia: The Consumer Protection (Amendment) Act 2010' [2013] 1 Malayan Law Journal lxxxix; *ibid* (n2).

consumers, traders, government and non-governmental bodies.⁷⁶ Since consumer issues have an across the board impact upon various ministries and agencies, a coordinating body needs to be established to ensure the achievement of the set goals. With concerted efforts and roles of all parties, the goals of the NCP 2002 are achievable in order to create a consumer community which is dynamic, progressive, of quality, possessing consumer values to drive a fair and ethical market environment in tandem with the Vision 2020.⁷⁷

The NCP 2002 was nicely set up on paper. The NCP 2002 needs to be translated into action. Only then, the goals could be achieved and consumers interests could be protected. However, the NCP 2002 was not taken forward.⁷⁸

5.3.2 Consumer Master Plan (CMP) 2003-2013

The NCP 2002 forms the basis for the CMP 2003-2013. The CMP looks nicely designed for the purpose of protecting the consumers. The formulation of CMP is intended to upgrade and raise the level of consumerism in Malaysia to the status of developed nations.⁷⁹ The CMP provides the framework, vision, mission, background of issues, analysis of the consumer situation and recommendations to prepare Malaysian consumers, business and the public sector to adopt sustainable development practices and to empower them to

⁷⁶ Lukman bin Ab Razak, 'The Enforcement Of Law In Protecting Consumer Right On Halal Food Product In Malaysia' < https://www.academia.edu/31669138/THE_ENFORCEMENT_OF_LAW_IN_PROTECTING_CONSUMER_RIGHT_ON_HALAL_FOOD_PRODUCT_IN_MALAYSIA Lukman bin Ab Razak 1131195 Bachelor of Fiqh and Fatwa with Honours Faculty of Syariah and Law > accessed 23rd October 2017.

⁷⁷ Vision 2020 is a Malaysian ideal introduced by the former Prime Minister of Malaysia, Mahathir bin Mohamad during the tabling of the Sixth Malaysia Plan in 1991. The vision calls for the nation to achieve a self-sufficient industrialized nation by the year 2020, encompasses all aspects of life, from economic prosperity, social well-being, educational world class, political stability, as well as psychological balance.

⁷⁸ The Sunday Daily, 'Protecting The Consumer' < <http://www.thesundaily.my/node/177264> > accessed 16th April 2018.

⁷⁹ 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).

face the challenges of liberalisation and globalisation for the period between 2003-2013.

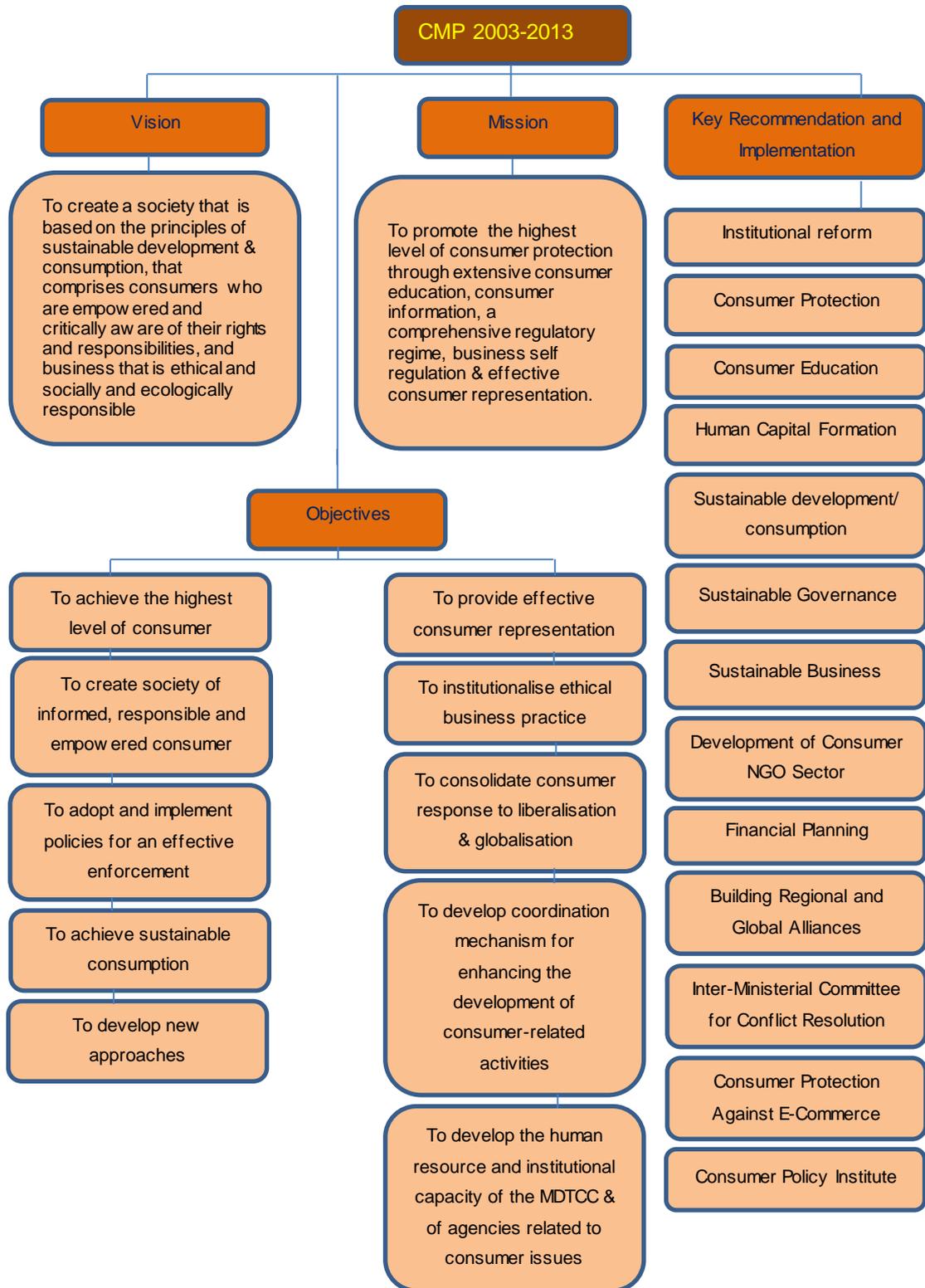


Figure 10: The Framework of Consumer Master Plan 2003-2013

The CMP 2003-2013 seems to demonstrate the centrality of consumer concerns to the Malaysian government as well as the ability of NGOs to place their own agendas within official policy. The mission set up by the CMP 2003-2013 is in a continuance of NCP 2002 is to promote the highest level of consumer protection through extensive consumer education, consumer information, comprehensive regulatory regime, business self-regulation and effective consumer representation.⁸⁰

According to Fernandez, 12 keys recommendations (were in the CMP 2003-2013) which are covering the strategic areas and realising the plan's objectives should be implemented.⁸¹ In order to execute the CMP 2003-2013 professionally, the MDTCC needs to carry out institutional reforms and innovations while at the same building on its human capital.⁸² New positions and competencies are required to deal with local area issues as well as regional and global issues impinging on consumer choices and safety. It must be able to review legislation and introduce legislative reforms and innovations that encourage sustainable business and sustainable consumption. There is also a great need to improve consumer education, introducing it into the formal education process, from primary to tertiary education. This needs to be supported by non-formal consumer skills education.

There is a need to improve the membership of consumer organisations in order to improve the bargaining and negotiation powers of consumers.⁸³ On the other hand, business organisations must start adopting sustainable business practices which include good and democratic corporate governance and clean production technologies. The creation of an information society brings along great prospects and dangers. This needs to be addressed and regulated both for good business practice and consumer protection from e-commerce businesses.

⁸⁰ Fernandez (n79).

⁸¹ *ibid* (n79).

⁸² Josie M.Fernandez, Consumer Master Plan 2003-2013 (Inception Report, August 2002) 60.

⁸³ Josie M.Fernandez, Consumer Master Plan 2003-2013 (Inception Report, August 2002) 61.

Last but not least, is the need for working towards heightening not only the level of consumer awareness and protection but also encouraging sustainable consumption trends.⁸⁴ Such trends towards sustainable consumption, sustainable production and sustainable development will help to create a sustainable and resilient future for all Malaysians. The aim of Vision 2020 will be realised not only in terms of economic development but also in terms of equity and quality of life of all Malaysians.

The above recommendations should be translated into a milestone plan. 12 keys recommendations outlined in CMP 2003-2013 were hoped to promote the highest level of consumer protection. However, the MDTCC claimed that the CMP 2003-2013 was not taken into action.⁸⁵ The Ministry proposed to review this CMP 2003-2013 for ensuring it's relevancy with current conditions in protecting the interests of consumers in this country.⁸⁶

5.4 Malaysian Law of Consumer Protection

Consumer protection laws have a long history in Malaysia by way of laws transplanted from the United Kingdom (the last colonial power here). But Malaysia has domestically developed laws too. The need for specific legislation to provide consumer protection has long been recognised. Before independence, some consumer protection laws such as the Price Control Act 1946 and the Medicines Act 1956 were introduced by the colonial government. Nevertheless, it has been claimed by Josie M.Fernandez that some consumer-related legislation such as the sale of goods and provision of services which were enacted before 1999 failed to protect consumers' interests which were based on caveat emptor.⁸⁷ The principle of caveat

⁸⁴ *ibid* (n6).

⁸⁵ 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 8th June 2017.

⁸⁶ Official Portal Ministry of Domestic Trade and Consumer Affairs (n74).

⁸⁷ *ibid* (n79).

emptor 'let the buyer beware' has caused many unfair practices in the consumer transactions.⁸⁸ Ong Tze Chin and Sakina Shaik Ahmad Yusoff claim that this general rule cannot be used in the modern market economy due to the consumers' limited knowledge on the terms and conditions which had been sophisticatedly draft by the large business organization in the consumer transactions.⁸⁹ As a result, the Malaysian government enacted CPA 1999 which came into force on 15th November 1999⁹⁰ to protect the rights and interests of consumers after protracted years of struggling by the consumer movement.⁹¹

The CPA 1999 represents a milestone in consumer protection in Malaysia which had been influenced in one way or another by legal developments in the United Kingdom, Australia, New Zealand and Canada⁹² that exclusively provides for consumers protection with enforcement in relation to the supply of goods and services either offline or online.⁹³ 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

⁸⁸ 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.

⁸⁹ Ong and Shaik Ahmad Yusoff (n88).

⁹⁰ Pursuant to Article 66(5) of the Federal Constitution, a law shall not come into force until it is published. The date a law comes into force may be evident from the date which is stated in the Act itself, the date appointed by the Minister as stated in the legal notification (B) Gazette, one day after the gazette date or on the gazette date. When the law is come into force, then it will legally has a binding effect.

⁹¹ Ibid (n88).

⁹² 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>

accessed 26 April 2017; Naemah Amin, 'The Consumer Protection Act 1999 and Fair Trade Practices in Malaysia' (Seminar on "When Life Gives You Lemon...", 14th October 2014).

⁹³ 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).

offered or supplied to one or more consumers in trade...'

By virtue of Section 2 of CPA 1999, a consumer is defined as a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption.⁹⁴ They acquire goods or services for direct use or ownership rather than for resale.

5.4.1 The Scope of Protection by CPA 1999

The CPA 1999 comprises 14 parts and a total of 150 sections which cover the main areas of consumer protection such as a supply of goods, supply of services, trade practices, product safety and liability and redress mechanism. The question is: does the CPA 1999 provides any protection for the consumers who are buying Umrah package travels from the local tour operators and travel agents?

Umrah package travel is a kind of service supplied by local tour operators and travel agents who combine accommodation, transportation, itinerary as well as meal in one package for the purpose of performing lesser pilgrimage in Mecca and Medina. According to CPA 1999, the supply of services has been 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'.⁹⁵ It is evident from the above definition that the term 'service' is defined broadly to include any contract except services which are merely incidental to the supply of goods as well as pure services which are regulated by their specific statutes such as the Architects Act 1967,

⁹⁴ 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&usq=AOwaw2zPdoiwj8nlobCpiUOgMfv> > accessed 11st March 2018. Consumers as defined by the CPA 1992 includes tourists, expatriates, diplomatic staff, permanent residents, etc.

⁹⁵ Sec 3, Consumer Protection Act 1999.

the Legal Profession Act 1976 and the Medical Act 1971.⁹⁶ Two types of services that are clearly within the ambit of CPA 1999 are; 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.⁹⁷ 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.

5.4.2 Types of Protection Provided by CPA 1999 For Umrah Package Travellers

The CPA 1999 is the core legislation that was enacted to provide greater protection to the Malaysian consumers including Umrah package travellers, where consumer rights granted by CPA 1999 cannot be taken away from them notwithstanding conditions in any agreement that they have signed.⁹⁸ 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.⁹⁹ This Act generally covers four major areas of consumer protection; the quality and safety of goods and services, marketing practices and

⁹⁶ Abu Bakar and Amin (n92).

⁹⁷ Sec 59, Consumer Protection Act 1999.

⁹⁸ 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.

⁹⁹ According to Sec 3 of Consumer Protection Act 1999, goods is defined as goods which are primarily purchased, used or consumed for personal, domestic or household purposes, and includes -

- (a) goods attached to, or incorporated in, any real or personal property;
- (b) animals, including fish;
- (c) vessels and vehicles;
- (d) utilities; and

- (e) trees, plants and crops whether on, under or attached to land or not, but does not include choses in action, including negotiable instruments, shares, debentures and money;

consumer information, price and supply of goods and services as well as remedies.¹⁰⁰

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 manufacturers¹⁰¹. If the tour operator or travel agent is found guilty for the offences prescribed under Part II of CPA 1999, the said company shall be liable to a fine not exceeding two hundred and fifty thousand ringgit (MYR250,000), and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit (MYR500,000).¹⁰² However, there is no single provision which requires the traders, suppliers or manufacturers to provide standard information to consumers.

Umrah package travellers who are dissatisfied with the performance of local tour operators and travel agents could file the claim for private redress to TCCM as stated in Section 85 of the CPA 1999. This tribunal is an independent judicial body with the primary function of hearing and determining claims lodged by consumers under the CPA 1999 including complaints from tourists. TCCM provides an alternative redress mechanism, apart from the courts, for a consumer to claim for any loss suffered (in respect of any goods or services purchased or acquired) in a less cumbersome, speedy manner and at a minimal cost. In 2014, several claims were filed by the Umrah package travellers who were frustrated by the local tour operators and travel agents to the Tribunals. The Tribunals awarded a certain amount of damages to be paid to the Umrah package travellers accordingly.¹⁰³

¹⁰⁰ Consumer Protection Act 1999.

¹⁰¹ Sec 10, Consumer Protection Act 1999.

¹⁰² Sec 25(a), Consumer Protection Act 1999.

¹⁰³ Sri Inria Sari vs Al hans Global Consultancy TTM-K-(P)-401-2014; MD Rejab bin Saad vs Madain Al Taqwa Travel & Tours Sdn Bhd TTPM-K-(P)-424-2014; Nazirah binti Ali vs Madain Al Taqwa Travel & Tours Sdn Bhd TTPM-WPPJ(P) 587-2014; Mohd Zarudin bin Mat Salim and Aziyun binti Arshad vs I Umrah Rakyat Sdn Bhd TTPM-WPPJ(P) 530-2014; Mat bin Mat Taha vs Syamar Smart Venture TTPM-WP-(P)-1047-2014; Shahrier bin Pawanchik vs Madain Al Taqwa Travel & Tours Sdn Bhd TTPM-P-(P)349-2014; Rohaida binti Ideros vs ZAFA Kiramas TTPM-J-(P)-446-2013

5.4.3 Enforcement of CPA 1999

In order to ensure this Act effectively protects the interests of consumers, MDTCC has an absolute right to enforce the rights of consumers. The enforcement of consumer protection also can be carried out by the relevant authorities or regulatory bodies based on the specific nature of the issues and complaint. Part XIII of the CPA 1999 specifically deal with the enforcement of CPA 1999. The MDTCC delegates it power to the controller, deputy controller and assistant control to enforce the law as prescribed in CPA 1999. By virtue of Section 7(3) of CPA 1999, an assistant controller shall be under the control and direction of the controller. In addition, the MDTCC delegates its power to an assistant controller to investigate the commission of any offence under this Act.¹⁰⁴ The MDTCC also created an Enforcement Division on 17 April 1972 to eradicate unethical business activity in order to protect consumers from being exploited by traders through CPA 1999.¹⁰⁵

The MDTCC had sought cooperation from the Malaysian Communication and Multimedia Commission to reaffirm the validity and legal effects of transactions by electronic means, to remove legal obstacles to e-commerce and to provide certainty in electronic communications.¹⁰⁶ Recently, many Umrah package travellers in Malaysia chose to book their Umrah package travels online when the local tour operators and travel agents started to launch their web portal of Umrah package travel. The one-stop GoUmrah.travel enables them to instantly book Umrah trips including all major

¹⁰⁴ Sec 123, Consumer Protection Act 1999; Sec 7, Consumer Protection Act 1999. The Minister may appoint, from among public officers, a Controller of Consumer Affairs and such number of Deputy Controllers of Consumer Affairs, Assistant Controllers of Consumer Affairs and other officers as may be necessary for the purposes of this Act.

¹⁰⁵ Ministry of Domestic Trade, Cooperatives and Consumerism. 'Enforcement Division' < <https://www.kpdnkk.gov.my/kpdnkk/enforcement-division/?lang=en> > accessed 11st March 2018.

¹⁰⁶ Malaysian Communication and Multimedia Commission, 'Safer Online Shopping' < <https://www.mcmc.gov.my/media/press-clippings/safer-online-shopping?lang=en-US> > accessed 3rd March 2018.

elements such as flights, hotels, transfers, visits to holy sites, travel insurance and visa processing.¹⁰⁷

5.4.4 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 communications (for example: mobile phone application, internet, e-commerce etc.) has not just changed the environment of consumer transactions but also pose potential risks that affect the consumers' rights as a whole. The traders have large resources to know the products and its relevant information. On the other hand, the consumers are more often left with limited or no information in regard to the products. This research found some gaps that exist in the existing CPA 1999 which should be filled in as to maintain its relevance for the current demand for protection by Malaysian consumers generally and Malaysian Umrah package travellers particularly. The earlier examination also discovered that the CPA 1999 is not strong 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.¹⁰⁸

The examination on the scope of protection in section 5.4.1 of this Chapter exposes that the existing provisions of CPA 1999 is extremely focused 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 consumers' interest. As had been highlighted in Chapter 2 of this research, consumers are vulnerable to a detriment in

¹⁰⁷ 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 16th April 2018.

¹⁰⁸ Ibid (n6).

different circumstances due to different factors. Lack of information and information asymmetry could be the factors that contribute to consumers detriment.¹⁰⁹ So, from a need-based perspective, account must be taken of the weaker position of consumers as loss bearers.¹¹⁰ Thus, they require greater protection than is provided by the existing CPA 1999. To be more specific, additional protection is needed to comprehensively protect the interests of consumers including Umrah package travellers in this challenging market. 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.

In addition, as discussed at length in Chapter Three, consumers need for sufficient and accurate information at all stages; advertising stage, pre-contractual stage, as well as post-contractual stage which cover all aspects. However, there is no single provision in the CPA 1999 which regulate the definite information that should be supplied by the traders to the consumers either at advertising stage, pre-contractual stage or post-contractual stage. This is a clear lacuna in the existing CPA 1999 which renders the protection to be inadequate. Compared to the approach adopted by the UK, they require the traders to provide all relevant information including the character of the product (either goods or services), the traders' identity, the price and payment arrangement etc. Providing certain information could be amongst the method for assisting the consumers in making better purchasing decisions and becoming informed consumers as targeted by the NCP 2002 and CMP 2003-2013.

Evidence suggests that traders possess more information about their products and services. Therefore, in order to prevent the traders from hiding

¹⁰⁹ Lack of information and information asymmetry are two different things. In the case of imperfect information, relevant facts about the world are not known with certainty. Asymmetric information refers to a situation where one party to an agreement is better informed than the other party. While imperfect information does not necessarily need to be asymmetric, asymmetric information presupposes imperfect information for at least one party to an agreement. Information asymmetries are often avoidable and, therefore, result often in consumer detriment.

¹¹⁰ Chris Willett, *Fairness in Consumer Contract* (Aldershot, 2007).

any information which could detriment consumers' interests, the CPA 1999 should require the traders to provide essential information in clear, legible, understandable, and be appropriate to the consumers including Umrah package travellers. As highlighted in Chapter Three of this research, there are some very specific information should be provided by the traders (local tour operators and travel agents) to the consumers at the pre-contractual stage, including their trading address, pricing, complaint-handling policy, cancellation rights as well as the characteristics of the goods or services. The information disclosed during that stage and agreed between both parties should form as part of the contract term and binding upon both parties.

5.5 Protection of Umrah Package Travellers By Malaysian Association of Tour and Travel Agents (MATTA) Code of Ethics for Members

The tourism industry in Malaysia is regulated by the Tourism Industry Act (TIA) 1992, Malaysian Tourism Promotion Board Act (MTPBA) 1992 and Tourism Vehicles Licensing Act (TVLA) 1999. Ministry of Tourism and Culture (MOTAC) was formed through the restructuring of the Cabinet on 15 May 2013 after the 13th General Election. Among the functions of the Ministry is to formulate the national tourism policy to achieve the vision, mission and objectives of the Ministry and implement policies relating to the progress and development of the tourism and culture industry. 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 act as national umbrella representative body for the entire travel industry in Malaysia. It has been established to regulate the travel

agency sector purposely for protecting the interests of many parties including service providers, tour operators, travel agents as well as consumers. MATTA boosts up a membership of over 3100 members and increasing, comprising local tour operators and travel organizations as well as numerous overseas 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.¹¹¹

It promulgates MATTA Code of Ethics for Members as to refrain the local travel agents or tour operators from committing any actions which may detriment the rights of package travellers as consumers. By virtue of Articles VII and VIII of the MATTA Constitution, every member of MATTA shall 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. While Part III of MATTA Code of Ethics for Members distinctively provides rules on how to control the conduct between travel agents and members of public i.e. consumers of tourism products including on the booking conditions, booking forms, insurance, travel documents, alteration to travel arrangement as well as visa and health requirements.

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

MATTA Code of Ethics for Members is applicable to all registered tour operators and travel agents regardless of their nature of a business, either domestic, inbound or outbound. MATTA is a platform which allocates specific rights for consumers including Umrah package travellers in order to protect them from being victims of unscrupulous tour operators and travel agents. It requires MATTA members to serve their consumers ethically and each member shall be committed upon their responsibilities as described in Code

¹¹¹ MATTA, 'About MATTA' < <http://www.matta.org.my/about-us> > accessed 2nd August 2017.

5.2 of MATTA Code of Ethics for Members. It is a measure to ensure that the activities of travel agents, tour operators, ground operators and others in travel and tourism industry contribute significantly to the economic, social and well-being of the community and country that they operate in. Generally, it is the responsibility of MATTA members to provide the travellers including Umrah package travellers with reliable information on the journey, the tour, the hospitality arrangements and the conditions of contract in clear, understandable and unambiguous manner.¹¹²

Each and every tour operator, travel agent and ground operator must have a valid licence granted by MOTAC under the TIA 1992.¹¹³ 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 found that any tour operator, travel agent or ground operator is running Umrah package travel business without having a valid licence, it has the power to report this offence to the MOTAC and if they are found guilty for an offence, they shall be liable to a fine not exceeding fifty thousand ringgit (MYR50,000) or to imprisonment for a term not exceeding five years or to both.¹¹⁴ However, if the local tour operators or travel agents continuously commit the same offence and found guilty, they shall be liable to a daily fine

¹¹² Code 1.1, MATTA Code of Ethics for Members.

¹¹³ Sec 5(2), Tourism Industry Act 1992.

¹¹⁴ Sec 5(3), Tourism Industry Act 1992.

not exceeding five thousand ringgit (MYR5,000) for each day the offence continues to be committed. When the MATTA aggressively monitor the entrance to the market and operation of tour operator and travel agents who are selling Umrah package travel, it will protect the Umrah package travellers from buying Umrah package travels from unlicensed tour operators or travel agents, consequently prevent from losing money or non-performance of the contract. However, MATTA is not effectively acting as a supervisor of the industry because there are still numbers of local tour operators and travel agents who illegally operate their business in this industry.¹¹⁵

The Travel Industry (Tour Operating Business and Travel Agency Business) Regulations 1992 makes it compulsory for licensed travel agency offering Umrah package to ensure that all pilgrims are insured by Takaful Umrah Scheme against the risk of emergencies, illness and death. The requirement was added into the Regulations through legislative amendment, which came into force in 1999. In addition, the MATTA has imposed a mandatory obligation on its members to offer travel insurance since March 2012. According to MATTA Code of Ethics for Members, travel agents shall draw the attention of their client travellers to travel insurance facilities, which is suitable for them to insure themselves against any eventualities such as flight cancellation or delay, baggage loss, personal accident etc.¹¹⁶

As provided in Code 5.2.2, the tour operators and travel agents who are the members of MATTA are responsible 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.¹¹⁷ Previously, fairness has been defined as a judgment of whether an outcome and/or the process to reach an outcome are reasonable,

¹¹⁵ 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 16th April 2018.

¹¹⁶ Code 5.2.4, MATTA Code of Ethic for Members.

¹¹⁷ 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.

acceptable or just.¹¹⁸ However, it is widely recognised that a more exhaustive fairness definition should consider the economy as well as the social aspect of production and trade.¹¹⁹ But, there is no clear definition of 'fair' term by MATTA Code of Ethics for Members. 'Fair' has been taken to be a global measure of price acceptability. The basis for determining a fair or acceptable price has been assumed to be purely economic. Hence, a fair price is simply a low price - one which benefits the consumer, one which is economically acceptable.

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 is 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.

¹¹⁸ 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.

¹¹⁹ 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.

5.5.2 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, this Code provides a platform for the consumers including Umrah package travellers to file their complaints in writing to the MATTA Consumers Affairs Board (MCAB).¹²⁰ 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).

The consumers also have a channel to bring the claims through alternative dispute mechanism to the TCCM as stated in Section 85 of the CPA 1999. This provision is one of the statutory laws that provides a remedy to compensate the injured party 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 function of hearing and determining claims lodged by consumers under the CPA 1999 including complaints from tourists. 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.¹²¹ It is because TCCM provides an alternative redress mechanism, apart from the courts, for a consumer to claim for any loss suffered (in respect of any goods or services purchased or acquired) in a less cumbersome, speedy manner and at a minimal cost. Every agreed settlement and every award made by TCCM shall be final and binding on all parties to the proceedings.¹²² Besides, the award made by TCCM shall be deemed to be an order of a magistrate's court and to be enforced accordingly by any party to the proceedings.¹²³

¹²⁰ Code 1.2, MATTA Code of Ethics for Members.

¹²¹ 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.

¹²² Rungit Singh, 'Consumer Claims Cross Border Redress Mechanism In the Asean Region' < aseanconsumer.org/misc/downloads/misc-crossborder.pdf > accessed 4 Jan 2016.

¹²³ Ministry of Domestic Trade, Co-Operative and Consumerism, 'Enforcement of Awards' < <https://tspm.kpdnkk.gov.my/portal/index.php/en/award/enforcement-of-award> > accessed 7 May 2015.

5.5.3 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 in section 5.5.1 of this chapter. However, this research 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 research 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 research 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 a 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 travel¹²⁴ 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.

¹²⁴ 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 6th September 2018; Hilal Azmi, 'Penipuan Pakej Umrah' < <http://www.astroawani.com/berita-malaysia/matta-desak-hukuman-keras-elak-penipuan-pakej-umrah-35327> > accessed 6th September 2018.

5.6 Specific Approach For Protecting Malaysian Umrah Package Travellers

The MOTAC works together with MDTCC, MATTA, Jabatan Wakaf, Zakat dan Haji (JAWHAR), Ministry of Foreign Affairs (MFA), Royal Malaysia Police (RMP), Companies Commission of Malaysia (CCM), Malaysia Competition Commission (MyCC), Ministry of Transportation (MOT), Malaysian Communications and Multimedia Commission (MCMC), Tabung Haji (TH), as well as Bumiputera Travel and Tour Agents Association of Malaysia (BUMITRA) set up Umrah Regulatory Council (URC) on 24th August 2014 under TIA 1992 particularly to protect the Umrah package travellers, regulate the operation of Umrah package travel arrangement and handle the Umrah-related issues. They are sharing information about Umrah package travel to ensure that fraud cases can be monitored more effectively.¹²⁵ Furthermore, the Council conducting awareness campaigns nationwide to educate the public on the matter relating to Umrah package travel and their rights as consumers of Umrah package travel.¹²⁶

In order to ensure that the establishment of URC achieve the purpose and corresponds the issues currently facing by Umrah package travellers in Malaysia, two main approaches have been initiated which require all tour operators and travel agents to have sub-licence for handling Umrah package travels and setting up minimum price of Umrah package travels.

5.6.1 Sub-licence of Umrah Package Travel

Malaysian tour operators who are running outbound tourism such as a trip to Mecca and Medina for Umrah must possess a valid outbound license

¹²⁵ Fernando Fong, 'Umrah Regulation Council Effective, Issued RM275,500 Worth Of Compounds Since 2014, Says Nazri' < <https://www.nst.com.my/news/2016/11/185547/umrah-regulation-council-effective-issued-rm275500-worth-compounds-2014-says> > accessed 29 May 2017.

¹²⁶ Fernando (n125).

granted under TIA1992.¹²⁷ Furthermore, the Saudi government also impose conditions that must be complied by the Malaysian tour operators who are selling Umrah package; where they must be registered with International Air Transport Association (IATA) (must provide bank guarantee or bond of MYR 300,000.00 and approved by Ministry of Hajj), possess outbound license and enter into an agreement with muassasah. Every tour operator also must enter into a contract of service with a travel agent in Holy cities (muassasah) which will cost up to SR 150,000. A tour operator that possess a license from MOTAC and Saudi government legally has the power to sell Umrah package through travel agents or directly to consumers.¹²⁸

The URC requires all of the tour operators and travel agents who are intended to handle Umrah packages to have a sub- licence which is issued by MOTAC from October 1, 2017 (which still pending amendments to the TIA 1992).¹²⁹ Previously any companies wishing to handle Umrah activities only need an outbound licence as required by TIA 1992. Malaysian government and tourism organisations believe that by requiring a special licence for operating Umrah travel arrangement, it could control the fraudulent Umrah package travel as well as control the entrant of Umrah package travel industry.

5.6.2 Regulate Minimum Price of Umrah Package Travel

Before regulating the minimum price of Umrah package travel in Malaysia, the government, MOTAC, MATTA and other tourism organisations discussed in detail with the local tour operators, travel agents and all service providers involved. As a result, the MOTAC with the agreement from

¹²⁷ Sec 5, Tourism Industry Act 1992:

(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 licence granted under this Part. (2) No person shall carry on or operate, or hold himself out as carrying on or operating--
 (a) a tour operating business; or
 (b) a travel agency business,

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

¹²⁸ Code 4.3.1, MATTA Code of Ethics for Members.

¹²⁹ Bernama, 'Travel Agencies Must Have Special Umrah License Starting October 2017' < <http://www.themalaymailonline.com/malaysia/article/travel-agencies-must-have-special-umrah-licence-starting-oct-2017> > accessed 29 May 2017.

BUMITRA and MATTA regulate the minimum price for an Umrah package travel which should not less than MYR4900 for 12 days 10 nights package. As highlighted in Chapter Two, numbers of local tour operators and travel agents offer cheaper Umrah package travel at MYR 3000 to the Umrah package travellers with an intention to cheat them. And undoubtedly, the result of a study done by the Ministry discloses that most of the claims lodged by the Umrah package travellers are related to the fraudulent cheap Umrah package travel. According to MOTAC and MATTA, it is impossible to create an Umrah package at that price range (MYR 3000) by taking into account the price of flight ticket, accommodation, meal as well as services fee of tour operators and travel agents. This approach will not be going to stop the unscrupulous tour operators and travel agents from selling fraudulent Umrah package travel, but it will make consumers more aware on rising occurrence of frauds and cheating related to Umrah by educating and disseminating the information in relation to the minimum price of Umrah package travel as regulated by Malaysian law to the public.

5.6.3 The Effectiveness of URC As An Approach For Protecting Umrah Package Travellers

Licensing and price control are two main regulatory approaches employ by MOTAC and tourism industry players for protecting the interests of Umrah package travellers, tour operators and travel agents. This approach of licensing is normally directed at the traders.¹³⁰ Licensing is one of regulatory approach use to regulate traders when there is a high risk of consumer detriment.¹³¹ It is a powerful regulatory approach that can simultaneously track traders entering and leaving the industry, screen new entrants, monitor and enforces ongoing compliance with industry standards. The Centre for International Economics' review of travel agents (CIE 2000) recommends that licensing schemes could be used to achieve consumer protection

¹³⁰ Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (2nd edn, Ashgate Publishing Limited, 2005) 74.

¹³¹ Consumer Affairs Victoria, 'Using Licensing to Protect Consumers' Interest' (Nov 2006) Research Paper No.9, i.

objectives.¹³² According to Geraint Howell and Stephen Weatherill, this technique of licensing allows channels of supervision over a trade which can be exercised by public authorities.¹³³ Shirley Svorny describes licensing as a set of regulation that limits service provision to individuals or entities who meet state-established criteria.¹³⁴ Despite claims that licensing increases service quality, the effect of licensing on consumption quality is ambiguous. That fact that service providers actively promote licensing has led to the suspicion that licensing benefits these groups at the expense of providers of competing services or consumers.¹³⁵ However, the effectiveness of this instrument in protecting the rights of Umrah travellers from unscrupulous tour operators and travel agents could not be evaluated yet.

Malaysian government keeps under control the price of Umrah package in the market through statutory devices.¹³⁶ One of the reasons that government invokes price controls is to ensure that goods and services are sold at an equilibrium market price. In a situation with numerous well-informed consumers purchasing from multiple sellers who can develop a reputation for high or low quality, the free market works well. However, there are occasions when entrants are discouraged or the information available to one or more parties is poor. In such a case, the government may impose price controls in an effort to protect consumers from the exploitation of a certain good or service.¹³⁷ By establishing a minimum price (floor price) or maximum price (ceiling price) of goods and services, a government wants to ensure the goods and services are affordable for as many consumers as possible.¹³⁸

¹³² CIE (Centre for International Economics) 2000, National Competition Policy Review of the National Scheme for the Regulation of Travel Agents, Report prepared for the Ministerial Council on Consumer Affairs.

¹³³ Howells and Weatherill (n130).

¹³⁴ Shirley Svorny, 'Licensing, Market Entry Regulation' in Boudewijn Bouckaert and Gerrit De Geest (eds) *Encyclopedia of Law & Economics, Vol. III, The Regulation of Contracts* (Cheltenham, UK, Edward Elgar, 2000) 296-328.

¹³⁵ Svorny (n134).

¹³⁶ Price Control, The Consumer and Law

¹³⁷ Fiona M. Scott Morton, 'The Problem of Price Controls' <

<https://www.cato.org/publications/commentary/problems-price-controls> > accessed 30 May 2017.

¹³⁸ Iain Ramsay, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (3rd edition, Hart Publishing, 2012)128.

Malaysian government passes the law to fix the minimum price or floor price of Umrah package travel at which commodities must be sold. In relation to the Umrah package travel in Malaysia, the government believes that by setting up the minimum price for Umrah package, it acts as a benchmark to the Umrah travellers on what is the reasonable price that they should pay on. By considering the actual cost for an Umrah package travel, they came out with a minimum price of package travel which should not less than MYR4900.00. This minimum price legislation is introduced by the government to protect the interests of Umrah package travellers in the absence of any guideline pertaining to the price of Umrah package travel. However, most economists have long agreed that government price controls are not effective.¹³⁹ The government intervention in normal market mechanism may bring dangers in the economy, particularly if such intervention is based on pure discretion rather than on any socio-economic consideration.¹⁴⁰

5.7 The Best Approach For Protecting Malaysian Umrah Package Travellers in the Globalization Era

Malaysian Umrah package travellers are exposed to the risk and threat due to information gaps as explained in Chapter Two of this research. Therefore, information provision should be the most appropriate mechanism that should be employed to safeguard the interests of Malaysian Umrah package travellers. The advancement in information and communication technology and globalization have resulted in the evolution of more complex and challenging marketplace. Furthermore, as today's consumers are constantly facing a bewildering array of goods and services in the market,

¹³⁹ Stephanie Laguerodie & Francisco Vergara, 'The Theory of Price Controls John Kenneth Galbraith's Contribution' (2008) Vol.20, Iss 4, Review of Political Economy, 569-593; Sowell, T. *Basic Economics: A Common Sense Guide To The Economy* (4th edn, New York, N.Y.: Basic Books,2011) 21.

¹⁴⁰ Ritika Muley, 'Effect of Price Control By Government' <
<http://www.economicdiscussion.net/price/effects-of-price-control-by-government/17043> >
accessed 30 May 2017.

consumers must be equipped with an elevated level of information. Therefore, it is vital to ensure that appropriate approach could be used to control the information provision by traders, to deter the omission of information provision by the traders as well as to secure compliance on the information provision, which after all protects the interests of the Umrah package travellers.

Therefore, a deliberate structure to overcome this problem could be summarised as below;

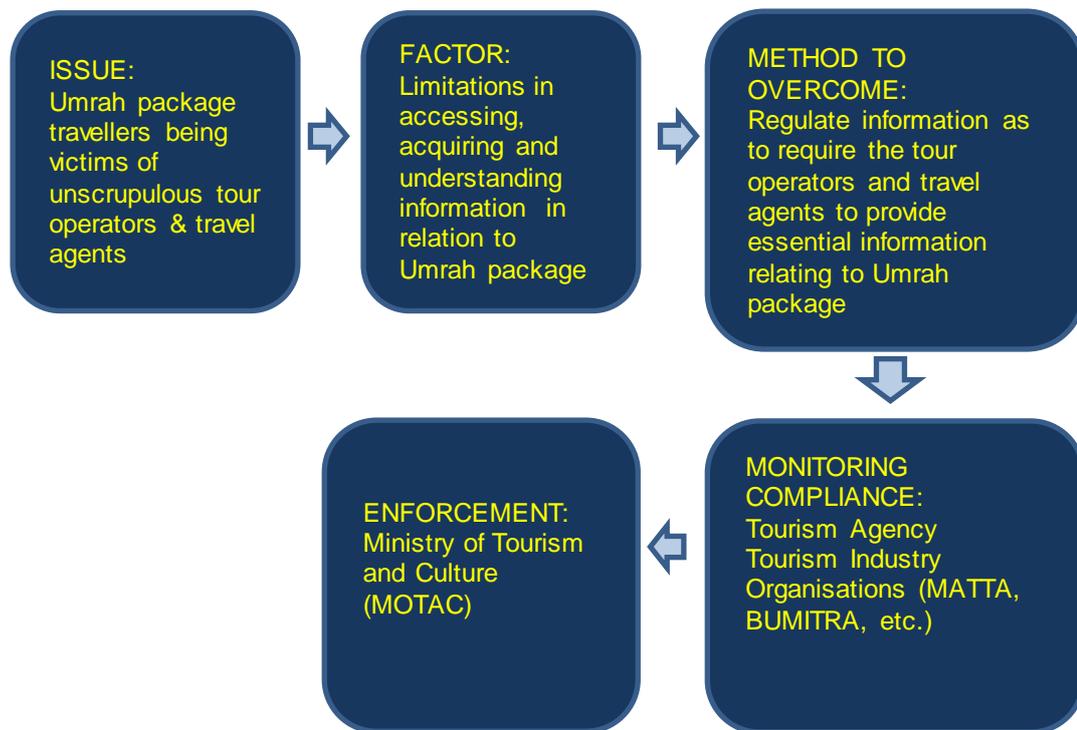


Figure 11: Structure of Problem

As highlighted in Chapter Three of this research, there are some obstacles to information. However, it could not be denied that information could help to protect the consumers' interests. This research would say that regulating the information that should be provided by the local tour operators and travel agents could be a vital start to protect the interests of Malaysian Umrah package travellers. Geraint Howells claims that consumer policy increasingly places emphasis on the role of information in allowing consumers

to protect themselves.¹⁴¹ The consumers must use the information to protect themselves, and will not be shielded from consequences that follow from entering into the agreement. Likewise, Beales, Craswell and Salop affirm that information provision allows consumer self-protection, compatible with individual preferences.¹⁴²

By using information as an instrument for protecting the rights of Umrah package travellers, the tour operators and travel agents must be required to provide essential information to the travellers before the contract is entered. Information provision gives consumers the opportunity to make a choice between service providers and act wisely. The more fully and accurately consumers are informed about the contract, the better they will be protected. The disclosure is likely to be effective only when the public can understand the information disclosed, where it is free to choose on the basis of that information, and where it believes the information is materially relevant to the choice.¹⁴³ Malaysian Umrah package travellers are coming from the different level of education, standard of living and background. Not all of them received higher education and literate. Therefore, the information provides by the tour operators and travel agents must be easy to understand and in a simple word. By having a good understanding on the package travel sold to them, at least they have basic knowledge about the content of the contract and their rights as consumers, the consequence of entering the contract and the alternative available in case of non-performance.

5.8 Conclusion

The earlier examination on the protection measures for Umrah package travellers in the context of Malaysian legal paradigm discovers that there are

¹⁴¹ Geraint Howells, 'The Potential and the Limits of Consumer Empowerment by Information' (2005) Vol 32, No.3, *Journal of Law and Society*, 349-370.

¹⁴² Howard Beales, Richard Craswell and Steven Salop, 'Information Remedies for Consumer Protection' (May, 1981), Vol. 71, No. 2, *The American Economic Review*, 410-413.

¹⁴³ Stephen Breyer, *Regulation and Its Reform* (London: Harvard University Press, 1982)164.

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 aimed. 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 research 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 research 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 responsabilisation).

Therefore, this research firmly believes that 'information regulation' could solve the problems that have been addressed above and be the best protective tool for the consumers, particularly Umrah package travellers. In other words, it will act as a bridge to fulfil the gaps that exist in the existing policies, law and approaches. Thus, it is vital to regulate the information that should be provided by the local tour operators and travel agents to the Umrah package travellers as to ensure that the interests could be protected at the earliest stage i.e. before entering into any contract with the local tour operators or travel agents. The provision of clear and accessible information on Umrah package travel plays a key role in making the transaction process more understandable, transparent, clear, and successful. In order to protect themselves from being the victim of local tour operators and travel agents, they must be aware of the content of Umrah package travel. Therefore, information provision could be the most efficient means of protecting consumers and support self-reliance to work comprehensively with the existing legal instruments created by government and tourism organisation. At last, the consumers and Umrah package travellers will be benefited from this movement.

Chapter 6 : Information Regulatory Approach: Specific Model for Protecting the Interests of Umrah Package Travellers in Malaysia.

6.1 Introduction

The discussion in the previous chapter (Chapter 5) has presented the legal framework and approaches adopted by the Malaysian government and the Malaysian tourism industry for protecting the interests of consumers particularly Umrah package travellers in Malaysia. The examination conducted in that chapter portrayed that the existing Malaysian legal framework does not correspond well to the current demand for protection by Malaysian Umrah package travellers. The existence of several flaws in the existing policies, laws and approaches prevent the Umrah package travellers from being comprehensively protected. Subsequently, they have to bear financial, emotional as well as spiritual loss.¹

As has been demonstrated in Chapter Two of this research, limitation in accessing, acquiring and understanding the information in relation to Umrah package travel is one of the major issues that place Malaysian Umrah package travellers in vulnerable circumstances. Different educational, social, economy, age and geographical background results to difficulty in accessing the relevant information related to Umrah package travel. In addition, Umrah package travellers are not always provided with the information they need to make informed buying choices. Even, some of them may be put off from reading the entirety of contracts due to the complex and/or lengthy language contained therein. All those differences and circumstances raise the issue of

¹ Umrah is performed by Muslims for spiritual experience. Umrah travellers at spiritually high stage when they decide to go for Umrah. If the package not turns up as expected, they are feeling down and suffer spiritual loss.

potential informational vulnerability where it may affect the process of decision making. Therefore, by having an examination on the concept of consumer protection and how information could play its role as a consumer protection measure in Chapter Three, this research found that information regulation could be the most appropriate means to protect the interests of Umrah package travellers in Malaysia.

The argument put forward by this thesis is that a good structure of information regulation for the purpose of protecting the interests of Umrah package travellers at pre-contractual stage should comprise of; 1) pre-contractual information duties of local tour operators and travel agents; 2) the list of information that should be provided; 3) method to provide the information to the Umrah package travellers; and 4) enforcement framework of information provision. All of these will be explained further in this chapter. Thus, to achieve the aim, this chapter will refer to the existing literature, existing approaches adopted by the European Union (EU) and United Kingdom (UK) as well as an existing framework designed and implemented by the Malaysian government and tourism industry.

6.2 Legal Transplant: A Method Use For Structuring A Specific Model of Information Regulatory Approach

6.2.1 Nature of Legal Transplant

The economic development, democratization and globalisation have today so sharply increase the number of legal transplants that at least in developing countries, most major legislation now has foreign component.² According to Mohammad Rizal Salim, a legal transplant was said as one of

² Jonathan Miller, 'A Typology of Legal Transplant: Using Sociology, Legal History and Argentina Examples To Explain The Transplant Process' (Autumn 2003) Vol. 51, No. 4, *The American Journal of Comparative Law*, 839-885.

the most important sources of legal development.³ Even, Alan Watson describes legal transplant as the most fertile source of legal development because the majority of changes in legal systems are the result of borrowing.⁴ As the concept of legal transplant is the key to legal transplantation theories, it is not surprising that most scholars engaging in debate about this phenomenon usually attempt to define this term.

One of the great proponents of legal transplant, Alan Watson defines legal transplant as ‘the moving of a rule or a system of law from one country to another or from one people to another and that change in the law is independent from the working of social, historical, cultural substrata, so that historical factors and habit of thought do not limit the transferability of rules’.⁵ Nevertheless, Watson’s view on a legal transplant is contrary to Pierre Legrand’s approach. Pierre Legrand who was one of the strongest opponents of legal transplants argues that legal transplants are ‘impossible’ due to ingrained differences between the systems involved.⁶ According to him, what can be displaced from one jurisdiction to another is literally a meaningless form of words because the meaning of a rule is dependent on interpretation in a given legal context. He concludes that no rule in the borrowing jurisdiction can have any significance as regards the rule in the jurisdiction from which it is borrowed.⁷

³ Mohammad Rizal Salim, ‘Legal Transplantation and Local Knowledge: Corporate Governance in Malaysia’ (2006) Vol 20, Australian Journal of Corporate Law, 55-83; Daniel Berkowitz, Katharina Pistor and Jean Francois Richard, ‘Economic Development, Legality and Transplant Effect’ (2003) Vol 47 Iss 1, European Economic Review, 165; Daniel Berkowitz, Katharina Pistor and Jean Francois Richard, ‘Economic Development, Legality and Transplant Effect’ (September 2001) William Davidson Working Paper Number 410 < <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/39794/wp410.pdf?sequence=3> < accessed 12th November 2018. Legal transplants are very important, not only for development of legal systems, but for social and economic development more generally.

⁴ Jean-Frederic Morin and Edward Richard Gold, ‘An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries’ (2014) Vol 58, Iss 4, International Studies Quarterly, 781-792.

⁵ Alan Watson, ‘Legal Transplants and European Private Law’ (December 2000) Vol 4.4 Electronic Journal Of Comparative Law < <http://www.ejcl.org/ejcl/44/44-2.html>> accessed 13rd December 2017.

⁶ Pierre Legrand, ‘The Impossibility of Legal Transplant’ (1st June 1997) Vol 4, Iss 2, Maastricht Journal of European and Comparative Law, 111-124.

⁷ Legrand (n6).

Robert Seidman and Ann Seidman also openly reject the legitimacy of legal transplant.⁸ Legal transplant is futile and dangerous. Otto Kahn Freud also opposes the idea presented by Watson by claiming that law must be separated from their purpose or from the circumstances in which they are made. They say further that ‘we cannot take for granted that rules or institutions are transplantable and believe that there are degrees of transferability’.⁹

Watson equates the notion of legal transplant with legal borrowing¹⁰ and according to him, borrowing is the most fruitful means of legal development.¹¹ He states further that what can be borrowed is not just statutory rules, but it could be a court decision, academic opinion, principles, institutions and even structures.¹² Watson believes that law is not ‘the natural outgrowth of a particular society, but the intellectual creation of clever lawyers, easily adaptable to local use by other clever lawyers elsewhere on the globe’.¹³ He and his proponents strongly believe in the possibility of legal transplant, but he fails to provide a clear and concrete methodology for producing effective and efficient laws.

This research agrees with Watson and would argue that legal transplant may retain the similar approach but may be different in substance, reflecting the specific legal desire of legal elite (jurists, politicians, academics, judges etc.) and suitability of borrowing states. It is common to see that the same legal rule operates differently in two countries. Even, the same legal rule could have different legal effect in different two countries. It is because the state is responsible for its coming into being, for its application and for its efficacy.

⁸ Cuong Nguyen, ‘The Drafting Of Vietnam's Consumer Protection Law: An Analysis From Legal Transplantation Theories’ (PhD thesis, University of Victoria, 2011) < <https://search.proquest.com/docview/1520453695?pq-origsite=gscholar> > accessed 3rd February 2018.

⁹ Kahn Freud identifies a two step process to determine the viability of a proposed transplant:

- a. To determine the relationship between the legal rule to be transplanted and the socio political structure of the donor state
- b. Comparing the socio-political environment of the donor and receiving state.

¹⁰ Watson (n5).

¹¹ *ibid* (n5)

¹² *ibid* (n5).

¹³ Alan Watson, *Legal Transplant: An Approach to Comparative Law* (2nd edn, 1993) 95.

This research would say that legal transplant should not be restricted to the theory that the borrowing states need to adopt the whole law, rules or decision of borrowed state and carrying the same meaning as the borrowed law, but legal transplant could be interpreted as the borrowing 'bits of law.' In other words, legal transplant means displace of partial or whole existing law, rules or regulation (A) with a new law, rules or regulation (B) by carrying some similar characteristics with the borrowed jurisdiction. Within this context, this research would propose the Malaysian government to adopt a similar approach as what has been practised by the UK to protect package travellers. As has been addressed in Chapter Four of this thesis, the UK protects the rights of consumers for adequate information by regulating the information provision. Though a similar approach will be adopted, there are some different information will be required to be provided as to suit with the nature of Malaysian package travel and Malaysian travellers' needs.

6.2.2 The Motivation of Legal Transplant

The transplant motivations are normally associated with political or governmental functions, such as regulating a new national problem, pursuing foreign policy interests or gaining governmental legitimacy.¹⁴

The primary motivation for this legal transfer is protecting the Umrah package travellers and providing information was proven as a means to achieve it. This motivation is potentially fruitful source of legal development in Malaysia¹⁵ and the best practical means of law reform for protecting the vulnerable Umrah package travellers. Therefore, legal transplant is seen as the best legal solution for the current issue facing by the Malaysian Umrah package travellers and protect the interests of Umrah package travellers.

¹⁴ Li Wen Lin, 'Legal Transplants Through Private Contracting: Codes of Vendor Conduct in Global Supply Chains As An Example' (Summer 2009) Vol. 57, No. 3, *The American Journal of Comparative Law*, 711-744.

¹⁵ Nguyen (n8).

The UK is one of the most innovative and advanced leisure travel sectors in the world and is one of the biggest markets for leisure travel products in the EU.¹⁶ The UK government looks one step ahead compared to Malaysia when they started to regulate the information provision in many fields including package travel as to ensure that consumers are protected with adequate and accurate. UK implemented the Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 purposely for protecting the interests of package travellers. The protection of Umrah package travellers still comes within the PTRs 2018 even though that Regulations is not specifically designed for them.

Compared to the UK, Malaysian legal development is a step behind. Malaysia has no solid legal structure and approach for protecting the interests of Umrah package travellers so far. The exposures, experiences and legal framework in relation to consumer protection of information holding by the UK could be a good source of legal reform in accordance with legal transplant theory, with a great consideration on the gaps that have been addressed in Chapter Five of this thesis.

Furthermore, this research looks towards the UK framework due to significant similarities in legal and political attributes though different in terms of cultural and behaviour of the Umrah package travellers in relation to information acquisition. The UK has a strong history of protecting consumer rights. For example, the Consumer Rights Act (CRA) 2015 was introduced to update and transform institutional arrangements and legal provisions in the UK¹⁷ whilst in Malaysia, Consumer Protection Act (CPA) 1999 was passed in

¹⁶ Department of Existing European Union, 'Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Bringing The EU Package Travel Rules Into The Digital Age' < <http://europeanmemoranda.cabinetoffice.gov.uk/memorandum/communication-from-the-commission-to-the-european-parliament-the-council-the-european-economic-social-committee-1380188447> > accessed 10th February 2018.

¹⁷ Justin Malbon, 'Institutional Structures Relating to the Administration and Enforcement for Consumer Laws' < http://consumerlaw.gov.au/files/2016/05/ACL_Comparative-analysis-overseas-consumer-policy-frameworks_Part5-1.pdf > accessed 11st September 2018.

July 1999 after consumer groups had campaigned for years.¹⁸ Malaysia and the UK share a common desire to enhance the degree of consumer protection. Majority of Malaysian are Muslims¹⁹ whereas about 6.3% of the UK population are Muslims in the year 2017.²⁰ Muslims in Malaysia and UK share similar desire which is to perform Umrah at least once in their lifetime. They have a similar mode of purchasing the Umrah package travels either by manual or online transaction. Recently, a big number of Umrah package travellers in UK and Malaysia purchase the Umrah package through online due to several advantages such as easy to make a comparison between products that available in the market, more flexible and save time consuming.²¹ However, the behaviour of UK and Malaysian travellers are different in certain aspects. It could be deeply influenced by economic, social and cultural development.²² Even, the UK is a developed country and its market is very diverse compared to Malaysia.

6.2.3 The Outcome of Legal Transplant

As a general principle, a legal transplant should be adapted to the recipient country in terms of being effective and justifiable in the local regulatory environment.²³ There is no strict formula saying how a legal

¹⁸ Marzuki Mohamad, 'Legal Coercion, Legal Meanings and UMNO Legitimacy' in Edmund Terence Gomez, *Politics in Malaysia: The Malay Dimension* (London and New York: Routledge, 2007) 30.

¹⁹ Ministry of Tourism and Culture, 'Islam in Malaysia' < <http://www.itc.gov.my/tourists/discover-the-muslim-friendly-malaysia/islam-in-malaysia/> > accessed 19th August 2018.

²⁰ Barnabas Fund, 'Analysis: UK Muslim population projected to hit 10% - challenges for Christians in Muslim-majority parts of the UK' < <https://barnabasfund.org/en/news/analysis-uk-muslim-population-projected-to-hit-10-challenges-for-christians-in-muslim-majority#> > accessed 19th August 2018.

²¹ Hasan Adnan Hashim, *A Study of Adoption and Acceptance of e-Umrah System in Saudi Arabia: Overcoming Infrastructure Barriers and Limitations* (The University of Sheffield, May 2014).

²² Scott A. Cohen, Girish Prayag & Miguel Moital, 'Consumer Behaviour In Tourism: Concepts, Influences And Opportunities' (2014) Vol 17, Iss 10, Current Issues in Tourism, 872-909.

²³ Juan Chen, *Regulating The Takeover of Chinese Listed Companies: Divergence from the West* (Springer-Verlag Berlin Heidelberg, 2014).

transplant should be carried out.²⁴ Malaysia can decide on their own how the UK legal framework may help them to achieve their goals and how exactly they want to make use of UK norms. This research does not copy the whole structure of the UK framework on the protection of package travellers, but the same approach using by the UK and some parts of its laws will be borrowed. They have been chosen from what was seen to be 'the best' in their field for solving the current issues facing by the Malaysian Umrah package travellers.

The exploration on the content of PTRs 2018 explained that these Regulations cover four main areas; performance of a contract, insolvency protection, changes and cancellation, information requirements in respect of package travels and linked travel arrangements.²⁵ The examination on the content of PTRs 2018 reveals that Part II of PTRs 2018 is the most relevant provision to be adopted into TIA 1992. It is due to a reason that this provision is specifically regulates the information that must be provided by the UK organisers and retailers to the travellers before the contract is concluded. That provision legally requires the UK organisers and retailers to provide specific information as below;

- a. Main characteristics of the travel services including travel destination, transportation, location, the visits etc.;
- b. The trading name and geographical area of the organiser and retailer;
- c. The total price of a package;
- d. Arrangement for payment;
- e. Termination of the contract by the traveller;
- f. Information on the optional or compulsory insurance to cover the cost of termination;
- g. General information about passport and visa requirements which apply to British Citizens who purchase the package in question,

²⁴ Justyna Zygmunt, 'Legal Transplant of the U.S. Fair Use Clause- A Surgery That Cannot Go Wrong? Some Remarks On Using The Theory of Legal Transplant' < http://www.tbsp.wpia.uj.edu.pl/documents/4137545/134213770/12.-Zygmunt_4_2016.pdf/dba1b995-460a-4f2a-9934-bd2b7be517d8 > accessed 14th February 2018.

²⁵ Consumer and Competition Policy Directorate (BEIS), 2018 Package Travel Regulations: Draft Guidance for Businesses

including information about the length of time it is likely to take to obtain the appropriate passports and visas; and

- h. Information about health formalities required for the journey and the stay.²⁶

Adopting this provision to the Tourism Industry Act (TIA) 1992 will help to improve the existing Malaysian legal framework on consumer protection in relation to information paradigm. The overarching aim of this research is to protect the interests of Umrah package travellers in Malaysia by using the best instrument which can fit well with the consumers' demand and environment. However, the new provision slightly different compared to the transplanted provision of PTRs 2018 because some additional information relating to Umrah package travellers (vaccination and safety threat) shall be required to be provided by the tour operators and travel agents to the Umrah travellers at the pre-contractual stage. The detail discussions on the information required to be provided by Malaysian local tour operators and travel agents will be made on part 6.5 of this chapter.

6.3 The Manifestation of Information Provision To the Existing Malaysian Legal Framework

In the process of designing a specific model of information regulation with the aim to comprehensively protect Malaysian Umrah package travellers, there are two choices; either amend the existing legislation that is related to that matter or implements a new law to govern that matter. For the present case of this research, the most appropriate attempt is to amend the existing laws that are regulated on the matter (protection of Umrah package travellers). Currently, two main legislation that are covered on the protection of Umrah package travellers are CPA 1999 and TIA 1992.

²⁶ Reg 5(1), the Package Travel and the Linked Travel Arrangements Regulations 2018.

The enactment of CPA 1999 evidenced a positive development towards greater consumer protection and it applies in respect of all goods and services that are offered or supplied to one or more consumers in trade.²⁷ As has been discussed in Chapter Three of this thesis, CPA 1999 is a statute that protects the rights and interests of consumers including Umrah package travellers. Generally, it has been recognised that consumers consume not only the products, but also the services. By virtue of Section 3 of CPA 1999, services are interpreted as:

‘includes any rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any 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’

In relation to the Umrah package travel, when the Umrah travellers enter into a contract with the local tour operators or travel agents, they are entitled to certain rights as consumers of Umrah package travel services. They are protected from services that may expose their health and life to danger as addressed in Section 21(A) of CPA1999. In addition, they have the freedom in buying or assuring that the service they need is obtained through the right channels, based on the right price.²⁸ They also have the right to claim for damages from unfair contract term provides by the local tour operators or travel agents.²⁹ However, there is no single provision under CPA 1999 which require the traders, suppliers or manufacturers to provide information to the consumers before they enter into a contract or before a contract starts. This is the main gap that was found by this research. Therefore, the CPA 1999 should be amended to include the protection for adequate information at the pre-contractual stage which is applicable in respect to all goods and services offered or supplied to consumers within the ambit of CPA 1999.

As been highlighted in Chapter One, the overarching aim of this research is to protect the interests of Malaysian Umrah package travellers. TIA 1992 is a legislation that was implemented to regulate tourism activities specifically for

²⁷ Preamble, Consumer Protection Act (CPA) 1999.

²⁸ Sec 12, Consumer Protection Act 1999.

²⁹ Part III A, Consumer Protection Act 1999.

the licensing and regulation of tourism enterprises and for matters incidental thereto or connected therewith.³⁰ As to reflect the main purpose of this Act, it is argued that TIA 1992 is the most appropriate medium to be used for protecting the interests of Umrah package travellers in Malaysia. By introducing a new Part in TIA 1992 which require all the tour operators and travel agents to provide essential information in relation to the package travels promote and sell by them, it will comprehensively protect the interests of all parties involve in package travel business including Umrah package travellers. Though TIA 1992 is primarily concerned on the licensing and regulation of tourism enterprise, it also should protect the interests of travellers as one of the players in the tourism industry.

The Package Travel and Linked Travel Arrangements Directive (PTD) 2015 and PTRs 2018 are implemented explicitly to protect the interests of package travellers. By referring to the PTRs 2018 and considering the aim of this research, the ambit of TIA 1992 should be expanded to cover the rights and interests of travellers including package travellers. In other words, it widens up the ambit of the Act. It should be clearly stated that the TIA 1992 is implemented to provide not only the licensing and regulating the activities of tourism enterprises, but it also provides measures relating to consumer protection as regards package travel, package holidays and package tours and for matters incidental thereto or connected therewith.

Section 2 of TIA 1992 defines tour as includes sightseeing, excursions, shopping, visits to places of interest or entertainment, and other activities normally undertaken by a traveller. This definition is very restrictive. It should not be limited for holiday and entertainment purposes only, but the meaning of tour should be expanded to cover other purposes such as religious, education, medical treatment and business. Since few years ago, Malaysia has been visited by foreigners for medical, educational as well as business purposes. Therefore, Malaysian law especially TIA 1992 should recognise that purposes as part of tourism activity and allocate certain protection for travellers who are

³⁰ Preamble, Tourism Industry Act (TIA)1992.

coming for medical, education as well as business purposes. By expanding the definition of a tour to include religious, education, medical treatment and business purpose to the existing interpretation of tour activity, TIA 1992 will cover a broader scope of tourism activity and protection. When the religious purpose is included as one of the 'tour' activities in that provision, it directly allocates a place for the Umrah travel to be a part of TIA 1992.

As to reflect to the academic discussions in relation to tourism in Chapter Two and the interpretation of package by the EU Directives and UK Regulations in Chapter Four of this thesis, the word 'package travel' should be defined clearly by TIA 1992. Package travel should be defined as the combination of services include any two of the following components; transportation, accommodation or other tourist services not ancillary to transportation or accommodation put together by the tour operators, travel agents or entirely by the consumers, sell at inclusive price and described in any media and/or which are publicly marketed, promoted or advertised through any medium including linked travel arrangements.

Currently, the TIA 1992 comprises of 5 Parts; preliminary, licensing of tourism enterprises, requirement and duties of licensed tourism enterprises, licensing of tourist guides and general (covers the renewal of a licence, lost of licence, an obligation of secrecy, general penalty etc.). Part II of TIA 1992 is very restrictive in describing the duties that should be performed by the licensed tour operators and travel agents. The tour operators and travel agents are required to perform their duties of displaying their license,³¹ submitting information and particulars relating to their business to the Commissioner³² and observing the requirement as to the advertisement.³³ However, when the Umrah package is recognised as a part of tourism businesses controlled by TIA 1992, the existing law should extend its scope of duties owed by the licensed tour operators and travel agents towards the travellers. The new version of Part II of TIA 1992 should explicitly require the

³¹ Sec 14, Tourism Industry Act 1992.

³² Sec 15, Tourism Industry Act 1992.

³³ Sec 18, Tourism Industry Act 1992.

licensed tour operators and travel agents to provide essential information in relation to package travellers including Umrah package travellers. In the case where the licensed tour operator or travel agent is found guilty for violating the said requirement, the law should impose a specific penalty against him.

In addition, when the ambit of TIA 1992 is expanded to cover the measures relating to consumer protection as regards to package travel, package holidays and package tours, one additional Part should be inserted to the existing TIA 1992 which is specifically to regulate the information provision by the licensed tour operators and travel agents at the pre-contractual stage. All of the key information should be listed down in a standard form as to ensure that the essential information is accurately and adequately provided to the consumers. Furthermore, a specific provision relating to the compliance and enforcement of information provision should be allocated. This matter will be discussed in section 6.6 of this chapter, where the most appropriate enforcement instrument will be proposed.

6.4 Extensive Substance for Information Provision

6.4.1 Pre-Contractual Duty of Local Tour Operators and Travel Agents To Provide Information

The exploration of the theory and applicability of regulation by information provision in Chapter Three of this thesis evidenced that it could be a great consumer protection measure if the structure is appropriately designed. It is vital to have a good understanding of the duty of tour operators and travel agents for providing the information relating to Umrah package travel to the Umrah package travellers before entering into a contract.

The use of information duties as a means of consumer protection have a future if they adapt to the insights from behavioural research and embrace the

possibilities of modern technology.³⁴ For proponents of the free-market principle, the use of information duties as a means of consumer protection has the advantage that it seems to regulate lightly. From this perspective, information duties are the ideal remedy for solving the problems caused by imperfect distribution of information in consumer markets. Information duties are the standard staple of consumer protection³⁵ and probably one of the most widely used tools in consumer law in the EU and elsewhere.³⁶ According to academic scholars, information duties are the ideal remedy for solving the problems caused by inadequate and imperfect information in consumer markets. In addition, information duties are instrumental to achieve consumer self-determination and maximise consumer choice.³⁷ A suitably informed consumer is better equipped to compare offers from different sellers and service providers. It also counterbalances the consumer's weaker position and helps to lift him on a par with the trader. From this perspective, imposing information duties is a mean of protecting consumers interests, promoting rational consumer decisions and consumer empowerment. Nevertheless, information duties also have some challenges. Vulnerable consumers may not be well placed to utilise the information provided.³⁸ Even, there might be a group of consumer that could not fully understand the information provided due to several reasons. Therefore, a more nuanced approach may therefore be required.

³⁴ Christoph Busch, 'The Future of Pre-Contractual Information Duties: From Behavioural Insights to Big Data' in Christian Twigg-Flesner, *Research Handbook on EU Consumer and Contract Law* (United Kingdom: Edward Elgar Publishing, 2016) 222.

³⁵ O Bar-Gill and O Ben-Shahar, 'Regulatory Techniques In Consumer Protection: A Critique of European Consumer Contract Law' (2013) Vol 50 Common market Law Review, 109, 110.

³⁶ Christian Twigg-Flesner, *Research Handbook on EU Consumer and Contract Law* (United Kingdom: Edward Elgar Publishing, 2016) 222.

³⁷ Twigg-Flesner (n36).

³⁸ Peter Cartwright, 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' <

<https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf> > accessed 28th September 2018.

6.4.2 Essential Information on Umrah Package Travel

By looking into the PTRs 2018, this research found that the PTRs 2018 require the organisers and retailers to provide essential information relating to the package travel including; the destination, the date and time of flight, the mode of transportation, the accommodation, the total price of package travel as well as the itinerary of the trip. The same approach should be applied in Malaysia where the local tour operators and travel agents should be required to provide essential information on the characteristics of Umrah package travel (such as accommodation, transportation, price of Umrah package travel as well as itinerary for the trip in Mecca and Medina). In addition, the consumers have a chance to check the accuracy of information delivered to them right before the trips take place.

All of the essential information should be provided clearly and precisely in a plain language and simple words before both parties (Umrah pilgrims and tour operators or travel agents) conclude the contract for ensuring that the Umrah package travellers have full knowledge and understanding about their Umrah trip. Clarity is defined by Tullock as the state or quality of being easily perceived and understood.³⁹ Precise is traditionally viewed as to define all; to leave nothing to the imagination, never to presume upon the reader's intelligence.⁴⁰ Whilst, precise and clear information provision will allow an increase in time to comprehend important information.⁴¹

Umrah package travellers in Malaysia come from various background and vulnerabilities has been highlighted in Chapter Two of this research. Some of Umrah pilgrims who are from a rural area are uneducated and lack of knowledge on the Umrah activity. Some of them are illiterate, blind and deaf.

³⁹ Esther Majambere, 'Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting' in Helen Xanthaki, *Enhancing Legislative Drafting in Commonwealth* (London and New York: Routledge, 2015) 16.

⁴⁰ Majambere (n39); Esther Majambere, 'Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting' (2011) Vol 37, Iss 3, *Commonwealth Law Bulletin*, 417-426.

⁴¹ Martin J. Eppler, *Managing Information Quality: Increasing the Value of Information in Knowledge Intensive Price* (Springer-Verlag Berlin Heidelberg, 2006).

By taking into consideration the background of Umrah package travellers in Malaysia, the law must require the licensed tour operators and travel agents to provide essential information in relation to Umrah package travel in the appropriate form including verbal, writing and visual.⁴² It is an effort to ensure that the essential information of Umrah package travel is disseminated and within the knowledge of Umrah package travellers before they agree to enter into a contract. Furthermore, it should provide an opportunity for them to check the information given and minimise the risk of being cheated or exploited by the unscrupulous tour operators and travel agents.

6.4.3 Umrah Visa and Certificate Against Meningococcal Meningitis

Some countries such as Saudi Arabia, China and the United States of America require inbound travellers to apply for travel visas which will allow the travellers to enter a foreign country for touristic and leisure purposes only and stay for a predetermined amount of time.⁴³ They have visa restrictions in order to check and control the flow of visitors in and out of the country and to prevent illegal immigration and other criminal activities.⁴⁴ This visa does not entitle the holder to work or engage in any business activities in the host country.⁴⁵

Saudi Arabia requires all of the travellers who intend to perform Umrah to Mecca and Medina to apply for Umrah visa through approved Umrah travel agents.⁴⁶ A proof of vaccination certificate against Meningococcal Meningitis before entering Saudi Arabia (pilgrims must have their immunisation at least ten days before travelling) must be attached by the time Umrah visa is

⁴² Khatuna Kacarava and Nino Kemertelidze, 'Visual and Verbal Communication: Differences and Similarities' (December 2016) Special Edition, European Scientific Journal, 103-108.

⁴³ Passport Index, 'Everything You Need To Know About Visa' < <https://www.passportindex.org/visa.php> > accessed 5th December 2017.

⁴⁴ Passport Index (n43).

⁴⁵ *ibid* (n43).

⁴⁶ Saudia, 'Umrah Visa' www.saudia.com/TRAVEL-INFORMATION/About-Saudi-Arabia/Haji-and-Umrah/Umrah-Visa accessed 10th December 2017.

submitted.⁴⁷ These requirements should be fulfilled by Malaysian Umrah package travellers right before the departure date. As reported in newspapers, Umrah package travellers only aware that they had been conned by the unscrupulous tour operators or travel agents when they failed to get the Umrah visa as promised.⁴⁸

Therefore, general information relating to the visa application, requirements of Umrah and health certificate are fundamental to be provided by the local tour operators and travel agents in order to protect the interests of Umrah package travellers. By having knowledge about the process of visa application and its requirements, the Umrah package travellers could prepare all the documents required in advance, self-estimate the period that it will take for acquiring Umrah visa, and mentally prepare in the case where visa application is delayed or rejected.

6.4.4 Price and Payment

Reflecting to the effort by Malaysian government who established Umrah Regulatory Council (URC) for regulating the minimum price for Umrah package travel which should not less than MYR 4900, it was stressed in Chapter Five of this thesis that regulating the minimum price of Umrah package travel solely cannot prevent the cheap fraudulent Umrah package travel. However, consumer awareness on the minimum price of Umrah package also plays its roles in controlling the numbers of fraudulent Umrah package travel from being a disaster in the Malaysian tourism industry.

In order to ensure that the consumers are buying Umrah package travel within the relevant price, the local tour operators and travel agents should

⁴⁷ Saudia (n46).

⁴⁸ Syaherah Mustafa, 'Penipuan Pakej Haji dan Umrah Babitkan RM11.1 Juta' (Berita Harian, 25th September 2017) < <https://www.bharian.com.my/berita/kes/2017/09/330048/penipuan-pakej-haji-dan-umrah-babitkan-rm111-juta> > accessed 4th December 2017; Bernama, 'Akibat Beribu Kes Penipuan Pakej Umrah, Pelanggan Rugi Berjuta Ringgit' (Malaymail Online, 23 May 2017) < <http://www.themalaymailonline.com/projekmmo/berita/article/akibat-beribu-kes-penipuan-pakej-umrah-pelanggan-rugi-berjuta-ringgit#orhBb6QzAUlZi0E.e.97> > accessed 4th December 2017.

break it down and clearly inform what is the purpose for each payment that has been made by the Umrah package travellers. The local tour operators and travel agents also need to make sure that the price for each and every element of Umrah trip (accommodation, transportation, meal, itinerary etc), total price of Umrah package, mode of payment and arrangement of payment for Umrah package travel is within the knowledge of consumers. This provision must be included in the existing TIA 1992. This approach is to avoid from any misunderstanding that may expose the consumers at any risk. If the consumers are required to make payment by several stages; booking payment, deposit payment, and balance payment, it must be clearly spell out at the pre-contractual stage.

6.4.5 Particulars of Tour Operators and Travel Agents' Business

On 9th August 2017, it was reported that 11 tourism companies have been blacklisted and their licence have been revoked for Umrah package fraud.⁴⁹ Their licenses were also revoked for Contravening The Licensing Conditions Under The Tourism Industry (Tour Operating Business And Travel Agency Business) Regulations 1992 Of The Tourism Industry Act 1992 (Act 482).⁵⁰ The revocation had banned them from outbound activities, as well as to conduct Umrah *and* Ziarah packages.⁵¹ Later on, the Ministry of Tourism and Culture (MOTAC) introduced a Special Licence of Umrah as an initiative to curb fraudulent Umrah package travel in Malaysia.⁵² It came into force on 1st October 2017. Eighty seven Malaysian travel agencies have been

⁴⁹ Muhammad Azizul Osman, '11 Umrah Operators' License Revoked, Blacklisted' < <http://malaysiagazette.com/v2/en/2017/08/09/11-umrah-operators-license-revoked-blacklisted/> > accessed 7th January 2018.

⁵⁰ Osman (n49).

⁵¹ *ibid* (n49).

⁵² The Sunday Daily, "Special Umrah Licence From Oct 1' < <http://www.thesundaily.my/news/2017/08/10/special-umrah-licence-oct-1> > accessed 13rd April 2018; Bernama, 'Special Umrah Licence Will Be Enforced From Oct 1' < <http://www.bernama.com/en/general/news.php?id=1380750> > accessed 13rd April 2018.

approved by the Ministry of Hajj and Umra, Kingdom of Saudi Arabia as authorised travel agents for Umrah.⁵³

The tour operators and travel agents should provide their particulars of business to the consumers including the registered name, the address of business and the contact numbers for further communication with their consumers. By providing and disclosing their identity, it helps the consumers to check their company status; whether they are acquired a valid license of Umrah tour operators and travel agents or not. The Jabatan Zakat, Waqf and Haji (JAWHAR) established a webpage which lists down all of the licensed tour operators and travel agents who have been approved by the Saudi Arabia for operating the Umrah business (see the appendix). This is also could prevent the consumers from purchasing any Umrah package travels from unlicensed companies or non-existing companies.

6.4.6 Safety Threat

The safety of tourism destination is amongst the main concern of Umrah package travellers and very crucial for their personal safety. In recent years, Saudi Arabia has in recent years been seen a series of deadly attacks, many of which were claimed by the so-called Islamic State.⁵⁴ Six foreign pilgrims were wounded when a suicide bomber blew himself up near the Grand Mosque in Mecca, where hundred thousands of worshippers had gathered for prayers.⁵⁵ Near the end of Ramadan 2016 in the Saudi city of Medina, four security officers died in an explosion close to Islam's second holiest site, the Prophet's Mosque.⁵⁶

⁵³ Ministry of Hajj and Umra, 'Travel Agent' < <https://eservices.haj.gov.sa/eservices3/pages/TravelAgency/ea.xhtml?dswid=-7188> > accessed 6th January 2018.

⁵⁴ BBC News, 'Saudis 'foil suicide attack' on Mecca's Grand Mosque' < <http://www.bbc.co.uk/news/world-middle-east-40390010> > accessed 10th April 2018;

⁵⁵ First Post, 'Mecca Bombing: Iran Condemns Attack, Offers Help to Saudi Arabia To Tackle Terrorism' (First Post, 24th June 2017) < <http://www.firstpost.com/world/mecca-bombing-iran-condemns-attack-offers-help-to-saudi-arabia-to-tackle-terrorism-3741261.html> > accessed 4th December 2017.

⁵⁶ First Post (n55).

There is no provision under the PTD 2015, the PTRs 2018 and Malaysian law which require the tour operators and travel agents to provide information relating to safety threat to the consumers. This kind of information has been identified as one major gap in the existing laws (has been addressed in Chapter Four of this thesis).

By looking to the current demand for safety protection and current agitation, information of safety threat is really essential to be provided by the local tour operators and travel agents to the Umrah package travellers. Failure to provide information on any threat might affect the safety of travellers. For that reason, it should be a compulsory for the licensed tour operators and travel agents to provide information in relation to the safety of Umrah trip destination (Mecca and Medina) at the pre-contractual stage as to allow the Umrah package travellers know the real condition of Mecca and Medina as well as to make the best decision before they enter into contract. The tour operators and travel agents should provide the information in relation to the safety threat by referring to the current advice from the government agencies.

6.4.7 Rights for Cancellation and Remedies

By virtue of Section 60(1) of the CPA 1999, consumers are entitled to remedies where the service fails to be performed. It clearly states that:

‘Where a consumer has a right of redress against the supplier under this Part in respect of the failure of any services or any product resulting from the services to comply with a guarantee under Part VIII, the consumer may exercise the following remedies:

(a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time’.

However, if the failure cannot be remedied, the consumer may cancel the contract for the supply of the services or obtain from the supplier damages in compensation for any reduction in the value of the product resulting from services below the charge paid or payable by the consumers for the

services.⁵⁷ The consumers could express their intention to cancel the contract by words or conduct or both and the intention to cancel the contract should be clearly expressed.⁵⁸ With regard to the Umrah package, the Umrah package travellers should be provided with all information that is related to their rights after the conclusion of the contract particularly on their cancellation rights and remedies. It is to ensure that they are well informed of their rights when one of the contracting parties fail to perform the contract as agreed. The consumers must be given information and any cancellation form in a clear, comprehensible and legible form before they enter into a contract.

6.5 Mode of Information Provision

One key insight from a growing body of critical research explains that the effectiveness of information provision as a regulatory tool is not only a matter of providing the necessary information to the consumers.⁵⁹ Information itself does not necessarily empower the consumer.⁶⁰ It can overwhelm, confuse, distract or even deter people from making effective choices if presented in a way people struggle to engage with. It is also a matter of communicating that information in a way that is actually useful for consumers, and that is informed by concrete insights about the ways in which consumers interact with, and benefit (or not) from information.⁶¹

Local tour operators and travel agents should be required to have due regard to the information needs of their customers, and to communicate information in a way that is clear, fair and not misleading. Communication

⁵⁷ Sec 60(1)(b)(i), Consumer Protection Act 1999.

⁵⁸ Sec 63(2), Consumer Protection Act 1999.

⁵⁹ Natali Helberger, ‘EU Cloud Computing Expert Group: Discussion Paper Pre-Contractual Information Requirements And Cloud Services’ < ec.europa.eu/justice/contract/files/expert_groups/discussion_paper_pci_en.pdf > accessed 28th August 2017.

⁶⁰ Financial Conduct Authority, Smarter Consumer Communication (June 2015) Discussion Paper DP15/5 < <https://www.fca.org.uk/publication/discussion/dp15-05-smarter-consumer-communications.pdf> > accessed 12th November 2017.

⁶¹ Helberger (n59).

theory states that communication involves a sender (local tour operators and travel agents in relation to Umrah package travel) and a receiver or receivers (Umrah package travellers) conveying information through a communication channel. There are multiple communication channels available to us today, for example face-to-face conversations, telephone calls, text messages, email, the Internet (including social media such as Facebook and Twitter), radio and TV, written letters, brochures and reports to name just a few. Communication involves the imparting or interchanging thoughts, opinions, or information among people by speech, writing, or signs. Choosing an appropriate communication channel is vital for effective communication as each communication channel has different strengths and weaknesses.⁶²

The information age has altered the ways in which people (including consumers) communicate and placed an increasing emphasis on written versus oral communications. The Internet is seen as the most dynamic mass media in this century. Its interactive nature has attracted people from all walks of life. Unlike its predecessors like the TV and radio, the internet is also a storehouse of knowledge providing access to a huge pile of information. While electronic mail has emerged as a highly popular business communication tool in recent years.

It is vital for ensuring that the local tour operators and travel agents transparently communicate all key information in relation to price and service quality of Umrah package travel to the Umrah package travellers. In a broad sense, transparency is about: how much access to internally-held information citizens are entitled to; the scope, accuracy and timeliness of this information; and what citizens (as “outsiders”) can do if “insiders” are not sufficiently forthcoming in providing such access. Information must be transparently communicated to build consumers trust. Tour operators and travel agents who communicate honestly, openly, and authentically are more credible, more often heard, and considered more trustworthy. Any descriptive matter

⁶² Elizabeth C. Annan-Prah, *Basic Business and Administrative Communication* (Xilibris, 2015).

concerning Umrah package, its price and other conditions must not contain any misleading information.

A vast majority of Umrah package travellers want a great deal of specific information concerning their Umrah trip. Thus, information on Umrah package travel should be accessible by the Umrah package travellers through various developing interactive communication.⁶³ It is a dynamic, two-way flow of information. Many forms of communication previously thought one-way, like books and television, have become interactive with the rise of computers, the internet, digital and mobile devices. These developing collaborative technologies, or new media, have rapidly increased the opportunities for interactive communication across mediums, disciplines, cultures, social classes, locations, and even time.⁶⁴ By using this medium of communicating information to the consumers, it creates an opportunity for the consumers to access information at an optimum level. All information must be well documented and detailed enough.

Previously, Muslims went to tour operators and travel agents' premises to get essential information and purchase Umrah package travels. In spite of that practice, Muslims especially those who are living in urban areas are hunting for Umrah package travels by using an online medium such as website, page and emails. Recently, several tour operators and travel agents established their own chat room to open a dialogue between their prospect consumers and themselves. A chat room is known as an interactive medium for providing information on lodging, prices and payment mode, accommodation, weather and visa policy. Live chat is the closest thing consumers can get to having a concierge desk online- it allows tour operators and travel agents to have real-time interactions with visitors, without having to make time-consuming phone calls or emails. However, some precaution steps have to be taken as to control the information supplied by the tour

⁶³ DTU, 'Effective Communication in Project Management' < http://apppm.man.dtu.dk/index.php/Effective_Communication_in_Project_Management > accessed 3rd November 2017. Interactive communication is an exchange of ideas where both participants (sender and receiver) are active and can have an effect on one another.

⁶⁴ DTU (n63).

operators and travel agents to their online consumers as well as to protect the interests of all parties involved. Hence, this regulatory requirement of information provision should address this specific issue of live chat room as a medium of providing information and the content of information provided by the tour operators and travel agents before the contract is concluded. Essential information in relation to a particular contract should be provided in writing and send to consumers' personal email or correspondence address.

Several good practices and innovative approaches to communicate effectively with Umrah package travellers include:

- a. Presentable mode of information provision;
- b. Information provision by writing; and
- c. Information provision in a standardised format.

6.5.1 Presentable Mode of Information Provision

Information provision to be effective, must be presented in a form and in a context that allows consumers to make a link with their actual situation, their information needs and experiences.⁶⁵ Or to put it differently, in order to be effective, information must not be written from the perspective of the lawmaker, a business of tour operator or travel agent, but it must be from the perspective of the travellers including Umrah package travellers. As discussed in Chapter Two of this thesis, Umrah package travellers travel to Mecca and Medina with the same purpose; to find inner self, understand and be at peace with themselves, to experience calmness and to join a sense of renewal. This motivational factor for performing Umrah is really sacred and unique compared to the other types of tourism activity. Umrah package travellers are probably extremely heterogeneous in terms of age, education level, financial position, media literacy etc. Therefore, the background of travellers should be taken into account to ensure that information delivered by the local tour operators and travel agents is effectively communicated and understood. The

⁶⁵ *ibid* (n63).

method of presentation must not disguise, diminish or obscure important information.

6.5.2 Information Provision By Writing

Regulation 5(4) of PTRs 2018 requires that:

‘Any information provided to the traveller under this regulation must be provided—

- (a) in a clear, comprehensible and prominent manner; and
- (b) where the information is provided in writing, in a legible form’.

The UK PTRs does not strictly require the tour operators and travel agents to provide information in written but, it allows the information to be provided in the other appropriate forms such as verbal and visual. It simply illustrates that the main purpose of this provision is to ensure that the required information is within the knowledge of the consumers before they agree to enter into a contract no matter how the information is presented.

As to reflect the UK PTRs 2018, this research believes that the best way to communicate information relating to Umrah package travel is by providing understandable, credible, reliable and sufficient information in writing. The information should be given in writing in a durable medium such as on paper or email. At a minimum, information should be communicated in comparable and ideally standardized and machine-readable format. All printed information must be of print size to be clearly legible, the information provided must be clear and comprehensible. It also should not be hidden, obscured, detracted from or interrupted by other written or pictorial matter or any other intervening material.

Alternatively, it can be provided in a way appropriate to the means of communication, so verbally if the contract is made by phone. For instance, in

the case where an Umrah package traveller is a blind person, providing information in writing form is not the most appropriate way. But, the local tour operators and travel agents should be required to use other appropriate forms such as verbal to deliver information in relation to Umrah package travel to their consumer's knowledge. This is an effort to protect the interests of vulnerable consumers from being exploited by the tour operators and travel agents as well as to reduce inequalities between the consumers of Umrah package travel in access to, and outcomes from, Umrah package travel services.

6.5.3 Information Provision In A Standardised Format

The essential information relating to Umrah package travel must be presented in the best way for the Umrah package travellers engage with. The most important information should be clearly, concisely and prominently stated by the local tour operators and travel agents at the pre-contractual stage. For example, PTD 2015 outline several standard information forms for package travel contracts as well as linked travel arrangement.⁶⁶

On the other hand, essential information also can be presented in a 'key features' as to seek attention from the consumers. In relation to the Umrah package travel, essential information could be proactively presented as the key facts for the purpose of seeking the attention of travellers, and not as a warning. It is better to act in a proactive way rather than de-active. The tour operators and travel agents should list down all the information that they think is key to the Umrah package travel contract.

⁶⁶ Part A, Part B, Part C, Part D of Annexure 1, Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

6.6 Enforcement Framework for Information Regulation

Each and every regulatory approach must be supported with a good enforcement framework to allow its efficiency and effectiveness. Various enforcement policy options including the criminal justice system, the civil justice system, an administrative and self-regulatory arrangement could be adopted in meeting its objective. Thus, an appropriate approach of enforcement is vital in securing a high level of compliance. Therefore, this part will explore further on enforcement framework, how enforcement structure helps for compliance of information regulation and deterrence of its omission.

Information provision must be supported by procedures for monitoring and provisions for the imposition of penalties for discovered violations, usually lumped under the label of 'enforcement'. Enforcement is a key component of any regulatory control regime⁶⁷ and should respond to the reason for non-compliance. Effective enforcement is vital to the successful implementation of legislation⁶⁸ where in this case, to ensure that the local tour operators and travel agents comply with the information regulation which requires them to provide adequate and accurate information to the Umrah package travellers. This section examines the question of how the enforcement task might best be conducted in order to achieve policy outcomes that are effective (in terms of reducing the incidence of social harm) and efficient, while also maintaining community confidence.

This research will explore a specific method of law enforcement that could be used to control the information provision by the local tour operators and travel agents, to deter the omission of information by the local tour operators and travel agents as well as to secure compliance on the

⁶⁷ Chento G. Veljanovski, 'The Economics of Regulatory Enforcement' in Keith Hawkins and John M. Thomas (eds), *Enforcing Regulation* (Kluwer-Nijhoff, 1984) 171. As stated by Veljanovski, 'it is legal rules and their enforcement that together shape the incentives and deterrents that attempt to alter the behaviour of those regulated and induce compliance with the law'.

⁶⁸ Neil Cunningham, 'Enforcement and Compliance Strategies' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press, 2010).

information provision. Detailed studies of regulatory enforcement styles conducted by economists, political scientists and socio-legal scholars have identified both deterrence and compliance enforcement strategies, the choices of which should be guided by the characteristics of the regulated community.⁶⁹ According to Stigler, the goal of enforcement is to achieve the degree of compliance with the rule of prescribed (or proscribed) behaviour that the society believes it can afford.⁷⁰ However, the scholarly literature on enforcement suggest that enforcement often fail to improve compliance because it insufficiently deters the omission of information.⁷¹

Scholarly evidence and regulatory best practice suggest that regulators should generally use mixes of regulatory styles or strategies to improve compliance of regulation, rather than relying on deterrence alone.⁷² The leading theory by Ayres and John Braithwaite explain and prescribe that mix of enforcement style or also known as responsive regulation tend to be, and should be, arranged in a regulatory pyramid, with more cooperative strategies deployed at the base of the pyramid and progressively more punitive approaches utilized if and when more cooperative strategies fail.⁷³ The theory of responsive regulation was developed and expanded by Ian Ayres and John Braithwaite which recognises that it is not possible for any regulatory agency to detect and enforce every contravention of the law that it administers.⁷⁴

⁶⁹ Keith Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Oxford University Press, 1984), Bridget Hutter, *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (Oxford University Press, 1988) and Bridget Hutter, *Compliance: Regulation and Environment* (Oxford University Press, 1997). Deterrence or sanctioning enforcement styles emphasis the need for retribution and punishment: violators are punished for breaking the law and prosecution is seen as a mark of success. In contrast, under a compliance strategy, regulators prefer to use techniques such as advice, persuasion, negotiation and informal enforcement tools. Regulators who adopt a compliance approach will have recourse to legal penalties. But when they do, the purpose is not so much to punish violations but to signal a breakdown in negotiations.

⁷⁰ George J. Stigler, 'The Optimum Enforcement of Laws' (1970) Vol. 78, No.3, *Journal of Political Economy*, 526-536.

⁷¹ Christine Parker, 'The Compliance Trap: The Moral Message in Responsive Regulatory Enforcement' in Erik Larson, Patrick Schmidt (eds), *The Law and Society Reader II* (New York University Press, 2014).

⁷² Cunningham (n68).

⁷³ Ian Ayres, John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, Inc, 1992).

⁷⁴ John Braithwaite, *To Punish or Persuade: Enforcement of Coal Mine Safety* (State University of New York Press Albany, 1985); Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).

Therefore it is vital that regulatory agencies are able to encourage actors to comply with the law voluntarily. In particular, law enforcers should be responsive to how effectively citizens or corporations are regulating themselves before deciding whether to escalate intervention. The argument of responsive regulation is that regulators are more likely to succeed if they use strategies that are responsive to the culture of those being regulated.

Ayres and Braithwaite argue not only that regulatory agencies require a variety of enforcement mechanisms, but those enforcement mechanisms must be ordered correctly.⁷⁵ Compliance is most likely to be achieved when a regulatory agency is able to display an explicit 'enforcement pyramid' that contains a variety of enforcement measures escalating in severity in proportion to the nature of the contravention committed.⁷⁶ Thus, a policy maker could use the pyramid to think responsively in choosing among a range of regulatory options.

6.6.1 Deterrence Model of Regulatory Enforcement

A debate in the regulatory literature has taken place between those who think that individuals and firms will comply with rules and regulations only when confronted with harsh sanctions⁷⁷ and penalties, and those who believe that gentle persuasion and cooperation work in securing compliance with the law.⁷⁸ Decades of research on regulatory rule enforcement prompted a battle of sorts between those who favour a deterrence approach and those who promote compliance approaches.⁷⁹ In criminology, the concept of deterrence

⁷⁵ Braithwaite (n74).

⁷⁶ Michele Welsh, 'Civil Penalties and Responsive Regulation: The Cap Between Theory and Practice' (2009) Vol 33, Iss 3, Melbourne University Law Review, 908-933.

⁷⁷ Legally, sanctions can be understood as penalties or a mean of enforcement used to provide incentives for obedience with the law, or with rules and regulations.

⁷⁸ Ayres and Braithwaite (n73).

⁷⁹ Valerie Braithwaite and John Braithwaite, 'An Evolving Compliance Model For Tax Enforcement' < http://johnbraithwaite.com/wp-content/uploads/2016/05/2000_An-Evolving-Compliance-Model-f.pdf > accessed 17th November 2018 ; Reiss Jr Albert J. , 'Selecting Strategies for Social Control Over Organizational Life' in Keith Hawkins and John M. Thomas (ed) *Enforcing Regulation* (Kluwer-Nijhoff, 1984) 23-35; Keith Hawkins, *Environment and*

is used to describe the prevention of criminal behaviour through the use of, or by the threat of legal sanctions.⁸⁰ Deterrence, then, is intended to refer to compliance produced by the existence and administration of the criminal law rather than some other sources. So defined, deterrence refers to a particular relationship between the existence, or perception of legal sanctions and subsequent behaviour.

Deterrence theory posits that sanctions will be effective in modifying behaviour to the extent that they are perceived as being certain, swiftly applied, and severe.⁸¹ People are predicted to abide by the law if sanctions are sufficiently severe, whereas they tend to break the law if sanctions for doing so are too mild.⁸² However, some researches have shown that increasing the severity of punishment does not have much effect on crime while increasing the certainty of punishment does have a deterrent effect.⁸³ The use of heavy punishment has been described as ‘the least effective and least fair principle of sentencing’. An experiment done by Janis and Feshbach shows that behavioural change can be greater under mild than under extreme threat.⁸⁴

6.6.2 Compliance Strategies by Enforcement Pyramid

The earlier discussion portrays that heavy punishment does not guarantee for deterrent effect. A big question tries to be answered in this part

Enforcement: Regulation and the Social Definition of Pollution (Oxford, U.K.: Clarendon, 1984).

⁸⁰ Robert F. Meier and Weldon T. Johnson, ‘Deterrence as Social Control: The Legal and Extra legal Production of Conformity’ (1997) Vol 42 Iss 2, *American Sociological Review*, 292-304.

⁸¹ James L. Nichols and H. Laurence Ross, ‘The Effectiveness of Legal Sanctions in Dealing with Drinking Drivers’ (June 1991) Vol 22, Iss 2, *Journal of Safety Research*, 117-117.

⁸² Jean-Robert Tyran and Lars P.Feld, ‘Why People Obey the Law: Experimental Evidence From the Provision of Public Goods’ (2002) CESifo Working Paper No.651 (2); U of St.Gallen, Econ.Discussion Paper No.2001-14 < [file:///C:/Users/HP-PC/Downloads/SSRN-id290231%20\(1\).pdf](file:///C:/Users/HP-PC/Downloads/SSRN-id290231%20(1).pdf) > accessed 14th January 2018.

⁸³ Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (The Sentencing Project, 2010).

⁸⁴ Irving L.Janis and Seymour Feshbach, ‘Effects Of Fear-Arousing Communications’(1953) 48, *Journal Abnormal & Social Psychology*,78-92.

is what is the best strategy that is suitable for consumer protection specifically in relation to contravention of information obligations?



Figure 12: Enforcement Pyramid⁸⁵

As can be seen in Figure 12, an enforcement pyramid consists of a number of layers, each layer representing a different enforcement activity a regulator could use to gain compliance from a regulated firm. The above pyramid of enforcement regulation presents a strategy of dynamic deterrence for the most effective use of the enforcement measures available to regulators to sanction regulatory breaches. Braithwaite concludes the ‘enforcement pyramid’ by saying that both punishment and persuasion work to limit violations of the law. Punishment by itself is ineffective as a method for regulating businesses. Therefore, to ensure regulatory effectiveness, the regulator should impose punishment when needed, but use persuasion whenever possible.⁸⁶ In other words, this enforcement pyramid offers a solution to the problem of how to choose between a persuasive and a punitive enforcement style.

Different kinds of sanctioning are appropriate for different regulatory arenas. As demonstrated by the regulatory pyramid, regulators first use softer

⁸⁵ *ibid* (n74).

⁸⁶ John Braithwaite, *To Punish or Persuade: Enforcement of Coal Mine Safety* (State University of New York Press Albany, 1985).

enforcement measure to foster compliance. Most regulatory action occurs at the base of the pyramid where attempts are initially made to coax compliance by persuasion⁸⁷ by using administrative devices including information, education, advice, orders, notices or directions. Although these devices are generally found at the base of the regulator's enforcement pyramid, they are an extremely effective way of dealing with the recalcitrant company.⁸⁸ Persuasion is relatively inexpensive because it will elicit a more cooperative approach from those who have been regulated⁸⁹ i.e. tour operators and travel agents. If persuasion works, both sides avoid expensive enforcement and litigation procedures and more resources will be left to expand regulatory coverage. In this situation, society also gains the benefits of improved compliance at low cost to the economy.

However, the next phase of enforcement escalation is a warning letter; if the violation continues. Warning letters are issued to achieve prompt voluntary compliance. It is issued when no further enforcement is contemplated, to inform the recipient that a violation has been documented or request steps be taken to either correct the violation or prevent another violation from occurring. A warning letter may be issued which details the exact nature of the asserted contravention, refers to the specific provision(s) of the legislation contravened, and states the required remedial action.⁹⁰ Written warnings will be followed up by further compliance activities. Failure to comply with a written warning will, in most cases, lead to the issuing of an infringement notice or another enforcement action against the non-compliant business operator or business.

⁸⁷ Marine Nehme, Margaret Hyland and Michael Adams, 'Enforcement of Continuous Disclosure: The Use of Infringement Notice and Alternative Sanctions' (2007)21, Australian Journal of Corporate Law, 112-134; Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992) .

⁸⁸ Carolyn Abbot, *Enforcing Pollution Control Regulation: Strengthening Sanctions and Improving Deterrence* (Hart Publishing, 2009).

⁸⁹ Kristina Murphy, 'Moving Towards a More Effective Model of Regulatory Enforcement In The Australian Taxation Office' (November, 2004) Working Paper 45 < file:///C:/Users/HP-PC/Downloads/Moving_towards_a_more_effective_model_of_regulator.pdf > accessed 10th November 2018.

⁹⁰ Australian Government, 'Compliance and Enforcement Policy' (Commonwealth of Australia, 2011).

If warning letter fails to secure compliance, mild administrative sanctions i.e. civil penalties will come into play. A civil penalty or also known as a civil fine is a monetary assessment imposed by a government agency as restitution for wrongdoing. It is not considered to be a criminal punishment, because it is primarily sought in order to compensate for the harm done to consumers or public, rather than to punish the wrongful conduct. As such, a civil penalty, in itself, will not carry jail time or other legal penalties.

Civil penalties involve the temporary suspension or revocation of license. Although civil fines can be very substantial, the loss of a licence may be catastrophic for an organization. The denial of permission to operate within the law potentially incapacitates it. Woods and Macrory believe that civil penalties have significant advantages ‘...enhance the use of noncriminal sanctions such as warning notices and enforcement notices, by providing a more ‘hard-hitting’ but not overly harsh means of further recourse in the event of continued non-compliance with a licence or statutory prohibition. When a prospective criminal status is at issue, it seems obvious that any offender will make greater efforts to avoid being found ‘guilty’, even when there is an acknowledgement that some degree of administrative oversight or error has taken place. It could also be anticipated that potential offender would be less likely to risk non-compliance based on the knowledge that the regulator would be better equipped to take enforcement action without having to resort to criminal proceedings’.⁹¹

In the case where civil penalty fails to work for compliance, criminal prosecutions will follow. The high burden of proof imposed in criminal actions has lessened the deterrence effect of the criminal sanctions. Historically, the effects of criminal sanction on subsequent criminal behaviour have been measured and estimated.⁹² Despite numerous studies using a variety of data

⁹¹ Michael Woods, R Macrory, *Environmental Civil Penalties: A More Proportionate Response to Regulatory Breach* (Centre for Law and the Environment University College London 2003), 2.8

⁹² Lawrence William Sherman, ‘Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction’ (November 1993) 30(4), *Journal of Research in Crime and Delinquence*, 445–473 < <file:///C:/Users/HP->

sources, sanctions, crime types, statistical methods and theoretical approaches, there remains little agreement in the scientific literature about whether, how, under what circumstances, to what extent, for which crimes, at what cost, for which individuals, and perhaps most importantly, in which direction do various aspects of contemporary criminal sanctions affect subsequent criminal behaviour.

If temporary suspension fails, permanent revocation of license is the last step taken by the regulator. Where the alleged offender operates under a valid licence, regulators may also have the option of revoking or suspending all or parts of that licence. The revocation or suspension of a licence can close down a company or severely limit their business operation. The withdrawal of some or all operating rights under a licence may therefore deal a more severe economic blow than prosecution: it is arguably a more punitive sanction than prosecution and is subsequently higher up the enforcement pyramid. Powers of suspension and revocation also clearly serve a preventative function and are therefore defensible on the grounds of public protection.⁹³ However, the argument here would be that licence revocation is a good idea for deterring the act and securing compliance because the same trader could continuously commit the same offence by setting up a new company.

6.6.3 Enforcement Strategy To Secure Compliance of Information Regulation and Deter Violation of Information Provision

The main question is: what is the best method that should be used to secure compliance on information provision by the local tour operators and travel agents as required by the law? In order to ensure that the enforcement strategy can effectively work and fit with the main objectives, the regulators should be responsive to the current issue by taking into account the culture of Muslim society in Malaysia, the nature and process of getting information

[PC/Downloads/Defiance Deterrence and Irrelevance A Theory of th.pdf](#) > accessed 5th June 2018.

⁹³ Carolyn Abbot, 'The Regulatory Enforcement Of Pollution Control Laws: The Australian Experience' (2005) Vol 17, No 2, *Journal of Environmental Law*, 161–180.

about Umrah package travels in Malaysia, the cost of getting information, as well as the undesirable effect of this act to the Umrah pilgrims, Malaysian tourism industry and the image of Islam.

The question is whether persuasion or warning letter is the best way to be enforced when the local tour operators and travel agents omit to provide essential information to the Umrah package travellers? People might say that the act of omitting relevant information related to Umrah package travels from disclosure is just a small matter that could be deterred by persuasion and warning letter. However, this research does not think so because the consequence that might happen due to omitting relevant information relating to the Umrah package travel could be so serious and caused to enormous loss to the consumers. Persuasive and warning letter measures located at the base of the pyramid (Figure 12) has a probability for failure to achieve the desired result because the sanction is mild and does not threaten them to comply the required information provision.

Should the tour operators and travel agents be subjected to the civil penalty or criminal prosecution in the case where they fail to comply with the information provision as required by law? As discussed earlier, the civil penalty or also known as the civil fine is a monetary assessment imposed by a government agency as restitution for wrongdoing. The purpose of punitive civil sanctions is to punish, even though their procedural setting is civil.⁹⁴ When the local tour operators and travel agents fail to provide information as required, the consumers suffer particular loss including economic, emotional as well as spiritual loss. In that case, the Umrah package travellers should be entitled for claiming punitive remedies from the tour operators and travel agents. Civil remedies may be appropriate to compensate that loss and this research thinks that it is an appropriate approach that could be employed to deter the tour operators and travel agents from hiding essential information. The regulator should carefully decide the minimum amount of civil penalty to be imposed in the case where the local tour operator or travel agent fails to

⁹⁴ Kenneth Mann, 'Punitive Civil Sanctions: The Middleground Between Civil and Criminal Law' (1992) Vol 101 No 8, The Yale Law Journal, 1861-1873.

provide the information as required by the law. If the penalty imposed is too low, it might not achieve the deterrence effect.

In the case where the local tour operators or travel agents breach their statutory duty of providing information to the travellers, they should be liable for a specific offence, penalty or fine. In PTRs 2018, it has been highlighted that;

‘If the intending consumer is not provided with the information required by paragraph (1) in accordance with that paragraph the other party to the contract shall be guilty of an offence and liable:—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and

(b) on conviction on indictment, to a fine’.⁹⁵

By looking to the current phenomena of Umrah package travels in Malaysia, a severe civil penalty should be enforced for deterring the licensed tour operators and travel agents from selling the Umrah package travels without adequate and accurate information in relation to the Umrah package travel. However, if the local tour operators and/or travel agents commit the same offence repetitively, they should be liable for criminal penalty such as imprisonment. In addition, their licence should be suspended or revoked depending on the seriousness of their offence.

In addition, this statutory duty of providing information should be strictly enforced by the regulator to guarantee its effectiveness. As implemented in Part 7, Regulation 31 of PTRs 2018 visibly provides that “every local weights and measures authority in Great Britain is to be an enforcement authority for the purposes of regulations 5, 7, 19, 25 and 26 of these Regulations (“the relevant regulations”), and it is the duty of each such authority to enforce those provisions within their area’.

The new law which statutorily requires the local tour operators and travel agents to provide information to the Umrah package travellers should be

⁹⁵ Reg 7(3), The Package Travel, Package Holiday and Package Tour Regulations 1992.

enforced for ensuring its effectiveness of protecting the interests of Umrah package travellers. Law enforcement in Malaysia could be performed by numerous law enforcement agencies and generally comes under the direct purview of the Royal Malaysia Police (RMP), the main government agency entrusted with the maintenance of law and order in the country. By virtue of Section 40(1) TIA 1992, the Minister may authorize in writing any public officer⁹⁶ to exercise the powers of enforcement under TIA 1992. According to Section 3 of Interpretation Acts 1948 and 1987, public officer means ‘ a person lawfully holding, acting in or exercising the functions of a public office’.⁹⁷ It could be the armed forces, the judicial and legal service, the general public service of federation, the police force, the joint public services, the public service of each state and the education service.⁹⁸ Whilst according to Section 40(2) of TIA 1992, the officer shall be deemed to be a public servant within the meaning of the Penal Code.

In relation to the enforcement of information provision in the context of Umrah package travel, the Umrah Regulatory Council (URC), MOTAC, MDTCC and RMP should be granted a power to supervise and enforce this provision under TIA 1992.

6.7 Conclusion

Undoubtedly, the provision of information is one of the key tools available to enhance consumer protection.⁹⁹ In a very real sense, information gap i.e. lack of information is the core issue happen in Umrah package travel industry in Malaysia. This issue prevents consumers from making an efficient and informed decision. Academicians such as Howells contends that

⁹⁶ Sec 40(2), Tourism Industry Act 1992, Any such officer shall be deemed to be a public servant within the meaning of the Penal Code.

⁹⁷ According to Sec 3 of Interpretation Acts 1948 and 1987, public office means an office in any of the public services.

⁹⁸ Art 132(1), Federal Constitution.

⁹⁹ Geraint Howells, ‘The Potential and Limits of Consumer Empowerment by Information’ (2005) Vol 32, No.3, Journal of Law and Society, 349-370.

information provision is the most efficient means of protecting consumers¹⁰⁰ and this view was supported by Beales, Craswell and Salop.¹⁰¹ Government at all levels frequently require the disclosure of relevant information about goods and services¹⁰² as to give consumers confidence to shop around, allows them to make a decision for their optimum benefit.

Due to lack of solid legal structure for protecting the interests of Umrah package travellers particularly on information in Malaysia, this research looks towards the UK legal framework. Borrowing the UK legal framework which is related to consumer protection of information provision could be a fruitful step due to the experience, exposure and advance status holding by the UK. A specific model has been designed as a measure for protecting the interests of Malaysian Umrah package travellers in terms of information by considering many things; the behaviour of Umrah package travellers dealing with information at the pre-contractual stage, the needs of information at the pre-contractual stage and the significance of information to the Umrah package travellers.

This instrument requires the local tour operators and travel agents to provide essential information relating to Umrah package travel including the basic characteristic of Umrah package travel, visa application and health certificate, price and payment arrangement, particulars of tour operators and travel agents, safety threat as well as rights for cancellation. All these information must be adequate, accurate, clear, legible, precise and comprehensive as to ensure that the consumers could understand and appreciate it.

Multiple methods of communication could be applied for ensuring an effective information disclosure. It includes; a presentable medium of information disclosure, communicating key information through appropriate

¹⁰⁰ Howells (n99).

¹⁰¹ Howard Beales, Richard Craswell and Steven C.Salop, 'Information Remedies for Consumer Protection' (1980) Working Papers No.36; E Scott Maynes, 'Consumer Protection: The Issue' (1979) Vol 3, Iss 2, Journal Consumer Policy, 97-109.

¹⁰² Jonathan H.Adler, 'There is No Consumer Right To Know' (2016) Regulation, 26-33.

medium, transparent communication of information and accessible by developing interactive communication. However, some precaution steps have to be taken as to control the information supplied by the tour operators and travel agents to their online consumers through live chat, emails and page as well as to protect the interests of all parties involved. The information delivered by the licensed tour operators and travel agents should be fair, reliable, timely, complete, consistent, and presented in clear and simple terms.

Requiring information provision in relation to Umrah package travel by the local tour operators and travel agents to the Umrah pilgrims sound like a sensible and even worthy policy idea. However, digging under surface of such information regulation will reveal that caution is essential. That such information provision requires a good enforcement structure to deter the licensed tour operators and travel agents from violating the information regulation and guarantee for the compliance. Has to be noted that poor regulatory design, which does not comprehensively consider compliance and enforcement issues can lead to laws that many businesses cannot comply with and that regulators cannot enforce.¹⁰³ Unenforceable laws are ineffective at achieving their intended policy objectives. Failure or perceived failure to enforce a law brings the law into disrepute and widespread non-compliance results.

Therefore, this research believes that the civil penalty with severe punishment could be a good regulatory response as to secure compliance of information provision and deter the unscrupulous tour operators and travel agents from selling the fraudulent Umrah package travel. Punitive civil sanctions are replacing a significant part of the criminal law in critical areas of law enforcement.¹⁰⁴ Furthermore, since they are not constrained by criminal procedure, imposing them is cheaper and more efficient than imposing

¹⁰³ Organisation for Economic Co-operation and Development, 'Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance' < <https://www.oecd.org/gov/regulatory-policy/1910833.pdf> > accessed 16th February 2018; Eric Windholz, *Governing Through Regulation: Public Policy, Regulation and the Law* (Routledge, 2018).

¹⁰⁴ K Mann, 'Punitive Civil Sanctions: The Middleground Between Criminal And Civil Law' (June 1992) Vol 101 Iss 8, Yale Law Journal, 1795-1873.

criminal sanctions.¹⁰⁵ However, if the tour operators or travel agent commit the same offence repetitively, the criminal sanction and licence revocation should be imposed against them.

¹⁰⁵ Vicky Comino, 'James Hardie and the Problems of the Australian Civil Penalties Regime' (2014) 37(1) University of New South Wales Law Journal, 195-230.

Chapter 7 : Conclusion

7.1 Introduction

This chapter is intended to provide a review of the entire contents of the thesis by pointing out the most important and interesting aspects, to add some supplemental information and reflections and to draw a conclusion. This includes the pivotal points which have been discussed throughout the thesis where the summary of the previous findings will be made. This chapter also reflects upon the research methodologies, the research limitations, the possible sites for future research and the recommendations for the way forward in improving the protection of Umrah package travellers in Malaysia.

Malaysian Umrah package travellers travel to Mecca and Medina for their specific purpose; to perform Umrah for fulfilling the unity of the soul, spirit and heart. As has been examined earlier, Malaysian Umrah package travellers come from different social, economic, geographical, educational and age backgrounds. All those differences and circumstances raise the issue of potential informational vulnerability where it has an impact on the decision making process. In consequence, they may suffer loss by making inappropriate purchasing decisions due to insufficient information acquired by them, information asymmetry between the local tour operators, travel agents and Umrah package travellers, and failure to process the information provided before entering into the Umrah package travel contract. Thus, in order to protect the Umrah package travellers from any potential information vulnerabilities that might defeat their interests, ensuring an appropriate protection measure is therefore significant.

Accordingly, this research set up 5 main objectives: 1) to demonstrate the specific need and application of information regulation in protecting

Malaysian Umrah package travellers 2) to identify the appropriateness of information regulation as a protective measure for consumers; 3) to analyse the extent to which information regulation could protect Malaysian Umrah package travellers; 4) to examine the EU and UK laws for the purpose of providing an effective protection for Malaysian Umrah package travellers; and 5) to present a specific model of information regulation for protecting the interests of Malaysian Umrah package travellers. The overarching aim of this research is to examine what is the most appropriate instrument to be adopted for protecting the interests of Malaysian Umrah package travellers from any potential informational vulnerabilities.

To achieve all of those objectives, this research went through five stages. Firstly, this research elucidated the concept and phenomenon of Umrah package travel by explaining the concept of Umrah package travel and defining the elements involved in Umrah package travel issues. Secondly, this thesis explored the theoretical aspect and practicability of other approaches of regulation through information provision for the purpose of protecting the interests of Umrah package travellers in Malaysia. Thirdly, this research analysed the EU and UK legal framework particularly designed for the purpose of protecting their consumers including Umrah package travellers. Fourthly, this thesis evaluated the effectiveness of existing legal measures in protecting the interests of Umrah package travellers in Malaysia. Finally, this research proposed a specific measure for protecting the interests of Umrah package travellers with some legal transfer from the EU and UK laws and practices into Malaysia.

In reviewing the whole substance of this thesis, this chapter offers four levels of discussion. Firstly, it reviews how the research objectives have been addressed and achieved. Secondly, it offers a reflection on the recommendations made throughout the research. Thirdly, it considers what could be the future research aiming at analysing instruments for protecting the interests of Umrah package travellers in Malaysia. Fourthly, it answers the research hypothesis and makes a summarised assessment to whether or not

information regulation could be the best approach for protecting the interests of Umrah package travellers in Malaysia.

7.2 Achieving Research Objectives

As has been addressed in the earlier part, 5 objectives have been developed.

7.2.1 Umrah Package Travel: A Phenomenon, Legal Problem and Special Need for Information

The concept of Umrah package travel and the problems relating to Umrah package travel in Malaysia were comprehensively discussed in Chapter Two of this thesis. Umrah has been recognised as one of the largest phenomena in the Malaysian tourism industry recently.¹ Due to a strong economic development within Muslims in Malaysia and awareness of its significance to the Muslims' spiritual purity, the number of Malaysian go for Umrah keep increasing from year to years.² In fact, according to the Saudi government, about 6.28 million visas for Umrah have been granted up to June 2016³ and Malaysian Muslims are amongst the largest group that perform Umrah every year.⁴ Undoubtedly, Umrah package travel is one of the important contributors to Malaysia's economy.

Umrah package travellers have a specific vulnerability because they have special interests undertaking travel to achieve specific objectives with specific needs.⁵ They travel to Mecca and Medina with a specific intention; to

¹ Siti Hasnah Hassan, Siti Rohaida Mohamed Zainal and Osman Mohamed, 'Determination of Destination Knowledge Acquisition in Religious Tourism: Perspective of Umrah Travellers' (2015) Vol 7, No.3, International Journal of Marketing Studies, 85-94.

² The statistic was analysed in Chapter Two.

³ Arab News, '6.2m Umrah Visas Issued' (June 11, 2016) < <http://www.arabnews.com/node/937861/saudi-arabia> > accessed 1st September 2016.

⁴ Hassan Mohd.Noor, 'Melayu Terokai Penerbangan Ibadah bersama MAB' < <http://m.utusan.com.my/rencana/melayu-terokai-penerbangan-ibadah-bersama-mab-1.341817> > accessed 31st August 2016.

⁵ Richard Sharpey and Priya Sundaram, 'Tourism: A Sacred Journey? The Case of Ashram Tourism, India' (2005) Vol 7, No.3, The International Journal of Tourism Research, 161-171;

perform religious obligations for fulfilling the unity of soul, spirit and heart. That is why Umrah is a unique travel activity compared to other types of tourism activities. Umrah package travel is incredibly important to Muslims because it helps Umrah package travellers to return to the purified state of a person, reflecting the holy spirit, nature and presence of God in creation. Umrah package travellers are fully motivated to experience a deeper spiritual state of Umrah and they tend to be far too trusting. However, without having adequate information in relation to Umrah package travels promoted to them, it could place them at high risk.

Furthermore, Malaysian Umrah package travellers come from a different background of education, social life, economic and age. They also come from different geographical areas; urban and rural areas. An Umrah package traveller who is educated, financially stable, living in a city and young could have easy access to detailed information in relation to Umrah package travel compared to uneducated, poor and older Umrah package travellers. When the Umrah package travellers fail to obtain relevant information relating to the Umrah package travel before they enter into any contract with the local tour operators or travel agents, fail to get the right information from the authorized local tour operators or travel agents, fail to understand the information provided by the authorised local tour operators or travel agents, or take for granted the information provided to them, it may raise the issue of potential information vulnerability where it has an impact on the decision making process. Based on the earlier analyses, this research provided important and unique findings to support the hypothesis.

7.2.2 Information Regulation: An Instrument of Consumer Protection

Moreover, the existing Malaysian laws do not correspond well to the current demand for protection by the consumers of Umrah package travels. There is no single provision in the Consumer Protection Act (CPA) 1999 and

Tourism Industry Act (TIA) 1992 which requires the local tour operators or travel agents to provide any relevant information to the Umrah package travellers before they agree to enter into the contract. Thus, in order to protect Malaysian Umrah package travellers from any potential information vulnerability that might defeat their interests, ensuring an appropriate protection measure is therefore significant.

This research found that protecting Umrah package travellers by regulating the information provided by the local tour operators and travel agents at the earliest stage i.e. pre-contractual stage, is an initial step in any reform. It is because, by providing essential information to the Umrah package travellers at the earliest stage, the Umrah package travellers have an opportunity to make comparison between the Umrah travel packages available in the market, helps to build up a well informed consumer, as well as being able to protect themselves from unscrupulous tour operators and travel agents. The theory of information regulation as a consumer protective measure theoretically and practically has been analysed.

The first part of Chapter Three argued that classical mode of regulation via command-and-control may be inappropriate to be applied to solve the current issue facing by the Umrah package travellers in Malaysia due to several obstacles that have been highlighted by the academic scholars and practitioners. For instance, Bayer criticizes that regulation by command and control is costly and economically irrational.⁶ Julia Black also critiques the regulatory approach by command and control and summarizes that government has insufficient knowledge to be able to identify non-compliance, inadequate implementation and/or insufficient compliance.⁷

However, it cannot be left without close consideration of the alternatives. An alternative to traditional regulation is aimed at supplementing or replacing classical rule-based instrument at lower cost and more effective than

⁶ Stephen Breyer, 'Analysing Regulatory Failure: Mismatches, Less Restrictive Alternatives and Reform' (1979) Vol 92, No.3, Harvard Law Review, 547-609.

⁷ Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-Regulatory World' (1 January 2001) Vol 54, Iss 1, Current Legal Problems, 103-146.

traditional regulation. In many situations, there may be a range of options other than traditional command and control regulation available including co-regulation, self-regulation, market-based regulatory instruments and information approaches. This research moves to a particular intervention through information regulation for protecting the interests of Umrah package travellers which is more flexible, cheaper and suitable than other approaches to be applied to the current case. There may be areas where information is the best way of protecting consumers. The UK Government said in its White Paper, Modern Markets: Confident Consumers:

‘Good, reliable information is essential if consumers are to make the right choice. They need to know the price and quality of competing products. In many cases they need to know whether they are safe, the quantity is accurate and the meaning of contract terms (including the costs of add-ons and the nature of guarantees)’. [para 3.1].

Information regulation can be applied to a greater extent as to remove or reduce information imperfections and to facilitate the availability of information. It can be in two forms either require specific information to be provided or prevent misleading from being provided.

Requiring traders to provide information at the pre-contractual stage could be the best way to minimize consumer detriment. Pre-contractual stage is considered as the vital point before the consumers agree to enter into any contract with the traders. When consumers have sufficient information, aware and fully understand the information provided to them at this stage, it could help them to make well-informed choice and protect themselves from any unintended loss. Some might argue that information overload, ignorance of consumers to read and failure to understand may prevent this instrument from effectively protect the consumers.⁸ However, if information provision is regulated properly, information overload could be decreased.

⁸ Better Regulation Executive, Department for Business, Enterprise & Regulatory Reform, National Consumer Council, ‘Warning: Too Much Information Can Harm’ (November 2007) Final Report < <http://www.eurofinas.org/uploads/documents/policies/NCB-BRE-Report.pdf> > accessed 15th April 2018.

Information regulation has been chosen to remove or reduce information imperfections, to facilitate the availability of information (describe the type of information that must be provided), as well as to help consumers evaluate the information that is being supplied. Ultimately, it is not about how much information is provided but rather how appropriate and meaningful the information actually is. By evaluating the costs and benefits of information regulation as a consumer protection measure, it is worth to employ this alternative regulatory approach as a measure of protection rather than employing the classical mode of regulation.

7.2.3 EU and UK Protective Measure on Information Provision In the Sphere of Package Travel

At various points, this thesis has made reference to the policies and the laws in European Union (EU) and United Kingdom (UK) which have a specific legal approach of protecting the interests of their travellers including Umrah package travellers by regulating the information that should be provided by the traders. The UK has a strong history of protecting consumers rights and has been influential in the EU in developing these rights. The Package Travel Directives (PTD) 1990 which laid down a set of consumer rights with regard to information requirements was implemented into the UK through Package Travel, Package Holidays and Package Tours Regulations 1992 (PTRs) 1992. The scope of protection covered by these two pieces of legislation is different where PTRs 1992 has a conceptually broader scope of protection compared to the PTD 1990. The PTD 1990 restricts the concept of package travel to cover pre-arranged package travel only while the PTRs 1992 extent its protection to the dynamic package travel.

While these Directives and Regulations have effectively protected consumers in the package travel market for many years, the sector has changed significantly since they were introduced. Technical innovation and in particular the growth of the internet and mobile technologies, have opened up new ways of buying and selling holidays. This has provided increased choice and flexibility in the travel market, allowing consumers to mix and match

components of a holiday to suit their particular needs. However it has also created a gap in protection as these new methods of packaging holidays are outside the scope of the PTD 1990 and PTRs 1992. On 25 November 2015, the new Package Travel and Linked Travel Arrangements Directive (PTD) 2015/2302/EU was adopted, bringing it up to date with the developments in the travel market.⁹ This new PTD 2015 extends the protection of PTD 1990 beyond traditional package holidays organised by the organisers and retailers. Information obligations imposed on organisers and retailers have not changed very much though the scope of package travel is enlarged.

Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 implement PTD 2015 and provide significant protection for the UK package travellers to cover a broader scope of package holidays. This research found that the PTRs 2018 cover a wider definition of package travel compared to what has been covered by PTRs 1992. The PTRs 2018 are not limited to pre-arrange contract, but it also covers tailor made package, dynamic package as well as linked travel arrangements that last for more than 24 hours. Furthermore, the new PTRs 2018 is more explicit in describing information duties owe by the tour operators and travel agents compared to PTRs 1992. Even, it clearly lists down all of the essential information that should be provided by the organisers and retailers.

The examination on the information provision required by the PTD 1990, PTD 2015, PTRs 1992 and PTRs 2018 clearly portrays one big loophole in the existing legislation which evidenced that the existing legislation does not exhaustively protect the consumers of package travel. No information on the safety of the travel destination has been required to be disclosed by organisers and retailers. Furthermore, this research found that the concept of vulnerability as defined by PTRs 2018 is limited to group of people who are old and reduced mobility. However, the earlier discussion revealed that the concept of vulnerability is wider than that and should cover those who are

⁹ European Commission, 'Package Travel' < http://ec.europa.eu/consumers/consumer_rights/travel/package/index_en.htm > accessed 20th January 2018.

physically old, poor, uneducated, disabled, sick etc. This research found that EU and UK existing legislation function well though some pitfalls still exist.

Nevertheless, the EU Directives and UK PTRs could be a good model for the researcher in designing the best structure of information regulation for protecting the interests of Malaysian Umrah package travellers. This has been discussed in detail in Chapter Six of this thesis where the same approach will be adopted in Malaysia through legal transplant with some modifications due to difference culture that Malaysia and UK have.

7.2.4 Protection Measures for Umrah Package Travellers In the Context of Malaysian Legal Paradigm

Fourthly, this thesis scrutinises the Malaysian government's policies and laws responding to the protection of Umrah package travellers as consumers. This research found the relevant policies, strategies and laws in Malaysia which are designed to protect the interests of consumers including Umrah package travellers. National Consumer Policy (NCP) 2002, Consumer Master Plan (CMP) 2003-2013, Consumer Protection Act (CPA) 1999, Tourism Industry Act (TIA) 1992 and the MATTA Code of Ethics for Members are relevant legislations that are enforced to protect the interests of consumers including Umrah package travellers. Despite the existence of the policies and laws on paper, this thesis discovered some issues impeding the effectiveness of the policy and legal implementation.

The NCP 2002 and CMP 2003-2013 drafted by the Malaysian government and set objectives towards producing capable consumers and effective consumer protection. However, it does not change into practice when the policies were left without any further action. The government has recognised the need for specific enactments to provide better consumer protection. As a result, the Malaysian government enacted CPA 1999 to protect the rights and interests of consumers after protracted years of struggling by the consumer movement. Nevertheless, the protection prescribed in the CPA 1999 does not correspond well to the current demand

of protection by the consumers including Umrah package travellers. The CPA 1999 excludes a number of matters important to consumers including information provision as an instrument to protect the consumers' interest. Consumers especially those who are vulnerable to detriment require greater protection than is provided by the existing CPA 1999.

The Ministry of Tourism and Culture (MOTAC) works together with the Ministry of Domestic Trade, Co-operative and Consumerism (MDTCC), Malaysian Association of Tour and Travel Agents (MATTA) etc. to set up the Umrah Regulatory Council (URC) on 24th August 2014 under TIA 1992 particularly to protect the Umrah package travellers, regulate the operation of Umrah package travel arrangement and handle the Umrah-related issues.¹⁰ In order to ensure that the establishment of URC achieve the purpose and correspond the issues currently facing by Umrah package travellers in Malaysia, two main approaches have been initiated which require all tour operators and travel agents to have sub-licence for handling Umrah package travel and setting up minimum price of Umrah package travel. However, the effectiveness of this instrument in protecting the rights of Umrah travellers from unscrupulous tour operators and travel agents could not be evaluated yet.

In order to fulfil the gaps that have been addressed, the government must develop and implement an effective and practicable legal protection framework which should cover appropriate instrument, good implementation framework and excellent enforcement. The study showed that 'information provision' could be the best protective tool for the consumers generally and Umrah package travellers specifically. Overall, the consumers and Umrah package travellers will benefit from this movement.

¹⁰ Hanis Zainal, 'Minimum Price for Umrah Package' < <https://www.thestar.com.my/news/nation/2014/08/29/minimum-price-for-umrah-package-amount-set-at-rm4900-to-deter-cheats/> > accessed 20th January 2018 (The Star Online, Friday, 29 Aug 2014).

7.2.5 Information Regulatory Approach: Specific Model for Protecting the Interests of Umrah Package Travellers in Malaysia.

Fifthly, this research found that the interests of Umrah package travellers in Malaysia might be better protected and improved through legal transplant. The earlier analysis of the theory of information regulation evidenced that regulating the information that should be provided to the consumers could be the best protective tool for the consumers, particularly the Umrah package travellers. This instrument also could be a bridge to fulfil the gaps on information provision that exist in the existing policies, law and approaches. Therefore, this research came out with its specific design for protecting the interests of Malaysian Umrah package travellers by considering the specific vulnerabilities of Malaysian Umrah package travellers, the existing laws and approaches employed in the EU and the UK for protecting their package travellers as well as the existing Malaysian policies and laws governing this matter.

This research drafted a specific measure for protecting the interests of Malaysian Umrah package travellers in terms of information by considering their behaviour, their need for protection, their vulnerability and their culture. In order to have a great mechanism for protecting the interests of Umrah package travellers in Malaysia, the TIA 1992 should; (1) require the local tour operators and travel agents to provide essential information to the Umrah package travellers at the pre-contractual stage including the basic characteristic of Umrah package travel, visa application and health certificate, price and payment arrangement, particulars of tour operators and travel agents, safety threat as well as rights for cancellation; (2) express the specific mode of communicating the information; and (3) enforcement structure for the compliance of information provision.

All these information must be adequate, accurate, clear, legible, precise and comprehensive as to ensure that the consumers could understand and appreciate it. Furthermore, in order to ensure that the provided information could efficiently and effectively protect the interests of Umrah package travellers, the information should be fair, reliable, timely, complete, consistent, and presented in clear and simple terms.

In addition, information provision requires a good enforcement structure to deter the unscrupulous tour operators and travel agents from violating the information regulation and guarantee for the compliance. By looking to the current phenomena of Umrah package travels in Malaysia, a severe civil penalties with deterrence effect could be a good regulatory response to deter the unscrupulous tour operators and travel agents from selling the fraudulent Umrah package travel and secure compliance of information provision by the tour operators and travel agents should be enforced. However, in the case where the local tour operators and travel agents repeatedly commit the same offences, criminal penalties and licence revocation could be a good structure to be enforced in Malaysia particularly in dealing with that issue.

7.3 Reflection on the Recommendations and Way Forward

7.3.1 Reform of the Law

The discussions in Chapter Five addressed the issues of Malaysian policies and laws in relation to consumer protection of information. While it is recognised that the policies, laws and approaches by industry players are the main three instruments to protect the interests of Umrah package travellers, the inadequacy of its substance and implementation must be addressed. However, for guaranteeing its effectiveness, the policy and the law must be reformed, as per the following recommendations.

7.3.1.1 Laws

7.3.1.1.1 Tourism Industry Act (TIA) 1992

Some amendments should be made to TIA 1992. Firstly, Umrah should be clearly recognised as one of the tour activity under TIA 1992. The existing TIA 1992 defines tour activity as ‘includes sightseeing, excursions, shopping, visits to places of interest or entertainment, and other activities normally undertaken by a tourist’.¹¹ In order to ensure that Umrah is within the ambit of TIA 1992, it should clearly expand the term tour to include other purposes such as religious, education, medical treatment and business. Section 2 of TIA 1992 should define the word ‘tour’ as:

‘Sightseeing, excursions, shopping, visits to places of interest or entertainment, as religious, education, medical treatment and business and other activities normally undertaken by a tourist’.

By expanding the definition of a tour in the existing TIA 1992, TIA 1992 will cover a broader scope of business and protection. By including religious purpose as one of the ‘tour’ activities, it directly allocates a place for the Umrah to be a part of TIA 1992.

Secondly, the word ‘package travel’ is never defined by TIA 1992. Section 2 of TIA 1992 should define the word ‘package travel’ as;

‘Any travel arrangements which are packaged and include any two of the following components; transportation, accommodation or other tourist services not ancillary to transportation or accommodation, sell at inclusive price and described in any media and/or which are publicly marketed, promoted or advertised through any media’.

By adding and interpreting the word package travel in TIA 1992, it will extend the scope of TIA 1992 to cover the business of package travel. In addition, it also will require the existing law to provide certain protection to the package travellers.

¹¹ Sec 2, Tourism Industry Act 1992.

Thirdly, Part II of TIA 1992 should be amended to include the duty of licensed tour operators and travel agents to provide information to the travellers. The essential information that needs to be provided in a standard form are;

- a. Essential information on package travel;
- b. Visa (Umrah visa and certificate of Meningococcal Meningitis in relation to Umrah package travel);
- c. Price and payment;
- d. Particulars of tour operators and travel agents;
- e. Safety threat; and
- f. Rights for cancellation.

Fourthly, a specific provision relating to the compliance and enforcement of information provision should be allocated. In the case where the licensed tour operators or travel agents fail to provide information relating to Umrah package travel as required by the law, they will be liable and civil penalty (fine and imprisonment) will be imposed. It is the duty of a regulator to enforce the said penalty as to ensure that it can effectively take place.

7.4 Future Research

Whilst this research has been substantiated and original, nevertheless, there remain possible agendas for future research, as follows. It is hoped that this thesis will provide the impetus for more intensive studies on information regulation for the purpose of protecting the interests of Umrah package travellers due to the importance of this topic and its tremendous impact on Malaysia Umrah package travellers and Muslim community. As has been discussed in Chapter Three, the effectiveness of regulation by information paradigm specifically for protecting the Umrah package travellers could be accessed from 2 different perspectives; theoretical and practical aspect. Theoretically, regulation by information provision is recognised as a method to comprehensively protect the interests of package travellers in EU and UK and could be a great instrument to protect Malaysian Umrah package travellers.

This fact leads to the conclusion that more research should be devoted to evaluate the successfulness of this instrument in protecting the interests of Umrah package travellers in practice. Furthermore, this research established that information provision is an essential instrument for protecting the interests of Umrah package travellers. However, future research should consider other forms of protection to complement this approach.

7.5 Overall Conclusion: Aim Achieved?

Many issues in relation to Umrah package travel plaguing Malaysian Muslim communities. Malaysian Umrah package travellers come from different economic, educational, geographical and age backgrounds. These differences will influence the information acquisition, information engagement and decision making of Malaysian Umrah package travellers. Limitations of accessing, acquiring and understanding the information available in the market could result in potential information vulnerability which may prevent the Umrah package travellers from making well informed decision and protect themselves from unscrupulous tour operators and travel agents. Consequently, the vulnerable Umrah package travellers are capable of being easily harmed or injured and suffered tremendous financial, emotion and spiritual loss. It is clearly evidenced by many reported cases where the Umrah package travellers have been left stranded at the airport without any information as well as cheated by the unscrupulous tour operators, travel agents and pious men who act on behalf of tour operators or travel agents.

As to reflect the research questions and objectives addressed in Chapter One, this research breaks into four discrete but inter-related parts. Firstly, it explored why Malaysian Umrah package travellers are vulnerable, what are the specific vulnerabilities of Malaysian Umrah package travellers and how those specific vulnerabilities might defeat their interests. Secondly, this study focused on a specific approach of information regulation for the purpose of protecting the interests of vulnerable consumers particularly the Umrah package travellers in Malaysia. Thirdly, this research looked at the

European Union (EU), United Kingdom (UK) and Malaysian strategies, policies and legal regime, as constructed to protect the interests of consumers including Umrah package travellers. Fourthly, this research built up a specific design of consumer protection measure to protect the interests of Umrah package travellers in Malaysia.

As highlighted in Chapter One of this research, the hypothesis of this research was:

Information regulation which requires the tour operators and travel agents to provide essential information relating to Umrah package travel at the pre-contractual stage is the best approach for protecting Malaysian Umrah package travellers.

The findings of this research are the first to have successfully explored the specific issue of Umrah package travel in Malaysia, the fundamental factor (lack of information and imperfect information) that lead to that problem and the appropriate solution to solve that problem as well as to protect the interests of Umrah package travellers in Malaysia as a whole. The analysis of this research has provided important and original findings on the subject of protection of Umrah package travellers where it is evidenced that 'Information regulation which requires the tour operators and travel agents to provide essential information relating to Umrah package travels at the pre-contractual stage' is the vital instrument to protect the interests of Umrah package travellers supported with other existing mechanisms including licensing, price control and education awareness. This approach should be supported with great enforcement by the regulator to guarantee compliance by the local tour operators and travel agents.

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List of Abbreviations

ADR	Alternative Dispute Resolution
BEIS	Business, Energy and Industrial Strategy
BRTF	Better Regulation Task Force
BUMITRA	Bumiputera Travel and Tour Agents Association of Malaysia
CAP	Consumers Association of Penang
CBHUK	Council of British Hajj United Kingdom
CCR	Consumer Contract (Information, Cancellation and Additional Charges) Regulations
CIE	Centre for International Economic
CLA	Civil Law Act
CMP	Consumer Master Plan
CPA	Consumer Protection Act
CPUTR	Consumer Protection from Unfair Trading Regulations
CRA	Consumer Rights Act
CRD	Consumer Rights Directive
CSG	Consumer Strategy Group Directive 2015
DTI	Department of Trade and Industry
EC	European Community
ECJ	European Court of Justice
ECTAA	European Federation of Travel Agents and Tour Operators Associations
EEC	European Economic Community
EU	European Union
FCA	Financial Conduct Authority
FCO	Foreign and Commonwealth Office
FMB	Franchise Mediation Bureau
FOMCA	Federation of Malaysian Consumer Associations
GDP	Gross Domestic Product
IATA	International Air Transport Association

IIUM	International Islamic University Malaysia
ILO	International Labour Organization
JAWHAR	Jabatan Wakaf, Zakat and Hajj
JTIC	Jane's Terrorism and Insurgency Centre
LTA's	Linked Travel Arrangements
MAB	Malaysian Airlines Berhad
MACFEA	Malaysian Consumer and Family Economics Association
MAHB	Malaysian Airport Holding Berhad
MATTA	Malaysian Association of Tour and Travel Agents
MCAB	MATTA Consumers Affairs Board
MCMC	Ministry of Communication and Multimedia Commission
MDTCC	Ministry of Domestic Trade, Cooperative and Consumerism
MFA	Ministry of Foreign Affairs
MOE	Ministry of Education
MOML	Moslem Meal
MOT	Ministry of Transportation
MOTAC	Ministry of Tourism and Culture
MTPBA	Malaysian Tourism Promotion Board Act
MyCC	Malaysia Competition Commission
MYR	Malaysian Ringgit
NCAC	National Consumer Advisory Council
NCC	National Consumer Council
NCP	National Consumer Policy
NCPC	National Consumer Protection Council
NGOs	Non-Government Organizations
OFT	Office of Fair Trading
PBUH	Peace Be Upon Him
PKPKL	Persatuan Keselamatan Pengguna Kuala Lumpur
PPIM	Persatuan Pengguna Islam Malaysia
PPPM	Persatuan Perlindungan Pengguna Malaysia
PTD 1990	Package Travel Directive 1990
PTD 2015	Package Travel and Linked Travel Arrangements Directive 2015

PTRs 1992	Package Travel, Package Holidays, and Package Tours Regulations 1992
PTRs 2018	Package Travel and Linked Travel Arrangements Regulations 2018
RMP	Royal Malaysia Police
TCCM	Tribunal for Consumer Claims Malaysia
TEU	Treaty of European Union
TFEU	Treaty on the Functioning of the European Union
TH	Tabung Haji
THTS	Tabung Haji Travel and Services Sdn Bhd
TIA	Tourism Industry Act
TLD	Tourism Licensing Division
TOBTAB	Travel Operating Business and Travel
TVLA	Tourism Vehicles Licensing Act
UCPD	Unfair Commercial Practices Directive
UiTM	Universiti Teknologi Mara
UK	United Kingdom
UN	United Nations
Unisza	Universiti Sultan Zainal Abidin
UNWTO	United Nations World Tourism Organization
URC	Umrah Regulatory Council
VAT	Value Added Tax
WRTA	World Religious Travel Association
WTO	World Tourism Organization
WTTC	World Travel and Tourism Council

Appendices

Article 4(1)(b), Package Travel, Package Holidays and Package Tours Directive 1990 (90/314/EEC)

The organizer and/or retailer shall also provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:

- (i) the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train;
- (ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call. Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the organizer and/or the retailer;
- (iii) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;
- (iv) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

Article 5 of Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

Pre-contractual information

1. Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organizer and, where the package is sold through a retailer, also the retailer shall provide the traveller with the standard information by means of the relevant form as set out in Part A or Part B of Annex I, and, where applicable to the package, with the following information:

(a) the main characteristics of the travel services:

(i) the travel destination(s), itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included;

(ii) the means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections. Where the exact time is not yet determined, the organiser and, where applicable, the retailer shall inform the traveller of the approximate time of departure and return;

(iii) the location, main features and, where applicable, tourist category of the accommodation under the rules of the country of destination;

(iv) the meal plan;

(v) visits, excursion(s) or other services included in the total price agreed for the package;

(vi) where it is not apparent from the context, whether any of the travel services will be provided to the traveller as part of a group and, if so, where possible, the approximate size of the group;

(vii) where the traveller's benefit from other tourist services depends on effective oral communication, the language in which those services will be carried out; and

(viii) whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveller's request, precise

information on the suitability of the trip or holiday taking into account the traveller's needs;

(b) the trading name and geographical address of the organizer and, where applicable, of the retailer, as well as their telephone number and, where applicable, e-mail address;

(c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveller may still have to bear;

(d) the arrangements for payment, including any amount or percentage of the price which is to be paid as a down payment and the timetable for payment of the balance, or financial guarantees to be paid or provided by the traveller;

(e) the minimum number of persons required for the package to take place and the time-limit, referred to in point (a) of Article 12(3), before the start of the package for the possible termination of the contract if that number is not reached;

(f) general information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities, of the country of destination;

(g) information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, or, where applicable, the standardized termination fees requested by the organizer, in accordance with Article 12(1);

(h) information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death.

For package travel contracts concluded by telephone, the organizer and, where applicable, the retailer shall provide the traveller with the standard information set out in Part B of Annex I, and the information set out in points (a) to (h) of the first subparagraph.

Article 7 of Directive (EU) 2015/2302 of the European Parliament and of the Council on the Package Travel and Linked Travel Arrangements.

Content of the package travel contract and documents to be supplied before the start of the package

2. The package travel contract or confirmation of the contract shall set out the full content of the agreement which shall include all the information referred to in points (a) to (h) of the first subparagraph of Article 5(1) and the following information:

- (a) special requirements of the traveller which the organizer has accepted;
- (b) information that the organizer is:
 - (i) responsible for the proper performance of all travel services included in the contract in accordance with Article 13; and
 - (ii) obliged to provide assistance if the traveller is in difficulty in accordance with Article 16;
- (c) the name of the entity in charge of the insolvency protection and its contact details, including its geographical address, and, where applicable, the name of the competent authority designated by the Member State concerned for that purpose and its contact details;
- (d) the name, address, telephone number, e-mail address and, where applicable, the fax number of the organizer's local representative, of a contact point or of another service which enables the traveller to contact the organizer quickly and communicate with him efficiently, to request assistance when the traveller is in difficulty or to complain about any lack of conformity perceived during the performance of the package;
- (e) information that the traveller is required to communicate any lack of conformity which he perceives during the performance of the package in accordance with Article 13(2);
- (f) where minors, unaccompanied by a parent or another authorized person, travel on the basis of a package travel contract which includes

accommodation, information enabling direct contact with the minor or the person responsible for the minor at the minor's place of stay;

(g) information on available in-house complaint handling procedures and on alternative dispute resolution ('ADR') mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council and, where applicable, on the ADR entity by which the trader is covered and on the online dispute resolution platform pursuant to Regulation (EU) No 524/2013 of the European Parliament and of the Council;

(h) information on the traveller's right to transfer the contract to another traveller in accordance with Article 9.

List of Approved Tour Operators and Travel Agents By Saudi Arabia

No.	NAME OF TOUR OPERATOR/ TRAVEL AGENT
1.	CANTUMAS TRAVEL & TOURS SDN BHD
2.	TH TRAVEL & SERVICES SDN BHD
3.	UTAS TRAVEL & TOURS SDN BHD
4.	BATUTA TRAVEL & TOURS SDN BHD
5.	KSB TRAVEL & TOURS SDN BHD
6.	RAYHAR TRAVELS SDN BHD
7.	C.S HOLIDAYS SDN BHD
8.	YHA TRAVEL & TOURS (M) SDN BHD
9.	FELCRA TRAVELS AND TOURS SDN BHD
10.	TRIWAYS OMEGA TRAVEL & TOURS SDN BHD
11.	DERAZ TRAVEL & RESORT SDN BHD
12.	GEMILANG TRAVEL AND TOURS SDN BHD
13.	FELDA TRAVEL SDN BHD
14.	FALCON TRAVEL & TOURS SDN BHD
15.	ANDALUSIA TRAVEL & TOURS SDN BHD
16.	RAKYAT TRAVEL SDN BHD
17.	WIRA SAUJANA TRAVEL & TOURS SDN BHD
18.	BAHRULMAZI TRAVEL & TOURS SDN BHD
19.	MISBAH TRAVEL & TOURS SDN BHD
20.	AN-NAJWA TRAVEL & TOURS SDN BHD
21.	DEMAK TRAVEL SDN BHD
22.	ZAHAFIZ TRAVEL & TOURS SDN BHD
23.	TIRAM TRAVEL SDN BHD
24.	AL-NILE TOUR & TRAVEL SDN BHD
25.	UMH TRAVEL & SERVICES SDN BHD
26.	IMTIYAZ TRAVEL & TOURS SDN BHD
27.	UC TRAVEL SDN BHD
28.	TM TOURS & TRAVEL SDN BHD
29.	ALFAJR TRAVEL & TOURS SDN BHD
30.	AL-RAHALA TRAVEL & TOURS SDN BHD

31.	JUARA TRAVEL & TOURS SDN BHD
32.	KOPETRO TRAVEL & TOURS
33.	PLATINUM GESTURE TRAVEL & TOURS SDN BHD
34.	TRIWAYS TRAVEL NETWORK (M) SDN BHD
35.	ELAF SHAHIDAH TRAVEL SDN BHD
36.	DINAR HOLIDAYS SDN BHD
37.	TOUCH ME TRAVEL & TOURS SDN BHD
38.	JAGONG MAS TRAVEL SDN BHD
39.	MADINAH TRAVEL & TOURS SDN BHD
40.	NAT TOUR SDN BHD
41.	EDARAN TRAVEL & TOURS SDN BHD
42.	POTO TRAVEL & TOURS SDN BHD
43.	SYAZA TRAVEL & TOURS SDN BHD
44.	RIA TRAVEL & TOURS SDN BHD
45.	ADAM HOLIDAY TRAVEL SDN BHD
46.	M R TRAVEL & SERVICES SDN BHD
47.	ZUSB WORLD TRAVEL SDN BHD
48.	MKM TICKETING TARVEL & TOURS SDN BHD
49.	HM GLOBAL CHARTER TRAVEL SDN BHD
50.	REY-Z TRAVEL SERVICES SDN BHD
51.	ALQUDS TRAVEL SDN BHD
52.	LINTAS TRAVEL SERVICES SDN BHD
53.	INTERLEISURE & EVENT MANAGEMENT SDN BHD
54.	ARRAYYAN TRAVEL SERVICES SDN.BHD
55.	AL FURQAN TRAVEL & TOURS SDN BHD
56.	FA IZIN INTERNATIONAL TRAVEL & TOURS SDN
57.	MULTAQA AL-IMAN TRAVEL
58.	TRI - D TRAVEL
59.	EPL TRAVEL AND TOURS SDN BHD
60.	RED SEA TRAVEL
61.	AL ZAHABI TRAVEL SDN BHD
62.	AZ ZUHA GROUP TRAVEL&TOURS SDN BHD
63.	ALWASAYET TRAVEL & TOURS UMRAH SERVICES SDN

	BHD
64.	KOTA MAS TRAVEL TOURS
65.	TRADEWINDS TRAVEL SERVICES SDN BHD
66.	GLOCAL TRAVEL TOURS SDN BHD
67.	IMG TRAVEL AND TOURS SDN BHD
68.	MAQBUL TRAVEL AND TOURS