



**Asia-Pacific
Economic Cooperation**

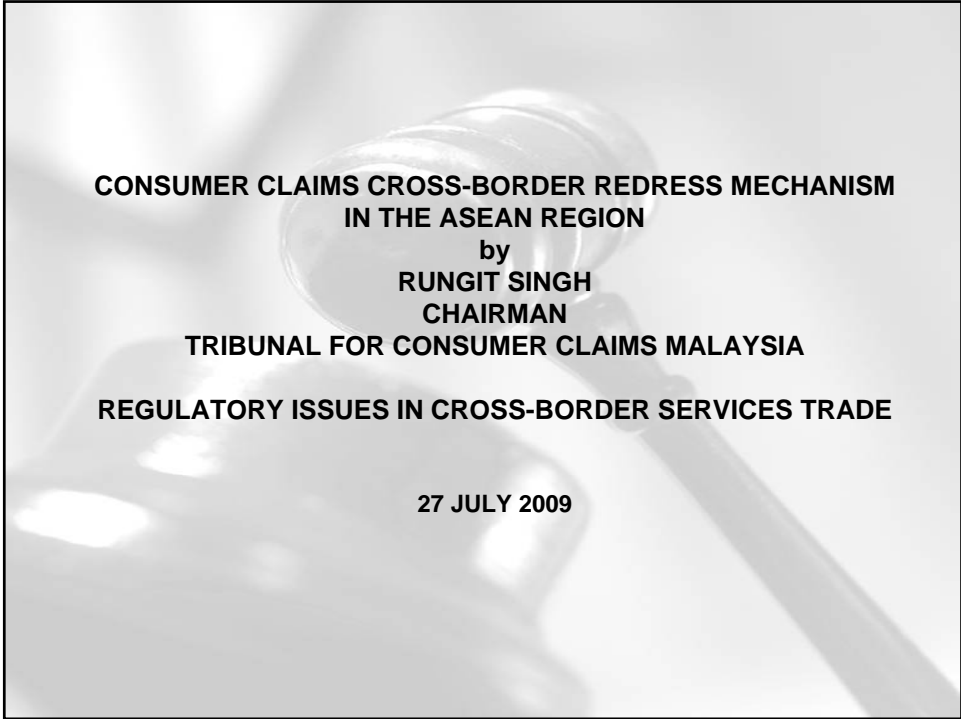
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Consumer Claims Cross-Border Redress Mechanism in the ASEAN Region

Submitted by: Malaysia



**Seminar on Regulatory Issues in Cross-Border
Services Trade: Ensuring Protection of
Consumers and Service Suppliers
Singapore
27 July 2009**



**CONSUMER CLAIMS CROSS-BORDER REDRESS MECHANISM
IN THE ASEAN REGION**
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2. DEFINITION OF REDRESS MECHANISM

1. Right of consumers to file actions for specific complaints / dissatisfaction against goods and services.
2. Right of consumers to specific remedies in law eg. refund of money, return / replacement of goods, resupply of goods, compensation for loss or damage, enforcement of guarantees, etc.
3. Legal structure to pursue and enforce consumer claims eg. Small Claims Courts, Tribunal's, Civil Courts, etc.
4. Consumer departments / Government or Non-Governmental Organizations to advise and facilitate filing of consumer claims.
5. Settlement avenues for consumer claims eg. Consumer Affair Departments, Enforcement Departments, Professional Bodies etc.

3. DEFINITION OF CONSUMER

- A. A person who acquires or uses goods or services for :
 - (i) personal use.
 - (ii) domestic or household purpose.
 - (iii) personal consumption.**
- B. Not goods or services acquired for trade purposes, manufacturing process or professional services.**
- C. Does not include negotiable instruments, shares, debentures and money.**
- D. Does not include recovery of land or interest in land.**
- E. Includes tourists, expatriates, diplomatic staff, permanent residents, etc.**

4. DEFINITION OF SERVICES

- Services includes any rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any contract.**
- Does not include services provided by professionals who are regulated by any written law.**
- Does not include healthcare services provided or to be provided by healthcare professionals or healthcare facilities.**
- Does not include services provided under a contract of employment.**

5. CROSS-BORDER CLAIMS

1. Identify departments / organizations handling cross-border consumer claims.
2. Online access to cross-border redress mechanism.
3. Identify traders / companies dealing with consumers from Asean region.
4. Clear information and access to the domestic cross-border mechanism available in every Asean country.
5. Facilitate the filing of claims by the Asean citizen.
6. Representative filing and handling of claims by specific bodies eg. Tourism Boards, Consumer Affairs Departments, Non-Governmental Organizations, etc.
7. Special procedures for short-term stay consumers eg. tourists, medical patients.

6. CROSS-BORDER MECHANISM - 1

1. Legal / administrative mechanism.
2. Simple, cheap and speedy.
3. Consumer Awareness.
 - (i) Information on consumer redress mechanism eg. brochures, pamphlets, toll free telephone lines, web-sites.
 - (ii) Advisory services by Consumer Affairs Departments, Diplomatic Missions, Governmental and Non-Governmental Organizations, etc.
 - (iii) Tourist's advisory bulletins, etc.
4. Consumer Protection Law eg. Malaysia's Consumer Protection Act, 1999.

7. CROSS-BORDER MECHANISM - 2

1. Rules and regulations for:
 - (i) Filing of claims
 - (ii) Prescribed forms
 - (iii) Fees
 - (iv) Hearing dates
 - (v) Conduct of hearings / interpreters
 - (vi) Awards and orders
2. Courts / Tribunals
 - (i) Accessibility
 - (ii) Consumer / trader friendly
 - (iii) Cheap filing fees
 - (iv) Simple legal procedures
 - (v) Fast disposal of claims
 - (vi) Formal orders / awards
3. Enforcement of orders / awards

8. CROSS-BORDER MECHANISM - 3

1. Consumer redress mechanism in Malaysia
 - (i) Businesses in-house consumer complaint/customer service departments.
 - (ii) Consumer Affairs Division, Ministry of Domestic Trade, Co-operatives and Consumerism.
 - (iii) Enforcement Division, Ministry of Domestic Trade, Co-operatives and Consumerism.
 - (iv) Non-Governmental Organizations eg. Federation of Malaysian Consumers Associations (FOMCA), Consumer Association of Penang (CAP).
 - (v) National Consumer Complaints Center (NCCC).
 - (vi) Professional bodies eg. Bar Council, Malaysian Medical Association.
 - (vii) Financial Mediation Bureau (Central Bank of Malaysia).
 - (viii) Tribunal For Consumer Claims Malaysia (TCCM).

9. TRIBUNAL FOR CONSUMER CLAIMS MALAYSIA - 1

1. Established under the Consumer Protection Act, 1999.
 - (i) independent judicial body.
 - (ii) jurisdiction limited to hearing consumer claims and traders' counter claims.
 - (iii) nationwide jurisdiction.
 - (iv) goods and services supplied in the domestic market.
 - (v) final and binding orders.
 - (vi) resort to consumer jurisprudence to develop consumer protection law.
2. Operates from 15 Tribunal branches throughout Malaysia. Accessible by toll- free telephone line, e-Tribunal, reference through 73 branches of the Ministry of Domestic Trade, Co-operatives and Consumerism, reference by NGO's, legal advisory services at all counters of Tribunal branches.
3. Pamphlets and information booklets on rules and procedures of the Tribunal including sample claims widely distributed and available upon request.

10. TRIBUNAL FOR CONSUMER CLAIMS MALAYSIA - 2

1. Hearing of consumer claims
 - (i) Open court hearing.
 - (ii) Parties or representatives present including any other interested party and witnesses.
 - (iii) Parties informed of their right to negotiate a settlement either by themselves or with the assistance of the presiding Judge (President).
 - (iv) If no settlement, parties present their case in the language of their choice.
 - (v) Claimant proceeds to present his case, submit necessary documents and exhibits, call any witnesses. Claimant closes his case.
 - (vi) Respondent present his case, submits documents, etc.
 - (vii) Presiding Judge to initiate settlement/mediation of the issues raised by both parties. If necessary, a private mediation session is held.
 - (viii) If matter settled at any stage, consumer withdraws claims or agreed terms of settlement are recorded.
 - (ix) Where no complete settlement is reached, the Tribunal will hand down an award to determine the claim.

11. TRIBUNAL FOR CONSUMER CLAIMS MALAYSIA - 3

1. Awards of the Tribunal may contain the following orders:

- (i) record the terms of an agreed settlement;
- (ii) that a party to the proceeding pay money to the other party;
- (iii) that goods be supplied or resupplied to the consumer;
- (iv) that the goods complained of be replaced or repaired;
- (v) that the price or other consideration paid to the consumer be refunded;
- (vi) that a party comply with any guarantee;
- (vii) that money be awarded to compensate for any loss or damaged suffered by the consumer;
- (viii) that the contract between the consumer and the trader be varied or set aside;
- (ix) costs be paid to any party;
- (x) that interest be paid on any sum awarded ;
- (xi) that the claim be dismissed;

12. TYPES OF CLAIMS FOR YEAR 2008 - SERVICES

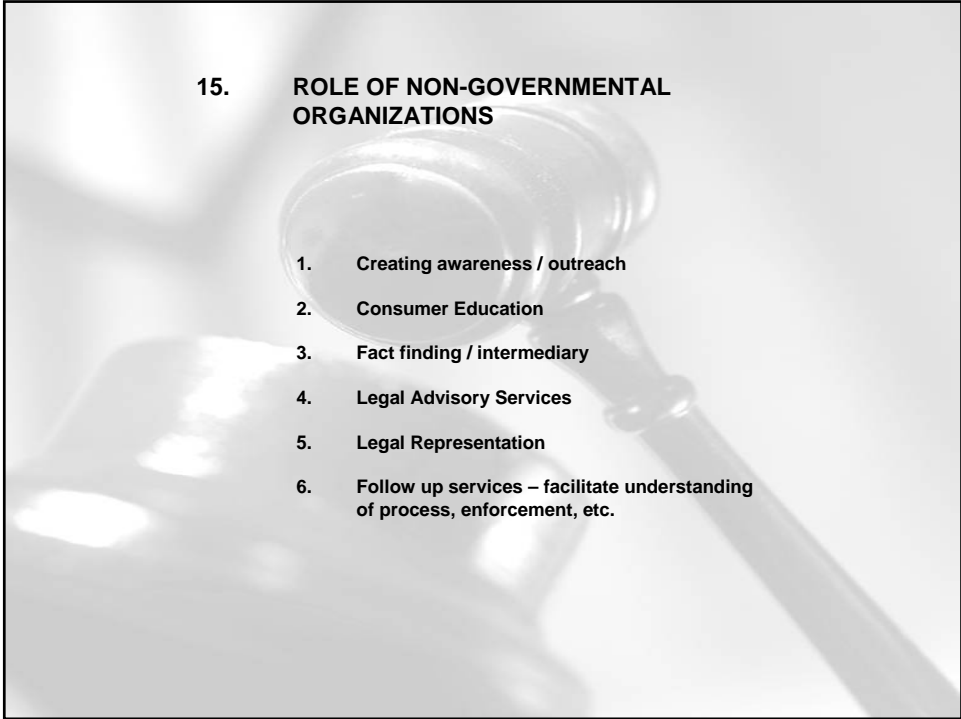
1.	Travel Agencies	-	327 claims (9.34%)
2.	Time Sharing	-	341 claims (6.88%)
3.	Car Workshops	-	241 claims (6.37%)
4.	Employment Agencies	-	202 claims (5.77%)
5.	Maid Agencies	-	166 claims (4.74%)
6.	House Renovation	-	131 claims (3.74%)
7.	Minor Repairs	-	114 claims (3.26%)
8.	Beauty Treatments	-	93 claims (2.66%)
9.	Educational Institutions	-	85 claims (2.43%)
10.	Umrah Packages	-	82 claims (2.34%)

13. CONSUMER CLAIMS BY FOREIGN NATIONALS (2008)

1.	Singapore	-	57
2.	United Kingdom	-	4
3.	Nigeria	-	4
4.	Iran	-	3
5.	Australia	-	3
6.	India	-	2
7.	Philippines	-	2
8.	Germany	-	2
9.	Japan	-	2
10.	Saudi Arabia	-	1
11.	Indonesia	-	1
12.	Lebanon	-	1
13.	Yemen	-	1
14.	Iraq	-	1
15.	Norway	-	1
16.	Holland	-	1
	TOTAL		86

14. BUSINESS SECTOR DEVELOPMENT

1. Unfair Terms in Contracts
2. Refund of Deposits
3. House Renovation
4. Trade-in Cars
5. Employment Agencies
6. Banks and Insurance
7. Educational / Training Institutes
8. Laundry
9. Free gift / Offers / Bait sales
10. Miscellaneous Claims



15. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

1. **Creating awareness / outreach**
2. **Consumer Education**
3. **Fact finding / intermediary**
4. **Legal Advisory Services**
5. **Legal Representation**
6. **Follow up services – facilitate understanding of process, enforcement, etc.**



16. CROSS-BORDER REDRESS CHALLENGES

1. **Determining Redress**
 - **Identifying redress bodies**
 - **Consumer Protection Law**
 - **Scope of redress**
 - **Point of contact**
 - **Cross-border networking**
2. **Awareness and Publicity Programs**
3. **Logistics**
 - **Accessibility – information, e-access etc.**
 - **Legal advisory services**
 - **Trained support staff**
 - **Trained judicial officers/mediators**
 - **Database**
4. **Development of Consumer Protection Law**

17. CONCLUSION

1. Asean member countries to move towards a workable consumer redress mechanism.
2. Initial consumer redress mechanism can be developed within the existing legal infrastructure and consumer law framework.
3. Wide publicity to be given to the availability of consumer redress mechanism.
4. Speed and simplicity crucial.
5. Supply of good and services secured against unscrupulous and unfair trade practices.
6. Boost consumer confidence for the Asean citizen and create a breed of ethical Asean traders.
7. Vision of Asean member countries should be the strengthening of domestic markets through a well established redress mechanism.

THANK YOU

Homepage Address: <http://tribunal.kpdnkk.gov.my>