MALAYSIAN BLOCKCHAIN
REGULATORY REPORT
A Research Report Prepared by the University of Malaya
ABOUT THE RESEARCH AND THIS REPORT

This research has been conducted by a team of researchers at the Faculty of Law, University of Malaya (UM) and University of Malaya Malaysian Centre of Regulatory Studies (UMCoRS) with the objective of encouraging both economic development and innovation in Malaysia without compromising consumer protection. This Report provides inputs and recommendations to support the adoption of blockchain technology by startups, small and medium sized enterprises, large corporation and government agencies while also ensuring the development of a conducive and safe regulatory environment.

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The information in this Report is updated as at May 2018.

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One of blockchain’s key benefits is the ability to provide an accessible, trustworthy and complete record and history of any goods and services. Nevertheless, concerns remain as to its compliance with consumer protection laws. How will errors be rectified? How will refund policies be implemented? How will various disputes be settled?

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Chapter 4D

CONSUMER PROTECTION

4D.1 Introduction

Consumers are one of the most important components in any commercial activity for it is they who consume the goods and services, either manufactured or supplied, in the market. Since they are the prime users of products and services and their needs and demands assist the entrepreneurs in continuing their commercial activities, the optimum benefits to consumers should be of the highest importance. Consumer behavior, understanding and perception about any innovation or innovation-driven services and solutions should be considered seriously by entrepreneurs during the cradle-to-grave product life-cycle i.e. from the R&D stage to the use-end disposal stage. Modern entrepreneurs in a duly regulated environment are usually concerned with protecting and safeguarding the consumers’ interests. Within the state mechanism, various regulators have been working both to promote innovations that promise to provide better services to consumers and to work as a watchdog to protect the interests of consumers so that they do not suffer adverse effects resulting from such innovations.

Theoretically, blockchain technology promises to provide better services to consumers. For example, blockchain technology can ensure better logistics and product management, ensuring consumers get the right product. This can empower consumers by allowing them to make more informed choices. Blockchain technology also promises to benefit consumers as it may enable an individual to enter into a commercial activity directly with another trader without the assistance of middlemen or intermediaries, e.g. banks.

Yet alongside these projected benefits, there are some technical, legal, regulatory and human resource related challenges which appear in conflict with some of the provisions of existing consumer protection laws, which bestow some rights to consumers and provide for avenues for redress. These challenges may be due to the fact that the technology is still in the nascent stage of development. Therefore, technopreneurs will have to take the initiative to overcome these challenges in order to motivate consumers interested in using these technology-driven goods and services and to convince regulators to allow the introduction of this technology on a massive scale in the local market.
This chapter is an attempt to evaluate existing Malaysian legal provisions on consumer protection with an aim to assess whether these provisions are adequate to protect the interests of consumers in relation to blockchain-based services, solutions, goods and products. This chapter will also highlight some issues that blockchain-based entrepreneurs should keep in consideration even though the technology is still in the development stage. Consumer protection has also been touched on in other chapters in this Report. Therefore, this chapter will primarily focus on consumer protection issues when blockchain technology will be used to provide various goods and services online. In doing so, this chapter will first define the word “consumer”, followed by the history, importance of and international movement on consumer protection. After that, various consumer rights in the Malaysian context will be discussed and initiatives will be taken to relate such rights within the context of blockchain technology. Finally, some suggestions, based on the existing knowledge, will be shared.

4D.2 Defining a Consumer

A consumer is usually a person who buys goods and services for his personal, domestic or household use. In Malaysia, a consumer is defined in the same way.1 Thus, a consumer does not buy goods2 or services3 for commercial use. Besides, in some sector-specific literature in the Malaysian context, e.g. banking,4 energy,5

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1 Section 3(1), the Consumer Protection Act 1999.

2 Goods are those things 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. See, Section 3, Ibid.

3 “Services” include any rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any contract but do not include rights, benefits or privileges in the form of the supply of goods or the performance of work under a contract of service. See, Section 3, Ibid.

4 Under the Financial Services Act 2013 and the Islamic Financial Services Act 2013, financial consumers are any persons who use, have used or may be intending to use any financial service or product offered by Financial Service Providers: a) for personal, domestic or household purposes; or b) in connection with a small business. Bank Negara Malaysia, “Prohibited Business Conduct,” November 17, 2014, available at: http://www.bnm.gov.my/guidelines/10_business_conduct/07_Prohibited_Business_Conduct.pdf

5 Tenaga Nasional, without defining precisely a consumer, has listed a few sectors as “commercial consumer”. See: https://www.tnb.com.my/commercial-industrial/for-commercial. The same organisation has also classified consumers into various categories – “industrial consumer”, “mining consumer” and “specific agriculture consumer”. See: https://www.tnb.com.my/commercial-industrial/for-industrial.
the communication and multimedia industry,⁶ one may get a similar definition of a consumer. Therefore, in simple terms, a consumer usually buys goods and services for their personal, domestic or household use without any intention to use these for commercial purposes with the exception of small and medium enterprises (SMEs) in banking matters.⁷ Consumers are also referred to as customers, patients, subscribers, clients, investors etc. in various laws and contexts.

4D.3 Emergence of the International Movement on Consumer Protection

An indirect reference to consumer protection can be found in the Code of Hammurabi, one of the oldest comprehensive legal codes proclaimed by the Babylonian king Hammurabi. Amongst the Hittites of Anatolia, in modern-day Turkey, some 3,500 years ago, there was a Consumer Food Code containing provisions on food safety and a prohibition on cheating and misleading activities. Nevertheless, after the advent of capitalism, consumer protection in its modern form is an idea developed from the mid-19th century onwards, initially in Western countries but later expanding to Asia.⁸

It was appreciated that the consumers were usually weaker than the manufacturers or suppliers and had very limited bargaining power. As a result, on March 15, 1962, the American president, John F. Kennedy outlined the “Consumer Bill of Rights”, which stated that a consumer should have four basic rights, i.e. the right to safety, right to information, right to choose, and right to be heard. The Consumer International, formerly known as International

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⁶ According to the Malaysian Communications and Multimedia Commission, A consumer is a person who receives, acquires, uses or subscribes to services relating to communications and multimedia within the meaning of the Communications and Multimedia Act 1998. This person may or may not yet enter a contract with any service provider. See: “General Consumer Code of Practice for the Communications and Multimedia Industry Malaysia,” Communications and Multimedia Consumer Forum of Malaysia, October 2003, available at: https://www.mcmc.gov.my/skmmgovmy/files/attachments/GeneralConsumerCode.pdf.

⁷ The National SME Development Council (NSDC) has revised the definition of SMEs based on sales turnover and number of full-time employees. To be treated as an SME, a company should have turnover not exceeding RM20 million (service and other sectors) and RM50 million (manufacturing sectors), and employees should not exceed 70 and 200 respectively in service and manufacturing sector. See: SME Corp. Malaysia Secretariat to the National SME Development Council, “Guideline for New SME Definition”, October 2013, available at: http://www.smecorp.gov.my/images/pdf/Guideline_New_SME_Definition_updated.pdf

Organisation of Consumers Unions, proposed another four rights i.e. the right to redress or remedy, right to environmental health, right to service and right to consumer education. The General Assembly of the United Nations encapsulated all of these eight rights and adopted the United Nations Guidelines for Consumer Protection (UNGCP) through Resolution 39/248 of April 16, 1985. The UNGCP are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. These Guidelines were later expanded by the Economic and Social Council through Resolution 1999/7 of July 26, 1999, and subsequently revised and adopted by the General Assembly through Resolution 70/186 of December 22, 2015.

The UNGCP have identified the legitimate needs of consumers. These are, *inter alia*, access to essential goods and services, protection of vulnerable and disadvantaged consumers, promotion and protection of the economic interests of consumers, access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs, consumer education on the social and economic consequences of consumer choices, availability of effective consumer dispute resolution and redress, a level of protection for consumers using electronic commerce, and protection of consumer privacy.

The UNGCP have stipulated a number of principles for good business practices in conducting online and offline commercial activities. These include, *inter alia*, a) fair, honest and equitable treatment of all consumers and an *avoidance of practices* that harm consumers including vulnerable and disadvantaged consumers, b) provision of *complete, accurate and not misleading information* regarding the goods and services, terms and conditions to enable consumers to take informed decisions, c) development of programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to take informed decisions, d) protection of privacy, and e) availability of *complaints-handling mechanisms* that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden. These principles are encapsulated in the municipal laws, and regulators across the world are there to monitor their implementation. Therefore, for better functioning and success of their business, the entrepreneurs should take these issues into consideration.

It is pertinent to mention here that the UNGCP are mere guidelines and therefore, are not legally binding. Nevertheless, they are of high persuasive value since they are accepted as the international benchmark for good practice.
on consumer protection and were adopted by the UN General Assembly. Most of the countries in the world have considered adopting the principles incorporated in the UNGCP while legislating their municipal laws on consumer protection. The United Nations Conference on Trade and Development (UNCTAD) has subsequently developed the “Manual on Consumer Protection” to assist countries in implementing the revised UNGCP. A significant contribution of this UNGCP is the formation of the standing body i.e. Intergovernmental Group of Experts on Consumer Protection Law and Policy, which is empowered to monitor the application and implementation of the guidelines.

Historically, the consumer protection movement in Malaysia was started alongside the establishment of an international consumer protection movement and the first regional office of the Consumer International was established in Penang. A small group of urban middle-class professionals formed the Selangor Consumers’ Association on January 23, 1965 and protested over the price of newspapers. The Consumer Association of Penang (CAP) was established after the 1969 General Election. Thus, it is evident that historically the people of this part of the world were really concerned about their rights as consumers and gave similar importance to these rights as did consumers in developed countries.

4D.4 Consumers in the Internet Age

As already stated, the issue of consumer protection is a relatively new phenomenon in the legal arena. Under the doctrine of the “inequality of bargaining power”, consumers enjoy very limited bargaining power as compared to the business community. The parties in any trade were simply treated as buyers and sellers and their rights and responsibilities were governed under general laws such as the Sale of Goods Act, the Price Control Act, the Control of Supplies Act or the Penal Code. With the spread of the internet in the early 1990s, the whole idea of consumer protection has been transformed. Whilst the popularity of e-Commerce has enabled consumers to receive various services faster, it has created many challenges for them due to their weaker bargaining power. The stakeholders, including national regulators, and international organisations such as the OECD have correctly understood the situation and have pursued a number of initiatives to protect consumers in the
4D.5 Malaysian Consumers: An Overview

Malaysian consumers are often portrayed as expert consumers and some of the Malaysian consumer activists are the most prominent in the Global South, with Malaysia being instrumental in the push to include basic needs as fundamental consumer rights. Nevertheless, the fact is that Malaysian consumers were found to be easy targets after the emergence of the internet and its widespread use in Malaysia.

Malaysia’s “National Consumer Protection Policy”, 2002, was formulated, inter alia, to increase the effectiveness of consumer protection. This Policy has made it clear that “effective consumer protection should be the responsibility of all parties. Government plays a role in coordinating enforcement and overall welfare of consumers and merchants.” The Policy was developed to focus on a culture of self-protection practices by consumers and self-regulation by the dealer or manufacturer. It is further stated that in order to achieve this objective of developing a culture of self-protection practices by consumers, a few things are to be done - a) enhance the quality, quantity and accessibility of information, b) develop an ethically responsible consumer, c) develop an effective consumer movement and d) improve the ability of consumers who are vulnerable in terms of resources and protection. This stand i.e. “self-protection practices by the

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9 The OECD is the pioneer organisation in taking various initiatives to protect the consumers in digital economy. The organisation has set the “e-Commerce Recommendation” in 1999. After that the OECD has adopted a number of guidelines and recommendations. Very recently, while revising the “Recommendation on Consumer Protection for E-Commerce” on March 24, 2016, the OECD has recommended the member countries and emerging economies to modernise their consumer protection laws to address new risks posed by online commerce and peer-to-peer internet transactions. The OECD further recommended that “businesses should not misrepresent or hide terms and conditions likely to affect a decision to buy or try to conceal their identity or location. Nor should they engage in deceptive practices related to the collection or use of personal data. They should take special care in marketing targeted at children or other vulnerable consumers. Provisions should be made to ensure consumers understand the terms and conditions relating to the acquisition and use of digital content like online music and movies – the fastest growing e-Commerce category and often sold with legal or technical usage limitations. Consumers should also have access to easy-to-use mechanisms to resolve domestic and cross-border e-Commerce disputes in a timely manner.”


consumers” may be effective in various sectors, but it will be challenging with regard to blockchain, at least for the time being, as the technology may be found to be complex to many consumers though the hype is already widely circulated. Consumer protection by way of responsibility to customers is included in the “Federation of Malaysian Manufacturers’ Generic Handbook on Code of Ethics” and also in the “Malaysian Business Code of Ethics”.

It has been shown that Malaysian consumers are concerned about misleading claims, insufficient information on the products or instructions of use, absence of contact details of manufacturers for consumers to get more information, counterfeit goods and infiltration of banned products through the “black market” or smuggling, etc. Malaysian consumers mainly complain about - (a) non-compliance with implied guarantees, (b) poor quality, lack of after sales service, (c) non-compliance with description, (d) delay in repairing products, (e) unsafe or unreliable products, and (f) unavailability of spare parts. Since 2009, scams or direct sales are recorded as having increased. After a close look at these claims and concerns of Malaysian consumers, and placing them within the landscape of blockchain technology, it can be confidently said that blockchain technology, with its trustworthy, transparent and immutable features, may help ensure consumer protection by way of binding the manufacturers or dealers to abide by the terms and conditions of the products and services.

The Ministry of Domestic Trade, Co-operatives & Consumerism (MDTCC), the regulatory watchdog, has been working hard to protect consumers. Nevertheless, with the popularity of the internet in Malaysia, consumers have been subject to various forms of scams. The MDTCC has received 700 complaints regarding internet transactions in 2013, 1215 complaints in 2014, 532 complaints in 2015 and 687 complaints from January until May 2016. These complaints were related to - a) goods ordered not delivered, b) different goods supplied, c) fake goods, and d) inferior quality goods.

The National Consumer Complaints Centre, Malaysia (NCCC), formed in July 2004 through the Federation of Malaysian Consumer Associations (FOMCA),

13 Ibid.
has been receiving consumer complaints to mediate and assist consumers to reach an amicable settlement to their claims. Since 2006, the NCCC has been publishing Annual Reports outlining the types of complaints it has received.

Table 4D.1 – Types of Complaints Received by the NCCC

<table>
<thead>
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<td>(Electricity, Water and Sanitation)</td>
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<td>15</td>
<td>Government service tax (GST)</td>
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Sources: National Consumer Complaints Centre, Malaysia, Annual Reports 2006-2016.15

It is evident that since 2014, the NCCC has been receiving the most complaints in the e-Commerce or online shopping category. In 2016, consumers have incurred potential losses of RM255.62 million in the 48,563 complaints which was 4,113 more than the number of complaints received in 2015 (where the loss was 233.76 million). Out of the 7,371 e-Commerce related consumer complaints in 2016, 34.4% were related to the delivery of purchased goods, where the vendors failed to live up to their promises and deliver products within the stipulated time. A refund was denied on the ground that the delays were beyond the seller’s control. 25.7% complaints were regarding scams and 11.3% were related to product quality.\(^\text{16}\)

It is a fact that many consumers are not as smart as the scammers and as a result, the findings of a study conducted by the telecom giant Telenor confirmed that Malaysia is the most vulnerable country to internet scams in this region.\(^\text{17}\) Scammers are very active and utilise multidimensional techniques in cyberspace to bait their targets. As a result, regulators have very limited options as scammers shift their techniques frequently and adopt new ones. In 2015, the Commercial Crime Investigations Department (CCID) of the Royal Malaysian Police received 14,627 cases of online scams involving the loss of RM1.09 billion and in 2014, the police recorded 11,931 cases involving RM816 million. In all these scams, 90% of the victims were women.\(^\text{18}\) In 2016-2017, the MDTCC received more than 3,000 complaints and asked the Malaysian Communications and Multimedia Commission (MCMC) to take down around 50 products on various online market places which were scams.\(^\text{19}\)

**4D.6 Consumers within the Malaysian Legal Framework**

Though the consumer protection movement in Malaysia was started at almost the same time as in Western countries, the consideration of this issue within the formal legal framework is relatively new in this part of the world. Nevertheless,

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there are more than thirty (30) laws in Malaysia which deal with various aspects of consumer protection, based on the responsibility of consumers not to be cheated. Some aspects on consumer protection are covered under general laws like the Penal Code,\(^{20}\) the Sale of Goods Act 1957, the Price Control Act 1946 and the Control of Supplies Act 1961, etc. Moreover, consumer protection issues are included in the Consumer Protection Act 1999. Since consumers consume “goods” and “services” and because the definition of “goods” and “services” is very wide, one may include consumer related laws in diversified sectors e.g. banking or food. A closer look at the provisions of these laws will reveal that they have incorporated most of the best practices and provisions of the UNGCP even though some of these laws were enacted much earlier than the UNGCP.

As there are more than thirty (30) laws containing provisions on consumer protection, it is neither possible nor desirable to cover all these laws in this segment; rather only relevant laws will be covered. After the Internet was introduced in Malaysia in 1995, the Communications and Multimedia Act 1998 and the Consumer Protection Act 1999 were enacted almost immediately. Part 8 of the Communications and Multimedia Act 1998 contains, though in a limited scale, some provisions on consumer protection. The law makes it an obligation on all the licensed service providers i.e. internet service providers to deal reasonably with consumers and adequately address consumer complaints.\(^{21}\) The law further contains provisions on the handling of consumer complaints.\(^{22}\)

An industry code i.e. the “General Consumer Code of Practice for the Communications and Multimedia Industry” was also accepted in October 2003, in accordance with the provisions of the Act. This Code, which is primarily meant for internet service providers and non-service providers who are members of the Communications and Multimedia Forum of Malaysia, deals with issues such as customer obligations, right of redress, protection of personal information and complaints handling. Blockchain technology has theoretical potential to ensure the protection of copyrights and related rights. In the future when blockchain technology will be used in managing such rights, entrepreneurs should then take into consideration provisions to help consumers get genuine products.

The specific Malaysian law on consumer protection is the Consumer Protection Act 1999 and thus, it is imperative to have some basic understanding of this law. The Consumer Protection Act was enacted in 1999 as e-Commerce

\(^{20}\) See, for example, Chapter XIV of the Penal Code (Malaysia). This chapter deals with offences affecting the public health, safety, convenience, decency and morals. Under this chapter, there are some provisions which contain some provisions on product safety.

\(^{21}\) Section 188(1), the Communications and Multimedia Act 1998.

\(^{22}\) Part 8, Ibid.
started to evolve dramatically. Some of the salient features of the law are shared below,

(a) The provisions of this Act apply to all kinds of goods and services offered or supplied in trade or trade transactions both offline and online.\(^{23}\)

(b) The application of the Act shall be supplemental in nature and without prejudice to any other law regulating contractual relations.\(^{24}\) In other words, if those other laws provide consumers with better rights and remedies those provisions shall have the application over this Act, but if the provisions of those other laws are found less favourable for the consumers then the provisions of this Act shall have application.\(^{25}\)

(c) The Act shall have effect notwithstanding any contract term which applies or purports to apply the law of another country where the term appears to the court to have been imposed wholly or mainly for enabling the party imposing it to evade the operation of this Act.\(^{26}\)

(d) The provisions of this Act shall have effect even if there is something to the contrary in any agreement. It will be a punishable offence if any supplier or manufacturer by contract excludes any provision of the law. However, the consumer can agree to settlement or compromises in case there is any issue of claim.

The Consumer Protection Act has bestowed upon consumers various rights. The consumers have the right to:

(a) receive or demand the product for which the payment was made. It is prohibited to demand for or accept any payment or other consideration for goods or services without the intention to supply the goods or services;\(^{27}\)

(b) get the goods or services within a specified or reasonable time;\(^{28}\)

(c) get reasonably safe products which are in compliance with the safety standards prescribed by the minister;\(^{29}\)

(d) cancel future service contracts i.e. contracts to provide consumer services on a continuous basis, though the supplier may charge 5% of the full contract

\(^{23}\) Section 2(1), the Consumer Protection Act 1999.

\(^{24}\) Section 2(4), Ibid.

\(^{25}\) Section 5, Ibid.

\(^{26}\) Section 4, Ibid.

\(^{27}\) Section 16, Ibid.

\(^{28}\) Section 16, Ibid.

\(^{29}\) Part III of ibid. provides that no person shall supply, or offer to or advertise for supply, any goods or services which do not comply with the safety standards as may be prescribed by the Minister.
price, the cost of the goods consumed or retained, portion of the full contract price for the service received;\(^{30}\)

(e) receive correct information that will assist consumers to make informed decisions.\(^{31}\)

In 2010, the Consumer Protection Act was amended to include Part IIIA (sections 24A-24J) on “Unfair Contract Terms” and it is provided that a consumer cannot be made a part of a contract with unfair contract terms, either procedural or substantive. Using unfair contract terms, excluding or restricting the liabilities for negligence or breach or expression, a supplier can get unjust advantage. Thus, a supplier or manufacturer cannot incorporate any terms that exclude or restrict their liabilities, rights and duties. Nevertheless, in the decision of Fairview International School Subang Sdn Bhd v. Tribunal Tuntutan Pengguna Malaysia & Anor,\(^{32}\) the Malaysian court did not interpret the procedural and substantive unfairness broadly.

These rights of consumers are, on the other hand, responsibilities on the business communities i.e. traders, manufacturers, dealers and suppliers. The Trade Description Act 2011, was also enacted to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to the supply of goods and services, and prohibited the application of a false trade description to any goods and supply or in any offer to supply any goods. Thus, it is prohibited to include a misleading trade description in any goods and the application of such description is a punishable offence under the law.\(^ {33}\) Nevertheless, an offence under this law shall not make the contract of supply void.\(^ {34}\)

It might here be pertinent to share that a Federal Court in Missouri, US in 2014 granted the Federal Trade Commission (FTC) permission to freeze the

\(^{30}\) Section 17 (2), the Consumer Protection Act 1999.

\(^{31}\) Under the law it is prohibited to make false or misleading representation i.e. anything that may lead the consumer into error regarding, inter alia, the particular kind, standard, quality, grade, quantity, composition, style or model of any goods and services. Furthermore, it is prohibited to make false or misleading representation that the goods or services have any endorsement, performance characteristics, uses or benefits, etc. See, section 10 (1)(a) and (c), the Consumer Protection Act 1999.

\(^{32}\) [2015] 1 CLJ 224 [HC].

\(^{33}\) The law provides for punishment by a fine of up to RM250,000 for the first offence and RM500,000 for subsequent offences in the case that it is a body corporate. For others, including individuals, the law provides for both a fine of up to RM100,000 or imprisonment for up to three years or both for the first offence and a fine up to RM250,000 or imprisonment up to five years or both for a subsequent offence. See, Section 5, the Trade Description Act 2011.

\(^{34}\) Section 57, the Trade Description Act 2011.
assets of Butterfly Labs that marketed its products and services mainly through online advertisements.\(^{35}\) This company was accused of marketing specialised computers deceptively to produce Bitcoins. The company charged consumers large amounts for its Bitcoin computers but failed to provide the goods.\(^{36}\) A class action suit was also filed against the same company in 2014. In February 2016, Butterfly Labs agreed to settle the FTC charges. This case is a reminder to companies to not transmit misleading or deceptive advertisements.

Using Woods’ “Consumer Law Matrix”, which is based on the eight (8) consumer rights, the Consumer Protection Act 1999 was evaluated and it was found that the Act contains strong provisions protecting consumers on their rights to safety, to be informed, to choose and to seek redress. However, provisions relating to protecting consumers on their rights to consumer education, to a healthy environment and to the satisfaction of basic needs seems to be lacking.\(^{37}\) When the UN Guidelines were in the process of revision by UNCTAD, the Malaysian government also replied in the same manner that “the Malaysian consumer protection framework is fairly robust with adequate laws and regulations emphasising consumer rights, protection, education and redress mechanism.”\(^{38}\) Nevertheless, all the statistics shared above suggest that Malaysian consumers have been suffering, and goods and services offered by the internet, mostly by scammers, have made the situation worse.

4D.7 Consumer Protection in Electronic Commerce

In the available literature on blockchain, it is claimed that the technology has various potentials to ensure decentralised and transparent services. It is further claimed that this technology will eventually enable an individual trader to trade his goods and services with another individual. Since such activities may take the shape of e-Commerce, and e-Commerce has the prospect to promote consumer welfare,\(^{39}\) it is imperative to have a discussion on e-Commerce in the Malaysian context.

\(^{35}\) Federal Trade Commission v. BF Labs, Inc., et al., Case No. 4:14-cv-00815-BCW (United States District Court Western District of Missouri Western Division).


\(^{39}\) United Nations General Assembly Resolution no. 70/186 of December 22, 2015.
In the latest Economic Census 2016, the Department of Statistics attempted to explore the usage of ICT and e-Commerce in agriculture, mining & quarrying, manufacturing, construction and services. 73.5% of the total of 920,624 businesses used ICT in 2015 and 61.5% used the internet, but only 28.4% have an online presence in their business. Only 5.2% of the total businesses (43,294) conducted e-Commerce transactions. Of this 5.2% of the businesses, 91% were from the service sectors. E-Commerce in Malaysia, mainly from the manufacturing sector, earned 89.6% of the income from the local market and the rest from the foreign market. B2B was the main type of customer (79.2%), followed by B2C (18.5%) and B2G (2.3%). Even though only a small number of establishments currently have an online presence, it can be seen that once a blockchain-based regulatory framework is developed, it will assist these companies to adopt this with limited cost as these businesses will not incur the cost of replacing old technology with new.

The MCMC conducted the Internet Users Survey 2017 and found that 58.1% of the respondents do not use the internet due to a “lack of confidence or skill” and 48.8% of the respondents purchased products online. For the respondents who did not prefer online shopping for them security, trust and confidence in the service were the main concerns. Subsequently it was disclosed that 67% of the Malaysians prefer online shopping over traditional ways of shopping and this rate will grow in coming years. Simultaneously, NCCC has been receiving the highest number of complaints relating to e-Commerce/online shopping since 2014.

Though the Internet became available for public use in 1995, the e-Commerce law, the Electronic Commerce Act 2006, was only enacted a decade later with the aim to, inter alia, enable and facilitate commercial transactions using electronic means. This law is complemented by the Electronic Government Activities Act 2007.

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43 “Commercial transactions” means a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance. See, Section 5, the Electronic Commerce Act 2006.
For the online goods and services providers, the provisions of the Consumer Protection Law 1999 will be applicable and the traders will have to respect the rights of consumers included in that law. In order to protect the online consumers, the Malaysian regulators have enacted the “Consumer Protection (Electronic Trade Transactions) Regulations 2012” which require e-Commerce service providers i.e. any person who operates a business for the purpose of supplying goods or services through a website or in an online marketplace to mandatorily disclose some information on the website. Under this Regulation, information that needs to be disclosed is: a) name of the person, business or company, b) registration number of business/company c) e-mail and telephone number/address, d) a description of the main characteristics of the goods/services, e) the full price including transportation costs, taxes and any other costs, f) method of payment, g) terms of conditions, and h) estimated time of delivery.\(^{44}\)

The Regulation further provides that such a person who operates a business for the purpose of supplying goods or services through a website or in an online marketplace: a) shall provide the appropriate means to enable the buyer to rectify any errors prior to the confirmation of the order made by the buyer; and b) shall acknowledge receipt of the order to the buyer without undue delay.\(^{45}\) An online marketplace operator has to keep and maintain a record of the names, telephone numbers and the address of the suppliers of goods or services in the online marketplace for a period of two years.\(^{46}\) Failing to provide the information and/or false or misleading information, they are liable to commit an offence,\(^{47}\) which can extend to a fine of up to RM50,000 and/or imprisonment for a term not exceeding 3 years for individuals, and fine up to RM100,000 for corporate bodies. When it is said that using blockchain technology individuals can deal directly with each other, they need to consider this provision. Again, as per the law, all online business must be registered with CCM. This is another issue that the blockchain service providers must consider.

The Malaysian government has been trying hard to make the online shopping safe for consumers and therefore, the government has been undertaking numerous initiatives to make consumers aware of their rights and responsibilities and encourage the business community to develop e-Commerce enabled websites by including the provisions of the “Consumer Protection

\(^{44}\) Regulation 3 & Schedule, the “Consumer Protection (Electronic Trade Transactions) Regulations 2012”.

\(^{45}\) Regulation 4, the “Consumer Protection (Electronic Trade Transactions) Regulations 2012”.

\(^{46}\) Ibid.

\(^{47}\) Ibid.
(Electronic Trade Transactions) Regulations 2012”. The government has been even providing tax incentives to such traders through the “Income Tax (Deduction for Cost of Developing Website) Rules 2003”. If traders develop their websites by following such requirements, it will be easier for the regulators to monitor their activities and track locally registered websites. However, it is a matter of fact that in the age of internet, even though an e-Commerce website is developed by including all these requirements, it will be difficult for the regulators to do anything against the websites if they are not registered locally. If the website is hosted outside of Malaysia, the regulator, MCMC, or police will come up against jurisdictional issues, although the regulator does retain the authority to block the website in some instances, such as in the case of pornography.48

As it is understood that the blockchain-based services will be provided online using blockchain networks like bitcoin or Ethereum, they too will have to follow the same provisions and inform the regulators. Business communities that have taken certificates from the MCMC already, before starting to use blockchain technology, may consider updating the regulators.49

4D.8 Remedies Available for Malaysian Consumers

There are number of avenues through which Malaysian consumers can seek remedies based on the amount claimed for the breach of consumer rights. These include Small Claim Courts, Tribunals for Consumer Claims in Malaysia and civil courts. The Small Claims Courts established in every state of Malaysia can hear claims not exceeding RM5,000. The Tribunal for Consumer Claims Malaysia is an alternative remedy that can be used if the claimed amount is not more than RM25,000. However, the claim must be made within three years. It may also be relevant to note that it is very troublesome for consumers to claim remedies in the court of law due to factors such as the production of evidence and competence/ability of the consumers to follow up claims. As a result, one may identify only a very few court cases in Malaysia, even though the consumer complaints received by various bodies are very high.

4D.9 Blockchain and Consumer Protection

Consumer behavior has taken a radical shift in recent times and consumers are now more concerned to purchase quality products. Blockchain technology

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is particularly useful in situations where it is important to know the ownership histories or supply chain of any product, allowing consumers to make more informed purchase decisions as they know every segment in the supply chain of the goods. Existing literature and some of the use cases shared in Chapter 2 suggest that entrepreneurs have already been experimenting with this technology in the luxury goods industry like diamond and cars, agricultural products, fish, dairy product, pharmaceutical products, in managing health care data and records.

Blockchain technology used in the insurance sector or the music industry, will help consumers to save a good amount of money allocated for the intermediaries in the form of commissions or fees. If this technology is used in these sectors, consumers will get better services at a lower price and the service providers such as musicians will get a greater share of the revenue. Nevertheless, it cannot be ignored that such a service i.e. the elimination of all intermediaries can only be considered once consumers are properly educated and can evaluate the overall situation.

To this date, most of the blockchain related consumer protection issues are discussed with regards to virtual or digital currencies and ICOs. Nevertheless, the protection of consumers is identified as a serious concern of regulators. As the technology is still in a nascent stage, international organisations like the World Bank do not have any general recommendation regarding its use in international development, instead the World Bank is of the opinion that the countries need to review and resolve various issues including consumer protection. A study commissioned by the European Parliament has identified some of the challenges regarding blockchain in the following terms:

Consumer protection will also be a key concern of regulators, as the contractual clauses and redress measures may not be clear to consumers and, given their automated character, not easily adjustable to a possible change of circumstances. Furthermore, there are security concerns of a regulatory nature, as it could be possible to trace or deduce a party’s identity from transactions. Finally, blockchain may lead to questions about the choice of law and jurisdiction for the adjudication of the relevant disputes.”

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In Chapter 1 of this Report, it has been stated that most of the development on blockchain for the time being is based on Blockchain 1.0 i.e. on cryptocurrencies. The Vice President of the European Commission at the roundtable on cryptocurrencies remarked that “cryptocurrencies expose consumers and investors to substantial risk including the risk to lose their investment” and therefore, consumers and investors should receive the warnings about these risks frequently in clear manner.53

The most important initial challenge for digital currencies is the loss of private keys, because either the consumer forgets the key or loses it. Because of the loss of private keys, consumers around the world have been losing huge amounts. Since digital currency exchanges are not regulated, anyone, even with a criminal record, can own or operate a digital currency exchange. If the exchange is hacked, consumers will lose money and if they forget or lose the private key it will make the exchanges unjustly rich as they are not required to hold the unclaimed funds in a trust or with the central bank.54

One important feature of blockchain is that it is immutable and therefore, any business enthusiast must consider various consumer rights before embarking on ventures as regulators can trace transactions, even after many years. While this may be a concern for consumers as most municipal laws on consumer protection allow a consumer to change their mind and to rectify their order, technically this can be solved by creating a new block as there is nothing in blockchain which is perfectly immutable, rather conditions can be set by which it can be decided whether or not a blockchain can or cannot be changed.55 The blockchain’s behavior depends on a network of corporeal computer systems, which may be vulnerable to destruction or corruption.

After a series of blockchain hacks, the security of blockchain is a serious concern for consumers. Fund security, verifiability, honesty and fairness, along

with efficient reporting tools are all badly lacking in the current crypto-exchange ecosystem according to industry protagonists. Opaque and sometimes dishonest exchanges have undermined crypto-community trust.\textsuperscript{56}

It was understood that the anonymity or privacy of consumers may not be ensured forever. Whatever kind of security technique is used, the Malaysian industry is of the opinion that due to the very nature of ICT the system is capable of being hacked in some point in the future with the introduction of new technology and thus, nobody can guarantee that the anonymity or privacy of consumers can be maintained forever. Therefore, blockchain entrepreneurs should also consider this aspect i.e. how they can proceed with regard to the privacy and personal data of the consumers.

Transparency and trust are two of the main reason behind the success of any industry, including blockchain technology. Theoretically, both these can be achieved using blockchain technology. While existing ledgers maintained by the intermediaries e.g. banks, are centralised and private, blockchain is decentralised and information, including sensitive information, is visible to everyone. Therefore, regulators and entrepreneurs should consider that though transparency is good for regulatory purposes, it involves significant privacy and sensitive data protection issues for the consumers. Hence, the entrepreneurs should also consider if they can offer customised services which will ensure privacy of consumers.\textsuperscript{57}

It is believed that for effective functioning, modern day consumers need to trust their money and information to third parties and they are ill-equipped to assess the trustworthiness of these third parties. Consumers’ Research, the USA’s oldest consumer organisation, established in 1929, attempted to produce guiding principles for consumer protection best practice for businesses working with digital currencies and other blockchain-derived digital assets.\textsuperscript{58}

Recently, the Deutsche Bundesbank has been skeptical regarding the prospects of blockchain technology in the field of individual and retail payments


\textsuperscript{57} For further discussion on privacy and data protection see Chapter 4C.

within the Euro area as the existing system is fast enough.\textsuperscript{59} This technology may, however, be particularly useful in a situation where trust is inevitable but difficult to establish. Thus, even though the proponents of blockchain claim that this technology can be a wonderful solution in providing banking services to undocumented migrant workers who do not have bank accounts, it can also raise some serious concerns. These migrant workers, documented or undocumented, are already in a disadvantaged situation and mostly are without a proper level of education. Thus, they can easily be the victims of further misfortune if sufficient and adequate precautions are not taken. Therefore, a concerted effort and holistic approach will be required.

Some of the regulators seem to be in the process of considering the development of their own cryptocurrencies e.g. countries like China, Japan, Iran and Sweden have been working to develop their national cryptocurrencies. Even a neighboring country like Cambodia has declared their intent to develop their own national cryptocurrency. However, the blockchain nation, Estonia’s central bank is still hesitant to issue Estcoin, as proposed by Estonia’s e-Residency program, as it is not sure what additional societal benefits it will offer.

It is certain that blockchain can both be public and private. It is a matter of fact that as most of the regulators across the world are concerned about the status and legality of virtual currencies developed using the blockchain protocol, their initiatives for the time being, though very minimal, are also related to consumer protection with regard to transactions of virtual currencies.

Consumer protection in the name of investor protection is a serious concern for the regulators. If the regulators can take a stand like the New York authorities, it may be easy for them to monitor the activities of the exchanges. The regulators can ask for information on consumer protection the way the New York authority has done so. Recently, the authority asked 22 exchanges to share the initiatives taken by these exchanges to protect the consumers and to stop money laundering.

A principles based approach\textsuperscript{60} to cyber-security regulation, as suggested


\textsuperscript{60}Principles are general rules that enjoy higher status than the detailed rules in the hierarchy of norms. Principles based regulation means moving away from reliance on detailed, prescriptive rules and relying more on high-level, broadly stated rules or principles to set the standards by which regulated firms must conduct business. See: Black, Julia, Hopper, Martyn, and Band, Christa, “Making a Success of Principles-based Regulation,” Law and Financial Markets Review, 1, 3 (2007): 191-206.
by Microsoft’s research team, will do well in mitigating cyber-security risks in permissioned blockchains while allowing the technology to continue to evolve through innovation.\(^{61}\) In the principle based regulation, one of the three strategies used solely or together i.e. broad-based standards are preferred over detailed rules, outcome or performance-based regulations are set and the responsibility of the senior management is increased.

For the purpose of consumer protection in the permissioned blockchain, outcome based or performance-based regulation may be more desirable where some outcomes can be set.\(^{62}\) Such outcomes should include that the consumers are confidently dealing with companies that fairly treat their customers as a part of their corporate culture, products and services supplied in the market are able to meet the needs of the consumers, consumers should get clear information or advice to make their preferred choice at every stage of product use, and consumers remain free from unreasonable post-sale barriers.

In relation to blockchain, consumers, according to Consumers’ Research, have rights regarding security (i.e. a right to secure the storage of funds and data entrusted to third parties; secured user accounts free from intrusion; security against extensive damage in case their accounts are compromised), privacy (i.e. non-collection of excessive data; erasure or revocation of use and hold of data when the purpose of collection or use is served; scope to withdraw consent before disclosure of data to third parties, use of techniques to make data difficult to use by bad actors), usability (i.e. simple, well designed and user friendly platforms; reasonably brief and readily understandable information on the platform’s terms and conditions, disclosure of personal information to third parties and regulators; right to interoperability among the various platforms) and disclosure and liability (i.e. right to have complete, time-stamped disclosures of information in concise, plain language regarding: legal entity status, applicable legal jurisdictions, institutional solvency, asset insurance, availability of funds or assets, privacy policy, timing of payments, receipts, loan/credit terms, and fees; access to and transfer of funds or assets at any time; audit of compliance with disclosure policies; timely and unencumbered transaction processing of


payments falling below certain legal requirements for reporting or monitoring).63

**4D.10 Blockchain and Consumer Protection in the Malaysian Context**

As already outlined, Malaysian consumers have been suffering and have lodged complaints as reflected in the successive Annual Reports of the NCCC. Blockchain technology can be used to provide better services to the consumers in some of these areas. This will be important as the technology can assist the business entities to ensure the regulatory compliance and simultaneously, the regulators will have proper track on the activities of the business entities. With so many potentials for blockchain, it is apparent that it is very much possible to apply this technology to all of the sectors where NCCC has been receiving complaints and some of the use cases are already discussed in Chapter 2 of this Report. It is a matter of fact that the Malaysian regulators are quite in favour of using the blockchain technology and have started experimenting with this technology.

Various countries have been exploring the potential of blockchain technology in the energy sector. In New York in April 2016, de-centrally generated energy was sold directly between neighbours using a blockchain system, through which using the energy supply contracts can be entered into between the energy producers and energy consumers without involving a central body or third party intermediary. Such a model in the energy sector can be lucrative in the Malaysian context, at least in the renewable energy sector, where the government has been encouraging the promotion of renewable energy through the feed-in-tariff (FiTs) mechanism even though Malaysia generates sufficient energy which was acknowledged by the World Bank’s latest “Doing Business” report. Nevertheless, it should be borne in mind that for regulators the total exclusion of such bodies in the Malaysian context may neither be possible nor desirable to avoid various future challenges in terms of dispute or damages.

Even though the “Consumer Protection Policy” in Malaysia was developed based on a culture of self-protection practices by the consumers, Malaysian regulators have already issued some alerts to make the local consumers aware of cryptocurrency scams. For example, BNM has been continuously uploading

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information on scams in the “Tips on Financial Issues” section of their website.\(^{64}\) Such alerts are in line with what other regulators like the European Supervisory Authorities,\(^{65}\) Australian Securities and Investments Commission’s (ASIC) or the Canadian Government\(^{66}\) have been doing. However, as suggested by other regulators, Malaysian regulators can consider to provide such warnings more frequently using different media.

It is very welcome that the relevant regulators like BNM and the SC have issued “alert notices” on their websites. Nevertheless, regulators must do a lot more than just posting such “alert notice” since the issue is technical and not very well known to ordinary consumers. The regulators may invite the industry players to join in the awareness campaign program. The business community, in conjunction with the government and other stakeholders, should take initiatives to make the consumers aware of different aspects of blockchain technology. Yet such activities will only be meaningful if the regulators can make their position clear about the regulation of blockchain in Malaysia.

Malaysian laws have given consumers the rights incorporated in the UNGCP. These rights are supplemented by responsibilities on the part of consumers. Consumers are only be able to behave responsibly once they are properly educated. Therefore, the regulators and stakeholders should come forward. Entrepreneurs can consider it part of their corporate social responsibility (CSR) to educate the consumers for their own business and to make people aware of scams.

In blockchain, mechanisms are in place so that the actual transactions are effected by way of “smart contracts” which are the individually defined rules which enable an autonomous matching of distributed providers and their prospective clients.\(^{67}\) The business community or anyone willing to provide services online using smart contracts on the blockchain platform should consider


\(^{65}\) Recently on February 12, 2018, the European Supervisory Authorities (ESAs) i.e. European Securities and Markets Authority (ESMA), European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA) have issued the warning notice on investment in virtual currencies for the second time, the first one being issued on December 12, 2013. See, “ESAs warn consumers of risks in buying virtual currencies,” available at: https://www.eba.europa.eu/-/esas-warn-consumers-of-risks-in-buying-virtual-currencies.


that the effect of both online and offline contracts are same in Malaysian context. Therefore, the business communities should consider a few things to include in the smart contract such as the details of the party to ensure that the consumer is of a “legal age” of majority to enter into the contract, detail description of the goods and services, the price for the goods and the mode of payment, mode of delivery, rights and liabilities of both the parties, dispute settlement mechanisms and the jurisdiction with regard to the application of law in case there is any dispute, limitation, exception and exemption clauses.

It is the responsibility of the e-Commerce platform to ensure the details of the goods and service providers listed in their platform. However, the question will remain regarding the goods and services provided through websites registered outside of Malaysia as the Malaysian regulators can hardly do anything in case there arises any dispute. Hence emerges the importance of making consumers aware of such technologies.

Awareness campaigns are a must to help consumers understand in plain language about the various terminologies used in blockchain. Such a campaign should include information regarding consumer’s virtual wallets, disclaimers presented before opening accounts and on the technical aspects of Bitcoin transactions such as the finality of a transaction, effect of lost or stolen funds or evolution of regulation concerning cryptocurrency, and the creation of internal compliance rules and committees governing the company’s actions relating to its involvement in the cryptocurrency industry.

The government has been running a number of programs to make the consumers aware. Some such programs include the student consumer movement, which is targeted for university level students and school’s Consumer Club which was established in 1992 by the MDTCC in collaboration with the Ministry of Education. These forums can also be utilised to make the students aware of blockchain technology. It is also evident that the state level regulators have also taken initiatives to make consumers aware. For example, on March 19, 2010, the Malaysian Remote Sensing Agency, in collaboration with the Sabah State Economic Planning Unit (UPEN), organised a “Consumer Awareness Seminar on Remote Sensing and Related Technologies”. The Communications and Multimedia Consumer Forum of Malaysia (CFM) has taken an initiative “CFM Gags and Coffee: Smart Consumer Sketch” to make the consumer aware. Simultaneously, the FOMCA and NCCC have also been running various activities and participating in various fora to make the local consumers aware of their rights and responsibilities.
Regulators such as MCMC have a great role to play as it is reported in other parts of the world that consumers have been scammed through blockchain-based URLs. In Australia, it was reported that Scamwatch, the body operated by the Australian Competition and Consumer Commission (ACCC) has received 77 bitcoin-related scam reports in the last week of October, 2017 which was 126% higher than the previous week. In such events, Australians lost AUD1.7 million in January 2017, AUD2.9 million in December 2017 and AUD4.63 million in January 2018. The Australian authorities received the biggest number of reports from people aged 25-34, whereas the people of age group 45-54 lost the biggest amount. 68

Since cryptocurrencies are traded and ICOs are offered online international coordination is required. Consumer protection issues are important as criminals and fraudsters target potential investors without disclosing basic information. To some extent, the individual miners can also be regulated because of their role in issuing new units of currency and in addressing the risk of a 51% Attack on the network. 69 For miners working as employees, the doctrine of vicarious liability shall be applicable.

Companies need to make significant initial investment in this technology and provide training to employees. Thus, the blockchain entrepreneurs should consider these provisions before attempting to offer any goods and services through a blockchain-driven platform. Even though such provisions are incorporated it will be difficult to implement and it will be difficult for the consumers with their competence, ability and weaker bargaining powers compared to their counterparts i.e. manufacturers or suppliers.

Because of the initial costs and technical difficulties, it may not be feasible for the time being but in the long run, individuals will hopefully be exchanging goods and services using blockchain. The regulators need to intervene and make their position clear regarding the implications of using such platforms by individuals. Blockchain technology based services will face the same problems of overlapping jurisdictions as there are number of regulators involved in its different stages such as the police, BNM or MCMC. In addition, regulators should also consider the fact that when individual traders offer their services and goods on e-commerce platforms developed using blockchain technology, they should share detailed information, as required by municipal laws. If such


details are not included, consumers are liable to suffer in terms of refund claims, consumer rights claims or receipt of incorrect products.

All Malaysian regulators involved in various aspects of consumer protection can post warning notices on scams continuously and regularly. Whereas, the blockchain-based industries can start working with SIRIM to develop voluntary standards for consumer protection. The blockchain-based entrepreneurs should make it clear regarding the various protections and dispute resolution procedures available, if any. If blockchain is considered as a program which is again recognised as a product, the Malaysian regulators can promote the “Buy Malaysia Products” scheme and include blockchain-based solution under this so that the public receive Malaysian products and services that are on a par with international standards.70

When blockchain technology is still in the development stage, any claim which is not proven conclusively may be treated as false or misleading in the long run. The challenge for blockchain entrepreneurs again is that the records will be in the blockchain forever due to its immutable nature.71 The entrepreneur may use the defence that the state of scientific and technical knowledge at the relevant time was not such that he may reasonably be expected to discover the defect if it had existed in his product while it was under his control. That means that the entrepreneurs have taken the best care of the product. This will again be very challenging for the regulators to prove and they should do so objectively. A defense based on ignorance of the risks a product poses to consumers is likely to be a weak one, especially where it is shown that a basic level of diligence would have made those risks apparent or that the product was based on technology sufficiently complex that to offer it for sale was reckless.

Any kinds of excitement like that introduced by the advent of blockchain will lure people with little-understanding of the product to invest and allows scammers to trap general consumers. Therefore, it is imperative to undertake a massive awareness campaign to make Malaysians aware of scams driven by this technology. Increasing the awareness of consumer rights and avenues to redress is also identified as crucial under the National e-Commerce Strategic Roadmap.

Malaysia can be considered as a wonderful seedbed to make consumers aware of blockchain technology as there are many bodies and programs available here. There are programs like Rural Consumerism Programmes, District Consumer Movements, State Consumer Movements, the National Consumer Movement Council, Consumer Squads (formerly known as Price

71 Section 10 (1)(h), the Consumer Protection Act 1999.
Monitor Volunteers) and a National Consumer Advisory Council and there are also officials like District Assistants of Consumer Affairs, leading a nationwide spread of consumer associations and organisations, like FOMCA, the Muslim Consumers Association of Malaysia, CAP etc. There is also the student consumer movement, school consumer clubs. Though it may be argued that this is not yet the right time to consider the consumer protection issue, this will in fact help the startups to grow with confidence. The FOMCA has been doing wonderful job by publishing and disseminating information on issues of public importance, though a random search on the database using keywords like “blockchain”, “Bitcoin” or “cryptocurrency” did not reveal any results.

Though blockchain offers a better security it is not immune to all cyber-risks, yet there are unique cyber-security capabilities not present in traditional ledger technologies. In the Malaysian context, it is evident that the Government takes the cyber-security issue seriously in adopting the Digital Signature Act 1997, the Computer Crimes Act 1997 and the Communications and Multimedia Act 1998 almost immediately after the introduction of the internet in the country. Besides, the government has also adopted the “National Cyber Security Policy” through which ten critical sectors were identified as part of the “Critical National Information Infrastructure” to protect them from risks. Nevertheless, there remain security risk incidents.

Malaysia’s regulatory framework in relation to e-Commerce and internet banking are recognised to be one of the most comprehensive in the region. Development of easier reference guides about consumer protection in blockchain will be beneficial for all types of e-Commerce platforms. While reaching a consensus on developing supportive materials on blockchain, such as voluntary standards, it may require time as the ISO and International Telecommunication Union (ITU) are still in the process of developing technical documents and standards.

Once the government decides to regulate cryptocurrencies, the government will be able regulate the exchanges by way of licensing. Once these exchanges are regulated and registered with the regulators, they can be made responsible for depositing a significant part of their investment to avoid future risks and to protect the investors as consumers. Goods and services providers using blockchain can form an association or if there is already an association can come up with a resolution to form a fund so that the consumers can be indemnified

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72 Available at: http://www.konsumerkini.net.my/medialib/index.php/publications.
73 Microsoft, “Advancing Blockchain Cybersecurity: Technical and Policy Considerations for the Financial Services Industry”.

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in case of any adverse effect. This is what Japan has done after the recent hack.

**4D.11 Conclusion**

To some extent, blockchain technology will not change things dramatically. However, it is capable of empowering the government to monitor compliance issues more competently once companies begin to use this technology. Blockchain may not be the killer app but surely it is a game changer. There should not be any doubt that for the business community it is imperative to attain the trust and confidence of consumers for the survival of their business. Empowering consumers by way of providing various services propelled by blockchain technology will again protect the consumer. Blockchain technology, if intended, can make sure consumers can benefit from their data collected by various organisations.

The Government has launched the Digital Free Trade Zone (DFTZ) and National e-Commerce Strategic Roadmap (NeSR) initiatives to boost e-Commerce’s contribution to Malaysia’s GDP. The government has set a target to achieve 21% e-Commerce growth by 2020. As of February 8, 2018, there are 58,824 online business registered with the Companies Commission of Malaysia.74 9 out of 10 business establishments in Malaysia are SMEs and 28% of these have an online presence where only 15% already use that presence for export purposes.75

In the UNCTAD “Business-to-Consumer e-Commerce Index 2017”, Malaysia ranked 5th among the developing economies after Korea, Hong Kong, Singapore and United Arab Emirates. Consumer trust is the decisive factor in the success of an e-Commerce business. Consumer surveys in OECD countries revealed that though around 75% of the consumers use the internet, only half of them do so for e-Commerce activities. Besides, secure payment and data security, only half of the consumers had good or full confidence regarding their rights and less than half of the consumers read the terms and conditions or privacy policy of the platforms. Unfortunately, less than half of the disputes were dissolved to the satisfaction of the consumers. When all of these findings come from the consumers of developed countries, the fate of Malaysian consumers can be anticipated to some extent. Therefore, it is crucial to make people aware of their rights available under the Malaysian consumer protection law.

75 Ibid.
Blockchain-based digital currency industry entities such as exchanges, hosted wallets, payment processors or DAOs need to ensure consumer protection issues. Effective consumer protection must be a cornerstone of any policy approach that aspires to foster a trusted e-Commerce marketplace for consumers, whose interactions with businesses are typically at a distance, and often across borders.

It is a matter of fact that co-operation and co-ordination among the stakeholders at home and abroad have a serious impact in protecting consumers in the age of e-Commerce. It has already been discussed that while revising the “e-Commerce Recommendation” in 2016, the OECD has rightly identified a few things that the business community should and should not do. Business communities should consider those for their own sake and to gain the trust and confidence of the consumers as there are other technologies like quantum computing, IOT, Hashgraph, Web 3.0 and new versions of DLT that will have a big impact on blockchain technology. International organisations such as ISO have taken the initiative to consider the issue of consumer protection in blockchain. Nevertheless, it is believed that it will be useful if the standing body, the Intergovernmental Group of Experts on Consumer Protection Law and Policy, formed under the UNGCP, can be involved in this regard. Since this is a Committee of the Intergovernmental Group of Experts, it may represent the voice of all consumers as compared to ISO, which mainly focuses on standards.

Blockchain-driven industries should endeavor to protect consumers for their own sake. In doing so, they should implement industry best practices such as, “employing effective multi-layer protocols such as full encryption, (non-automated) multi-signature and multi-factor authentication and deterministically random key generation, coupled with the use of cold storage (for a majority of the assets being stored) and other security mechanisms (including federated networks, ‘programmable money/tokens’).” Blockchain-driven industries should take initiative to provide robust, user-friendly key management solutions able to generate a recovery key, in case of loss or theft and provide robust mechanisms to ensure the intended amount and the recipient account are verified before value is transferred.

From various studies, the Deputy Governor of BNM has identified three main characteristics of Malaysian consumers. These are, 1) Malaysians tend

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77 Ibid., 12.
to have low financial resilience and are vulnerable to financial risks, 2) a significant number of Malaysians like to “live for the moment” and display short-sighted tendencies - focusing on “instant gratification”, and 3) the majority of Malaysians do not practice long term financial planning.

Malaysians still lack understanding on risk and return and are not able to make rational financial decisions. They remain prone to financial fraud and abuse. According to the police, the number of financial scams reported in Malaysia has risen to an alarming 1,883 cases between 2015 up to the first-quarter of 2017, accumulating a total loss of RM379 million. This suggests that greed and ignorance can supersede rational financial decisions for many victims. Because of these, the government is formulating a 5-year National Strategy to Elevate Financial Literacy where strong collaboration of all stakeholders has been listed as one of the three thrusts. While this is a wonderful and timely initiative, it will be desirable to have a discussion on important issues regarding blockchain technology, e.g. digital or virtual currencies.

Finally, it is evident that the government of Malaysia is very much in favour of technological innovations and innovation-driven solutions that may make the life of the consumer smoother. Blockchain technology can be a solution to many of the problems that consumers have been facing. Yet to ensure proper consumer protection all of the stakeholders need to play their role. Regulators may consider taking a principle based or outcome based regulatory approach, entrepreneurs should assist the government in making the consumers aware of various scams and traps for mutual benefits and the consumers should act responsibly and wisely.

79 It is relevant to note that Consumers’ Research has suggested some guiding principles that the entrepreneurs of digital currency industry entities can consider. These principles are relating to security, privacy, usability and disclosure and liability. See: Consumers’ Research, “Bretton Woods 2016: Consumer Protection in the Digital Currency Economy,” available at: http://consumersresearch.org/research/white-papers/bretton-woods-2016-protecting-consumers-in-the-digital-currency-economy/.