

## LEGAL PROBLEMS OF TRAVEL AGENCY BUSINESS AND TOUR GUIDE IN THAILAND\*

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### **Abstract**

The most important strategy according to UNWTO framework to approach sustainable tourism is safeguarding tourists while traveling. Thailand follows this policy by enforcing Travel Agency Business and Tour Guide Act B.E.2559 (2016) where standards of travel agency business and tour guide professional and tourist protection measures against unfair practice caused by tourism service providers are introduced.

However, this Act doesn't allow foreigners to operate travel agency business and to register for tour guide license by economic reason. In fact, travel agency business operator and the tour guide professional need to be developed by special knowledge and skilled labors from foreign countries. Additionally, the problem of zero-dollar tour is also intensified by the unclear scope of travel agency business in this Act where transportation provider who arrange service for touring has never been classified as the travel agency business and being out of control of registration system. The mentioned problems create substandard tourism service, unfair practice toward legal right and benefit of tourists, economic impact and unfavorable tourism image.

This study aims to find new solution to resolve the difficulties arising from Travel Agency Business and Tour Guide Act by comparing with Chinese and South Korean laws which are considered as the sufficient tourist protection laws. The proposed new legislative solutions include addressing all types of transportation provider to an explanation of travel agency business, permitting

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foreign investment in travel agency business and permitting foreigner to engage in tour guide professional that may regulate the whole tourism industry and benefit to all parties.

**Keywords:** Travel Agency Business, Tour Guide, Zero-Dollar Tour

## 1. Introduction

Tourism industry, plays an important role in both economic and social development in many countries. It is considered as a significant factor to overcome the poverty and influences social revenues and job opportunities increasing among the local community. Tourism also raises the living level of local people to be self-employed, sell their local products and services.<sup>1</sup> Additionally, a cooperation of Association of South East Asian Nations (ASEAN) in economy, social and cultural development, tourism was designated by the members countries to be promoted as the main goal in the AEC's strategy. As a result, the country has launched tourism law and legal measures applicable to any movements in tourism sector in order to create the best image of tourism industry and to improve an efficiency of tourism market among international competition. Travel Agency Business and Tour Guide Act B.E.2551 (2008) was enacted and became effective for the benefits of all parties involved in the tourism industry in order to satisfy the following purposes:<sup>2</sup>

- 1) To develop the standards of tourism services and conditions of tourism attractions to be complied with the law and international standards;
- 2) To preserve travel agency business operation and to preserve tour guide as a career for Thai nationals only and;
- 3) To improve protection measures against any unfair practice of service providers and tour operators toward tourists.

In this regard, this Act is not fully efficient to tackle with the legal problems of zero-dollar tour and scope of travel agency business, problem of use of a Thai national as a nominee in travel agency business, and problems of tour guide.

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<sup>1</sup> Aslan Jashi, 'Role of Tourism for Developing Social and Economic Conditions' *Business Week* (U.S.A., 15 June 2017)

<sup>2</sup> Remark of Tourism Business and Guide Act B.E.2551 (2008)

## 2. Tourism Industry in Thailand

Recently, tourism industry approximately creates more than 30 million international arrivals and generate more than 1.5 trillion baht each year.<sup>3</sup> Generally, the tourism industry includes every sector of providing infrastructure and services for tourists and produce direct impact to the economy such as hospitality, transportation, catering, communication, retail, attraction and recreational activities etc. The tourism industry also need supports from government authorities and private sectors in connecting of all tourism factors. Tourism industry in Thailand is large size service industry covering with both direct and indirect tourism services that needs capital skillful workers and special techniques to organize every factor in the industry.

Moreover, tourism business, a business sector in tourism industry, is an activity of operating tourism services for making profit from businesses including with transportation service, accommodation service, food and travel agency business and others. The tourism business plays an important role to support the operation of related businesses in service sector. Tourism business can be identified as the main driven in tourism industry.

### 2.1 Importance of Tourism Industry

Tourism industry has advantages over economy structure of the nation with its higher competitive potential on both demand and supply than other industry.<sup>4</sup> Moreover, productivity of the tourism industry offering to tourist is the beauty of nature, man-made architectures, traditions and customary way of life which are concrete and sustainable. Tourism business does not need a lot of capital like other heavy industries, but its prosperity comes from individual

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<sup>3</sup> Department of Tourism, Statistic Review (January 2017) <<http://www.tourism.go.th>> accessed 25 January 2017

<sup>4</sup> Terdchai Chuaybumrung, 'TAT Tourism Journal' (2014) 4 <<http://www.etatjournal.com/web/menu-read-web-etatjournal?catid=0&id=615>> accessed 10 November 2016

satisfaction on quality of service providing. The country and communities gain benefit from this industry in many ways as states below.

### **2.1.1 Source of Foreign Exchange Earning**

Tourism industry has contributed to the balance payments of the country by generating foreign income into the economic system. Tourists around the world are regarded as exports, while residence of a country travelling abroad is regarded as an import that causes foreign currency exchanging.<sup>5</sup>

### **2.1.2 Employment Opportunity**

Tourism industry a limitless industry that needs man-service, has provides benefit on employment opportunities of both business operators, local people and other industries.<sup>6</sup> Direct employment includes all jobs that directly result from tourist expenditures. Indirect employment means to jobs resulting from the effects of the tourist expenditures. The secondary businesses related to tourism such as real estate, automobile services and repair, and shipping also require for greater employment. The tourism income from both primary and secondary sources has stimulate the high production of so-called multiplier effect on tourism industry also in related industries.

### **2.1.3 Source of Public and Private Income**

Tourism industry is a source of income for public, private and government sector. Income from tourism lead to the gross national product of the country. The government revenue received from tourism in three ways: direct taxation on employees as well as goods and service; indirect taxation such as customs duties; and from revenue generated by government-owned businesses which are known as the income of public. For private sector such as

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<sup>5</sup>Robert Christie Mill, *Tourism : The International Business* (1<sup>st</sup> edn, Prentice-Hall International Editions 1990) p.29

<sup>6</sup> Charles R. Goeldner, Brent J.R. Rotchie, and Robert W. McIntosh, *Tourism: Principles, Practices, Philosophies* (12<sup>th</sup> edn, Wiley & Sons 2011) p.13-15

business owners, local businesses, selling arts and handicrafts can make profit through their businesses called private income.

#### **2.1.4 Cultural Exchange and Publicity of the Nation**

Travelling is an initiative of cultural exchange in societies. In other words, the cultural diversity spreads to other regions when people travel. The tourism is a significant key showing an identity of the country expressed through people's lifestyle, languages, foods, arts, architectures, folks, and cultures. Tourism encourages people to preserve the country's legacy inherited from the past to new generation as cultures show prosperity of the past. Other than cultural exchange, tourism contributes to publicize different parts of the nation to the world through the tourists. When people travel within the country, the result is the harmony of national unity likewise international tourism will help strengthen the harmony of national unity and lead to stable relationship between countries.

#### **2.2 Problems of Travel Agency Business and Tour Guide in Thailand**

Normally, when a tourist thinks about travelling on a package tour arranged by travel agency, a business of providing travel and tourism related services to tourists, the tour guide always become a necessary figure who plays an important role towards both the travel agency and the foreign tourists. The main purpose of travel agency business is making revenue from these tourism products and services. Meanwhile, in providing services for tourists, the travel agency needs the tour guide to be its representative to create a friendly relationship among local community. The identities of the country have expressed through the knowledge about history, art, culture and traditions performed by the tour guide.

Although Thailand has laws and regulations relating tourism industry, the existing laws fail to tackle unfavorable impacts of zero-dollar tours, the use of nominee and the problems of tour guide that are summarized below.

### 2.2.1 Zero-Dollar Tour

Phenomenon of Zero Dollar Tour mostly exists among Chinese inbound tourists who travel with group tour to several destinations in Thailand where they are tricked to buy cheap package tour in their country, but their expenses become greater upon arrival.<sup>7</sup> These foreign tourists, however, are not accompanied by the travel agencies that they initially deal with. They are instead transferred to other companies operating in Thailand who are associated with the zero-dollar counterparts. The tourists will be later pressured into misinterpretation of product information, purchasing expensive products or services, defects on contracted service by these secondary companies, in an attempt to extract unreasonable sums and profits.

Zero-dollar tour begins from the fierce competition for Chinese tourists among Thai travel agencies (inbound) who battle for the tremendous Chinese tourists. They will offer the various package tours for the tour operators (outbound) in China to sell for the tourists in China who want to visit Thailand. The attempt to get tremendous Chinese group tours causes very low-price package tours including airfare and low-cost accommodation offered in large quantities for the Chinese agencies to resell. Because of the high competition among Thai travel agencies in Chinese inbound tourism market, somehow the offer price of package tour is reduced to be lower than its cost (tour fare) to persuade the Chinese agencies who have the tourists in hands to receive more profit. The demand for the Chinese tourist will be increased until the offer price of package tour touches down to zero dollar which is the beginning of the process called “zero-dollar tour”. It means the Chinese tour operators have no costs for package tour price, unlike the tour operators in Thailand who have to pay for the whole program tour, facilities and services. In this circumstance, Chinese tour operators earn profit in two ways, but not for Thai tour operators who pay for those tourists and need to earn profit therefrom.

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<sup>7</sup> ทีมเศรษฐกิจ, 'เปิดโปงภัยร้าย 'ทัวร์ศูนย์เหรียญ' บั่นทอนท่องเที่ยวไทย' ไทยรัฐ (กรุงเทพ 6 กรกฎาคม 2558) < <http://www.thairath.co.th/content/509538> > accessed 6 September 2016 (Team Sethakit, 'Perdpong Pairai Tour Soon Rein Buntorn Tongteaw Thai' [Zero-Dollar Tour, A Dangerous to Thailand Tourism Industry] Thairath (Bangkok 6 July 2015)).

It seems like the tour operators in Thailand have their benefit lost, and one question may arise as well that “How the Thai tour operators get profit from operating Zero Dollar Tour?”. The answer is that more numbers of tourists makes more profit for them because the Chinese tourists have the highest spending ability during their trip. The tour operators seek advantages by setting up program tour limited on where they would take the tourists to visit within their network shops and restaurants. Many business tactics have been used while touring with the purpose to retake the money from the tourists’ purchases including selling optional tours. Restaurants, jewelry stores, leather goods shops and entertainment venues often charge the tourists exorbitant prices. Even the group tour needs a tour guide, the tour guide will be influenced by paying commissions as much as the tourists spend if they take the tourists to these places. This activity would be benefit for the business entrepreneurs in term of commerce, shorten cost and receiving more profit.

## **2.2.2 Problem of Use of a Thai National as a Nominee in Foreign-owned Travel Agency Business**

Thailand is considered as a charming spot for visitors from the mainland of China, the business-people who are expected to establish business in the country. Many of them are interested to operate tourism business and service sector as it generates major revenue, which comes from Chinese tourists’ spending. When the profit captured in tourism global value chain (GVC) comes from the same national, the Chinese business-people use this opportunity to set up consortium of nominee companies in Thailand for returning benefits to themselves.<sup>8</sup> It is found that a number of tour operator businesses have Thai nationals being their agents to register tour operator license, and numerous souvenir shops are owned by the foreign agencies. The misconduct of being nominee in foreign tour operator seems to be a further violation of law resulted from the zero-dollar tour that is now wide spreading among the

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<sup>8</sup> Richard Westra, Taylor & Francis, *‘The Political Economy of Emerging Markets: Varieties of BRICS in the Age of Global Crises and Austerity’* (16 March 2017) p.171



Chinese inbound tourism markets without registration system of the government authorities.

Causation of this problem comes up with an intention to control the payment of Chinese group tours by Chinese capitalists while they are travelling in Thailand. In their aspect, being the tour operators are easier to manage the route of group tour to the specific places where the tour operator can get higher benefit. The situation begins when the Chinese business-people who operate as a tour operator and other businesses relating tourism start to open up brunches in Thailand by representing Thai nationals as the owner of such businesses. In practice, the nationals who represent as an individual tour operator, or nominee shareholders in a travel company have no management power within the firms that controlled by the principle foreign capitalists. Once the zero-dollar tour occurs, the foreign capitalists normally also invest in restaurants, man-made tourist attractions, souvenir shops, and some accommodations called “tourist checkpoints”. These checkpoints are organized in package tour that the Chinese group tours are taken to visit for purchasing goods or services. As a result, the income from the group tours at these checkpoints directly goes to the foreign agencies, rather than contributes to taxation system and Thai local tourist businesses.

### 2.2.3 Problems and Difficulties of Tour Guide in Thailand

Nowadays, there are about 70,000 Thai nationals have registered as legal tour guides but only 20% of them are actually performing this job.<sup>9</sup> Due to the growing numbers of inbound tourists, especially tourists who do not speak English, it results the high demand for tourist guide in foreign languages. Thailand needs an additional 7,758 tour guides speaking Chinese, 4,014 speaking Malay, 1,176 speaking Russian, 1,148 speaking Korean, and 845 speaking Hindi.<sup>10</sup> Some travel agencies decide to take a risk by hiring illegal tour

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<sup>9</sup> Om Jotikasthira, ‘Tour guides: ‘Savage’ foreign criminals steal our jobs’ *Bangkok Post* (Bangkok, 10 July 2017)

<sup>10</sup> *Ibid.*

guides to serve their tourists with lower paid and poor quality. In addition, the large amount of revenue from being zero-dollar tour operator has influenced to the problem of using illegal tour guide who has shortage knowledge about Thai history, culture, tradition and tourist attractions. These illegal tour guides also cause improper behaviors and unfair practice towards tourists including forcing the tourists to buy goods, souvenirs, optional tour or other service in order to receive commission.

Moreover, a legal relation between a tour operator and a tour guide is mostly under a hire of work contract whereby an amount of wage is paid by quantity of work and not guarantee to receive stable wages every month. Unlike a labor contract that has more stable income and labor protection. The following problems are remained from the enforcement of some provisions of Travel Agency Business and Tour Guide Act that require all tourist guides to be Thai nationality and characteristic of the hire of work contract:

- 1) Lack of legal tour guide in some foreign languages;
- 2) Increasing substandard tour guides and;
- 3) Shortage welfare and unstable protection

## 2.3 Tourism Industry and Foreign Direct Investment

Foreign direct investment (FDI) seems to contribute positive economic development to Thailand's tourism industry by being source of foreign capital earning to the government and influencing the quality and quantity of capital formation into our country.<sup>11</sup> It also enlarges an employment of skilled-workers in tourism field and increases the total income of local people. Additionally, multinational corporations (MNCs) are regarded as beneficial agents for the international transfer of technology and knowledge that improve infrastructure and the level of social well-being of the host country. Moreover, FDI has a positive function to the economic stability of the host country by increasing capital accumulation which is achieved through introduction of new inputs to businesses and new technologies in productions. In this respect, the new

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<sup>11</sup> Sherif H. Seid, *Global Regulation of Foreign Direct Investment* (1<sup>st</sup> edn, Ashgate 2002) p.10

contributions of FDI allow domestic firms to adopt the utilization of these methods to improve their domestic production performance.<sup>12</sup>

Foreign Direct investment (FDI) refers to a physical investment made by a company or individual in one country in business interests in another country, in the form of either establishing business operations or acquiring business assets, such as ownership or controlling interest in a foreign company. It reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor.<sup>13</sup> The foreign direct investors have got benefit from the customary international law and treaty that their physical properties and other assets invested are protected under the principles of diplomatic protection and state responsibility.<sup>14</sup> As more foreign investment comes into a country, it can lead to the greater investments because others see the country as economic stability.

### 3. Comparative Legal Measures and Solutions to Problems in Thailand, China and South Korea

From studying on tourism laws in China and South Korea where the laws are effective to apply with their tourism industry, tourism industries of both countries are similar to Thailand where tourism is promoted as a national agenda. Tourism in China is promoted for the Chinese traveling within the country because of the large scale of area, whereas inbound tourism is targeted for South Korea. Chinese and South Korean laws are considered to be the most comprehensive legislation in every aspect of tourism industry compared to other countries in Asia.

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<sup>12</sup> Albiman, Masoud Mohammed, 'What Are the Impact of FDI to Economic Growth?', (2014) 4 p.80

<sup>13</sup> OEDC, *Main Concepts and Definitions of Foreign Direct Investment* (4<sup>th</sup> edn, OECD 2008)

<sup>14</sup> Marc Mancini, *Access: Introduction to Travel and Tourism* (2<sup>nd</sup> edn, Delmar Cengage Learning 2012) p.3

Law of the People's of Republic of China on Foreign-Funded Enterprise allows foreign investment in two types of travel agency business which are domestic and inbound where the spending of foreign tourists is created within the country and contribute to the local. Foreigners can legally apply for tour guide license in China if they complete the qualifications and standards required by Chinese laws. The travel agency who want to employ a tour guide must be agreed upon a labor contract. Additionally, travel agency business in Chinese law includes all kinds of transportation service provider.

Additionally, China has the responsive Tourism Act and Regulations on Travel Agency 2009 to protect its tourism industry and tourist rights based on the idea of harmonizing social and economic. The tourism laws of China apply to all parties and activities involved in its tourism industry including tour operator, tour guide, service provider, leisure activities and other forms of tourism activities organized within the territory of China, and the business operations providing relevant tourism services. The country gives awareness on the important of economic cooperation and technical exchange with foreign countries that will beneficial to it economic results. The legitimate rights and interests of foreign enterprises is protected by the relevant laws and regulations of China. The travel business and services operation are allowed for the foreigners when they completed the requirements by laws that is helpful to avoid the problem of using nominee in the business operation, not only tourism business but other business also.

Meanwhile, South Korean laws also have the same objective as the Chinese laws in the context of tourism promotion and tourist protection. According to Tourism Promotion Act, sstablishing travel agency business by foreign investors in South Korea is widely supported by Korean government in two types of corporations including local corporation and private business. All foreigners have equal rights to apply for a tour guide license at the same qualifications and requirements as the Korean people according to the principle of liberalization. When a travel agency needs a tour guide to facilitate the tourists, a labor contract must be signed between the two parties as to protect the tour guide under minimum standard of labor law. Lastly, South Korean

tourism laws classify transportation as sub-sector of tourism business and identify transportation service provider as a travel agency if it conducts transportation facility for tourists by arranging a package tour. Thus, the transportation providers who involved in the package tour have to apply for travel agency business license.

Eventually, Korean laws improve its tourism industry and approach new development and technologies to the country based on liberalization and foreign investment promotion. Opportunities of the foreigners to participate in tourism business are interweaved with identities expression of the locals result sustainable tourism in Korea. Tourist protection policy of both countries leads to an interception of any private transportation providers to engage in zero-dollar tour. This solution causes benefits to the tourists and brings the tourism income directly to the governments.

In case of Thailand, scope of travel agency business does not include transportation providers as travel agency business, while all types of transportation providers. Additionally, the rights of foreigners to participate in tourism-related business and tour guide professional in Thailand are limited under the laws with an undeveloped reason that Thai people are not yet ready to compete in tourism business professional with the foreigners.<sup>15</sup> Moreover, the restriction on nationality of tour guide leads to a lack of legal tour guide in some foreign languages, increase of substandard tour guide, using illegal tour guide to reduce cost. The legal relation between tour guides and tour operators are mostly under hire of work contract, whereat the tour guides have shortage welfare and stability in the career.

#### **4. Recommendations**

Travel Agency Business Act of Thailand should adopt the idea of grouping tourism-related business from South Korean Tourism Law. Where travel business is a subcategory in tourism business that refers to an agent for

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<sup>15</sup> Foreign Business Act B.E.2542 (1999) Section 6, 8, 7, 10 and 12

traveler or business operator who arrange the mentioned tourism services or other facilities required in travelling. Tourism laws of China can also be the model of Thai laws for anybody who arranges transportation service for tourists when soliciting, organizing and receiving tourists is concluded as travel agency. Both foreign laws undertake all types of transportation providers who facilitate the tourists in associate with tourism as travel business.

In order to increase well-being of people and improve many of technologies and knowledge into tourism service, it is necessary to allow foreign investment in tourism industry or as travel agency business. Registration and taxation system shall be applied to the foreign businesses as to make the efficient tourism industry and easier for tourism authorities in charge to oversee the foreign travel agency business operations. Moreover, the problem of shortage tour guide will be decreased by adopting the concepts of freedom in occupation and applying labor contract to fulfil the relationship between tour operator and tour guide. Allowing foreigners to participate in tour guide professional also be the solution to solve the problems of substandard tour guide in Thailand

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