

REGULATION OF ONLINE INTERMEDIATION SERVICE  
FOR TOURISM BUSINESS\*

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**Abstract**

This article examines the regulatory challenges and implications surrounding online intermediation services for tourism businesses, focusing on the case of Thailand. The rapid growth of these modernized platforms connecting local guides and tourists seeking touring and guiding services has questionable issues about their legal classification and liabilities within existing regulatory frameworks.

The study explores the nature of these modern intermediation platforms and how they may potentially be considered as tourism businesses. Nonetheless, the current definition of “Tourism Business” in Thailand’s Tourism Business and Tourist Guide Act B.E. 2551 (2008) does not explicitly encompass online intermediation services for tourism, leading to questions about their legal status and liabilities.

One key issue is determining whether the existing definition should be broadly interpreted or if specific amendments are required. The article particularly examines the ambiguity surrounding the joint liability of online intermediation service providers or business entrepreneurs when tourists encounter issues during trips arranged through their platforms. It suggests that addressing this legal uncertainty requires amending existing tourism laws to explicitly include these modern businesses and establish a regulatory framework, promoting growth while, ensuring protection for tourists and fair business practices.

**Keywords:** Online Intermediation Service, Tourism business, Regulation, Liability, Thailand

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## 1. Introduction

The travel industry is continuously growing, with a focus on safe and high-quality tourist attractions. Modern technology enables travelers to plan their vacations independently, with easy access to information through search engines and social media platforms. Online Travel Agents (OTAs) such as Agoda, Expedia, and Booking.com offer comprehensive tourism services, including recommendations for attractions, air ticket booking, hotel reservations, and more.<sup>1</sup>

One emerging trend is “Online intermediation service for tourism business,” an example of such a platform being “TMT”. These platforms connect tourists with local guides for guided activities. However, a legal ambiguity arises as to whether the existing definition of “tourism business” in Thailand encompasses these modern online intermediation services.

This article addresses the potential legal issues and controversies surrounding this evolving business model. It explores the relationship between TMT and local guides, as well as the responsibilities and liabilities that may arise in case of harm to tourists. Currently, there is no explicit regulation to govern these platforms, which may lead to uncertainties in terms of liability and safety for both local guides and tourists.

The absence of measures to verify the legal qualifications of tourist guides and the lack of liability coverage may result in legal problems in the future. For instance, tourists may face limitations in claiming damages, while business entrepreneurs could potentially evade liability through disclaimers and intermedial roles. Thus, this study aims to analyze applicable laws, assess responsibilities and liabilities, identify governing authorities, and propose mechanisms for better control and enforcement.

By examining the case of the TMT business, this article seeks to suggest solutions for effectively and efficiently regulating online intermediation services for tourism and ensuring a fair and secure travel experience for all parties involved.

## 2. Online intermediation service for tourism business: evolution and operations

One of the latest advancements in the tourism industry is the emergence of online intermediation services for tourism entrepreneurs. These platforms offer tourism-related services in Thailand and have a distinct approach compared to traditional businesses. Among them, TMT stands out as the noticeable platform for exclusive private local tours in Thailand, with expansions in Cambodia, Vietnam, and the Philippines since 2019.<sup>2</sup>

TMT operates as a platform connecting foreign tourists with local tour leaders, focusing on providing a unique “local experience.” The main offerings are “one-day trips,” with local guides narrating captivating stories about each attraction, allowing tourists to deeply immerse themselves in the destination’s culture and connect with local communities. TMT’s business

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<sup>1</sup> Arunee Intompairoj, ‘e-Tourism’ (2017) <<https://www.blog.rmutt.ac.th/?p=76/>> accessed on 12 June 2021.

<sup>2</sup> ‘What’s a Day Like with TakeMeTour?’ (Takemetour, 2021) <<https://www.takemetour.com>> accessed 7 August 2021.

model shifted from Thai tourists and local experts connecting on a Facebook page to catering to foreign tourists visiting Thailand who wish to experience the authentic local lifestyle.

TMT differs from conventional travel companies as it doesn't offer guided tours or strict itineraries. Instead, it empowers local experts to create their one-day trip tours, leading to diverse and personalized experiences for travelers. To ensure safety and quality, TMT carefully verifies the information of local guides, including criminal records and relevant documents. The booking process involves tourists paying for the trip upfront, with TMT transferring the payment to local experts after the trip's completion.

The pricing of each trip is determined by the local expert's satisfaction, fostering competition among them to offer unique and captivating tours. TMT has experienced significant growth since its inception, witnessing a steady 50% monthly increase in business. Most tourists using TMT's services opt for 3-5 star accommodations, spending at least 2,000 THB per day.<sup>3</sup>

Operated as a platform, TMT collaborates with various service providers, including local guides, hotels, restaurants, travel programs, and rental services. The platform sets specific terms, conditions, and disclaimers that limit TMT's liability and define the roles of local experts as external service providers, distinct from employees or contractors.<sup>4</sup>

TMT imposes certain duties on local experts, such as using TMT's messaging system to contact customers, providing accurate information, and delivering required documents for verification. The platform handles the transfer of service fees and retains the right to deduct its commission. Additionally, TMT disclaims responsibility for conversations between customers and local experts, as well as alterations to advertised travel services caused by force majeure events.<sup>5</sup>

These terms and conditions demonstrate TMT's approach to operating within a sharing service concept, while also addressing safety and quality concerns. However, the legal implications surrounding online intermediation services in the tourism industry remain a significant concern. The lack of explicit regulations for this business model requires further examination to ensure a fair and secure environment for both tourists and local experts.

### **3. Analysis of legal issues relating to online intermediation service for tourism business in Thailand.**

The analysis focuses on the legal issues surrounding the operation of TMT business as a case study of online intermediation service for tourism business in Thailand, particularly in

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<sup>3</sup> 'Takemetour Puen Pa Tour Don Jai Tang Chart' (Bangkok Bank, 15 September 2019) <<https://www.bangkokbanksme.com/en/travel-takeme-tour>> accessed 5 January 2022.

<sup>4</sup> 'Terms, Conditions, and Disclaimer' (TakeMeTour, 2021) <<https://www.takemetour.com/article/terms-conditions-and-disclaimer>> accessed 7 August 2021.

<sup>5</sup> Ibid.

the context of online intermediation services for tourism. Key legal problems identified are as follows:

### **3.1 Applicable laws and legal principles for tourist incidents in the transformation to 'TMT' Business Format**

The TMT business format is a form of tourism that provides local expert services for entertainment and stress relief, emphasizing local tourism and community involvement. However, the existing Tourism Business and Guide Act B.E. 2551 (2008) may not explicitly cover or regulate this new form of online intermediation service for tourism, causing interpretational issues. It is unclear whether the TMT business falls under the definition of "tourism business" in the current law.

The term "tourism business" in the Tourism Business and Guide Act B.E. 2551 (2008) defines it as a business relating to guiding tourists for touring or other travel purposes.<sup>6</sup> One perspective argues that the TMT business should be included in this definition due to its promotion of touring and guiding activities. However, another perspective disputes this, stating that the current definition does not explicitly encompass online intermediation services.

Consequently, the existing law may not be sufficient to determine the duties, responsibilities, and liabilities of entrepreneurs engaging in this form of tourism business. As a result, if any harm occurs to tourists during their interactions with TMT business, there may be legal gaps that prevent government authorities from taking appropriate legal action against the online platform entrepreneur or holding them responsible alongside the tourist guide for any potential liabilities.

Moreover, the use of the term "local expert" in place of "tourist guide" in the TMT business raises legal concerns. It is uncertain whether the local expert, who guides and provides recommendations to tourists, can be considered a "tourist guide" under the Act, potentially impacting legal responsibilities and liabilities.

Additionally, the TMT business may not qualify as a "tour leader" under the Act since it operates only domestically within Thailand. This distinction affects the legal responsibilities of TMT business entrepreneurs and their liability for any harm that occurs to tourists during the trip.

These legal ambiguities in the existing law may leave the TMT business entrepreneurs without clear guidelines and responsibilities, posing challenges in enforcing regulations and ensuring the protection of tourists' rights.

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<sup>6</sup> Kanathip Thongraweewong, Kod Mai Kiew Kab Karn Tong Tiew [Tourism Law] (2<sup>nd</sup> edn, Nititham 2020) 228-229 (คณาจិป ทองร่วงគី, ក្រុមហៈមាយកើតវក្សាបានពេលពេល (ពិម័យក្រោងទី 2, និពិនិត្យ 2563) 228-229).

### 3.2 Responsibilities and liability between entrepreneurs and tourist guides in the event of harm to tourists

When analyzing the responsibilities and liability between entrepreneurs and tourist guides in the context of the TMT business, we shall consider the transformation of the TMT operating model over time. Previously, the TMT business model involved tour leaders and tourist guides traveling together with the group of tourists. However, the current characteristic of TMT business allows local tourist guides to present their own travel programs through the TMT platform, emphasizing local tourism and community involvement.

This shift in the TMT business format aligns with the principles of local tourism set forth in the Conference on Environment and Development (Earth Summit) held in Rio de Janeiro, Brazil, in 1992. Local tourism focuses on allowing the community to be owners and decision-makers in managing tourism while preserving the environment, society, and culture<sup>7</sup>. The involvement of local tourist guides in arranging travel programs through the TMT platform empowers the community and enhances their quality of life, while promoting cultural exchange and mutual respect between tourists and the local population.

However, when considering the legal liability between the TMT business entrepreneurs and local experts, who act as tourist guides, certain complexities arise. The TMT business operates as an online platform, and its website information does not explicitly indicate that TMT is a legal tourism business entrepreneur. Additionally, TMT includes explicit terms and disclaimers to exempt joint liability with local experts or tourist guides.

In the event of harm occurring to tourists during their interactions with the TMT business, the liability provisions in Section 33 of the Tourism Business and Tourist Guide Act B.E. 2551 (2008) may not be applicable to TMT business entrepreneurs if they are not classified as tourism business entrepreneurs under the Act. Consequently, TMT business entrepreneurs may not be held jointly liable with local experts for any harm. As a result, the local expert or tourist guide may bear sole responsibility for any harm experienced by the tourists.

TMT's policy of satisfaction guaranteed further supports this perspective. The platform guarantees customer satisfaction by refunding the service fee for the local expert in case of a complaint under TMT policy. This policy aligns with TMT's statement that local experts are external tourist service providers and only members of TMT. Customers (tourists) agree that TMT is not liable for any loss or damage arising from a listed trip through TMT's website. Therefore, the exclusion of liability stated on TMT's website places responsibility on the local expert in case of any loss or damage.

In conclusion, the responsibilities and liability between entrepreneurs and tourist guides in the context of the TMT business can be complicated due to the unique

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<sup>7</sup> Jiraporn Matangks et al., 'The Development on Volunteer Tourist Guide for leading the travelling to Kudichin community and Kanlapaya Temple Community' (The Research Report, Faculty of Humanities and Social Sciences, English Program, Rajabhat Thonburi University 2019) 4-5.

characteristics of the TMT operating model and the legal ambiguities in existing tourism legislation. The empowerment of local tourist guides through TMT platforms aligns with the principles of local tourism, but the exact legal status of TMT business entrepreneurs and the liability distribution requires careful consideration and possibly further legal clarification.

The situation differs in Chinese law, where tourism services must be agreed upon between the tourism business entrepreneur and the tourists. A person who passes the tourist guide qualification test shall sign a labor contract with the tourism business entrepreneur before being qualified to apply for a tourist guide certificate, meaning that in China, tourist guides cannot privately contract with tourists for providing services without a labor contract with the tourism business entrepreneur.<sup>8</sup> This emphasizes consumer protection in Chinese law.<sup>9</sup>

Under the Thai Tourism Business and Guide Act B.E. 2551 (2008), section 33 of the Act deems that tourist guides act in the course of employment of the tourism entrepreneur when performing their duties, but in terms of the TMT business format, there is no explicit legal principle to define that the TMT business entrepreneur is the tourism business entrepreneur under the Act. Therefore, the TMT business entrepreneur may not be governed under the aforementioned section 33 and does not have any joint liability with the local experts under the existing law.<sup>10</sup> Moreover, according to the Thai Tourism Business and Guide Act B.E. 2551 (2008), there is no prohibition of a private contract between tourist guides and tourists, which may lead to an explanation under the TMT business format that the transactions occurring on the platform may be considered as a private contract between tourists and local experts.

In contrast, Chinese law strictly prohibits tourist guides from privately contracting with tourists and requires them to be assigned by travel agencies for guiding activities.<sup>11</sup> In case of harm to tourists caused by tourist guides, the travel agency is jointly liable, ensuring better protection for consumers.

From the perspective of the tourism business entrepreneur, TMT's operating model involves upfront payment by tourists, and TMT transfers revenue to local experts after the trip. TMT retains a percentage of the booking fee, typically around 20 percent per trip.

The legal relation between TMT business entrepreneurs, local experts, and tourists is ambiguous. The tourists using TMT's platform may perceive TMT as the main entrepreneur and service provider. TMT operates as an online platform where local experts present travel packages to customers, who then make payments to TMT. However, it is unclear whether TMT is considered a tourism business entrepreneur under the Tourism Business and Guide Act B.E.

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<sup>8</sup> Tourism Law of the People's Republic of China, 2013 s 38. <<https://govt.chinadaily.com.cn/s/201712/26/WS5c18b454498ee2f0291e3ff9/tourism-law>> accessed 30 September 2023.

<sup>9</sup> Regulations on Administration of Tourist Guides of the People's Republic of China 1999, art 9.

<sup>10</sup> Thailand Tourism Business and Guide Act. B.E. 2551 (2008), s 33.

<sup>11</sup> Tourism Law of the People's Republic of China, 2013 s 40.

2551 (2008) or if other laws apply to determine the legal relationship and liability between TMT, tourists, and tourist guides.

To consider the legal relationship between TMT business entrepreneurs, local experts and tourists, we need to examine the possibility of a contractual relationship and apply the principle of analogy law. According to the Thai Civil and Commercial Code, a contract is formed when one party offers and the other party accepts with the intention to create legal relations.<sup>12</sup> The relationship between TMT and tourists could be seen as a contractual one, where tourists access TMT's platform, choose trips, and make payments to TMT. Similarly, the relationship between TMT and local experts may be viewed as a contractual collaboration, where TMT provides the platform and local experts create guiding activities.

However, TMT may deny the contractual relationship, stating that it is merely an online intermediation service provider, facilitating interactions between local experts and tourists. TMT may be able to disclaim any legal relationship with both parties and emphasizes the independence of local experts during the trip. As there is no explicit legal provision governing online intermediation services for tourism businesses like TMT, any legal disputes involving TMT, local experts, and tourists will be subject to interpretation and discretion by the authorities or the Thai courts.

Considering the current applicable legal principles in Thailand, the nature of the legal relationship between TMT and the local expert may be more similar to that of an ostensible agent under the Thai Civil and Commercial Code, section 821. Tourists may innocently perceive the local experts as agents of TMT due to TMT's review and approval of the trips listed on its platform and the refund policy provided by TMT.

Under the principle of ostensible agency<sup>13</sup>, TMT could be held liable for damages caused by the local experts' actions. However, TMT could also defend itself by denying any legal relationship with the local experts and claiming that they are independent outsiders using TMT's platform. As there is no specific legal framework governing online intermediation services for tourism businesses like TMT in Thailand, the legal relationship and liabilities between TMT, local experts, and tourists remain open to interpretation and discretion in the event of legal disputes.

Additionally, the issue of tourist guide licensing in Thailand lacks stringent requirements, including the lack of mandatory training or testing for renewal and the absence of examination on the performance of duties during a past period. This could potentially impact the quality of services provided by tourist guides and raise concerns about their qualifications.

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<sup>12</sup> Thailand Civil and Commercial Code B.E. 2468 (1925), s 361.

<sup>13</sup> Ibid, s 821.

Overall, the legal complexities surrounding the TMT business, local experts, and tourists highlight the need for clearer regulations in the online intermediation service for tourism businesses in Thailand.

### **3.3 Government authorities and applicable laws for governance and control**

The government authority responsible for controlling and ensuring legal compliance in the tourism industry, including tourist guides, is the Committee of Tourism Business and Guide under the Tourism Business and Guide Act B.E. 2551 (2008). The Committee of Tourism Business and Guide holds significant responsibilities, including submitting opinions to the Minister of Tourism and Sports for the issuance of the Ministerial Regulation under the Act. This empowers the committee to regulate and provide guidance on specific aspects of tourism business operations and the duties of tourist guides and tour leaders towards tourists and the tourism business entrepreneurs. The committee is also responsible for issuing practice rules that set standards for conducting tourism businesses and performing tourist guide and tour leader duties.<sup>14</sup>

Furthermore, the committee is vested with the authority to issue notifications that prescribe areas where tourist guides, whose qualifications have been waived under section 51 of the Act, can perform their duties. In addition to these functions, the committee plays a role in managing and overseeing financial matters related to tourism business operations. These guarantees are essential for ensuring accountability and protecting tourists' interests when dealing with tourism business entrepreneurs. The committee also decides on the criteria and procedures for fact-finding and decision-making by a registrar, ensuring transparency and due process.<sup>15</sup>

However, the current law does not explicitly address the regulation of online intermediation services for tourism, such as the operation of TMT. As a result, the Committee of Tourism Business and Guide may not have the authority to govern and control TMT's online tourism business.

To address this gap and regulate modern online intermediation services in the tourism sector, Thailand should consider amending and improving the Tourism Business and Guide Act B.E. 2551 (2008) to cover platforms like TMT. This would ensure fair treatment and protection for tourists and local experts involved in such services.

### **3.4 Mechanism of good control for online intermediation business in Thailand**

Under the Tourism Business and Guide Act B.E. 2551 (2008), the Committee of Tourism Business and Guide plays a vital role in regulating service fees charged by tourism business entrepreneurs. Section 31 of the Act stipulates that a tourism business entrepreneur shall not organize tours without a service fee or with a fee insufficient to cover expenses, as determined

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<sup>14</sup> Thailand Tourism Business and Guide Act B.E. 2551 (2008), s 12.

<sup>15</sup> Ibid.

by the committee's notification. This notification sets forth the minimum service fee rates based on various factors, including the tourists' countries of origin and the type of tour offered.<sup>16</sup>

For instance, the notification issued in B.E. 2563 (2020) establishes different minimum service fee rates for tourists from specific countries. Ranking no. 1 includes countries like Myanmar, Cambodia, Vietnam, and others, with a service fee of 800 THB per person per night. Ranking no. 2 covers Asian countries (excluding those in ranking no. 1), with a fee of 1,000 THB per person per night. Ranking no. 3 encompasses other countries (excluding those in ranking nos. 1 and 2), with a fee of 1,500 THB per person per night. These fees encompass accommodation, vehicle transportation, entrance fees, remuneration for tourist guides, food, and accident insurance during travel.

To maintain good order and protect tourists, the Tourism Business and Guide Act B.E. 2551 (2008) requires business entrepreneurs to obtain a tourism business license and provide guarantees for tourists in case of harm, as prescribed by the law. Additionally, the Act stipulates penalties in the form of fines for business entrepreneurs, tourist guides, or tour leaders who cause harm to tourists through their actions.

One critical matter that needs consideration is the potential issue of whether TMT's business falls under the definition of a tourism business as outlined in the Tourism Business and Guide Act B.E. 2551 (2008). If TMT is not deemed a tourism business under this Act, then the provisions and mechanisms of control mentioned earlier may not directly apply to TMT's operations.

To strengthen mechanisms of control for online intermediation businesses and tours in the tourism industry, Thailand should consider amending and updating its laws to encompass the unique characteristics of modern online platforms. Providing clear guidelines and regulations for such businesses will ensure fair practices, protect tourists' interests, and promote responsible and ethical tourism within the country.

#### **4. Conclusions and suggestions**

##### **4.1 Summary of findings or conclusions**

Throughout this study, various legal issues and complexities surrounding the TMT business and other online intermediation service platforms in the Thai tourism industry have come to light, each corresponding to key findings explored in topics 3.1 to 3.4.

###### **4.1.1 Applicable laws and legal principles for tourist incidents**

The absence of specific regulations addressing online intermediation services like TMT has created interpretational issues. The uncertain classification of TMT business under the current law may lead to legal gaps, hindering the ability to hold online platform entrepreneurs accountable for potential liabilities.

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<sup>16</sup> Thailand Tourism Business and Guide Act B.E. 2551 (2008), s 31.

#### **4.1.2 Responsibilities and liability between Entrepreneurs and Tourist Guides**

As the TMT operating model empowers local tourist guides and emphasizes community involvement, complexities emerge regarding legal liability. Existing tourism legislation may not clearly define the status of TMT business entrepreneurs, raising concerns about liability distribution in cases of harm to tourists.

#### **4.1.3 Government Authorities and Applicable Laws for Governance**

While the Committee of Tourism Business and Guide plays a crucial role in regulating the tourism industry, it may lack the authority to govern and control online intermediation services like TMT. The current law does not explicitly cover these platforms, necessitating legal adaptations.

#### **4.1.4 Mechanism of Control for Online Intermediation Business**

Existing mechanisms for regulating service fees, licensing, and guarantees may not directly apply to TMT's unique business format if it's not classified as a tourism business under the current law. This raises questions about the enforcement of regulations for platforms like TMT.

### **4.2 Recommendations**

To address these concerns and ensure the appropriate regulation of online tourism businesses, several key suggestions have been proposed:

#### **4.2.1 Amend Legislation**

Amend the Tourism Business and Tourist Guide Act B.E. 2551 (2008) to explicitly recognize online intermediation service providers as tourism businesses and establish clear legal relationships between them and local guides.

#### **4.2.2 Shared Liability**

Recommend amendments to the Act to enforce shared liability between tourism business entrepreneurs and tourist guides for harm incurred by tourists during their trips.

#### **4.2.3 Empower Regulatory Bodies**

Empower the Committee of Tourism Business and Tourist Guide with the authority to govern and regulate online intermediation services for tourism businesses.

#### **4.2.4 Adapt Control Mechanisms**

Adapt existing mechanisms of control for online intermediation businesses to ensure they align with the unique characteristics of these platforms. This includes setting clear guidelines and regulations to maintain transparency and protect tourists' interests.

In conclusion, the legal complexities uncovered throughout this study underscore the pressing need for clear regulations and adaptations in the online intermediation service sector of Thailand's tourism industry. By revising and updating current laws to encompass the unique features of platforms like TMT, Thailand can promote responsible and ethical tourism practices, protect tourists' rights, and ensure fair treatment within the digital era.