LEGAL PROBLEMS OF TRAVEL AGENCY BUSINESS
AND TOUR GUIDE IN THAILAND

BY

MS. SUREEPORN HUENGWATTANA

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2017
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THESIS

BY

MS. SUREEPORN HUENGWATTANA

ENTITLED

LEGAL PROBLEMS OF TRAVEL AGENCY BUSINESS AND TOUR GUIDE IN THAILAND

was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)
on August 10, 2018

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ABSTRACT

The most important policy recognized by all nations in the world to approach sustainable tourism is a policy of safeguarding tourists while traveling. Many countries followed the tourist protection policy by enacting tourism law including Thailand where Travel Agency Business and Tour Guide Act B.E.2559 (2016) is currently applied. The Act introduced standards of travel agency business and tour guide professional along with tourist protection measures against unfair practice caused by tourism service providers. Since its first enforcement in 1992, the Act has been amended twice in order to apply with the complexity of tourism industry. However, some problems remain unsolved when nominees are found in travel agency business and the legal tour guides fail to perform their job. These problems have been intensified by zero-dollar tour, the low-cost package tour with low quality service that affects to tourism image, economic impact, legal right and benefit of tourists.

This thesis aims to study the principles of Travel Agency Business and Tour Guide Act, analyze the problems of tourism industry and propose new legislative solutions to resolve the difficulties arising from the Act. Additionally, the study enhances effectiveness of the Act by comparing with Chinese and South Korean laws which are considered as the sufficient tourist protection laws. The thesis identifies problem of zero-dollar tour operate by transportation provider, problem of using Thai
people as a nominee in travel agency business and problem of illegal tour guide increasing. These problems have arisen form inappropriate elements of Travel Agency Business and Tour Guide Act that need for new amendment of the law.

Therefore, the thesis proposes the new legislative solutions to regulate tourism industry and all parties involving in tourism industry, especially the tourists, are properly protected by this Act. The proposed new legislative solutions include addressing all types of transportation provider to an explanation of travel agency business, permitting foreign investment in travel agency business and permitting foreigner to engage in tour guide professional.

**Keywords:** travel agency business, tour guide, zero-dollar tour
ACKNOWLEDGEMENTS

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Ms. Sureeporn Huengwattana
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<td>ACCSTP</td>
<td>ASEAN Common Competency Standards for Tourism Professionals</td>
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<td>AEC</td>
<td>ASEAN Economic Community</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
</tr>
<tr>
<td>CJV</td>
<td>Chinese-Foreign Cooperative Joint Venture</td>
</tr>
<tr>
<td>CNTA</td>
<td>China National Tourism Association</td>
</tr>
<tr>
<td>DOT</td>
<td>Department of Tourism</td>
</tr>
<tr>
<td>EJV</td>
<td>Chinese-Foreign Equity Joint Venture</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FIT</td>
<td>Foreign Individual Tourist</td>
</tr>
<tr>
<td>FPI</td>
<td>Foreign Portfolio Investment</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
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<td>GIT</td>
<td>Group Inclusive Tourist</td>
</tr>
<tr>
<td>GVC</td>
<td>Global Value Chain</td>
</tr>
<tr>
<td>HRDSK</td>
<td>Human Resources Development Service of Korea</td>
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<tr>
<td>IFTTA</td>
<td>International Forum of Travel and Tourism Advocates</td>
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<td>IRTS 2008</td>
<td>International Recommendations for Statistic 2008</td>
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<td>KATA</td>
<td>Korean Association of Travel Agents</td>
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<td>KOTRA</td>
<td>Korea Trade-Investment Promotion Agency</td>
</tr>
<tr>
<td>KTO</td>
<td>Korea Tourism Organization</td>
</tr>
<tr>
<td>KRW</td>
<td>Korean Won</td>
</tr>
<tr>
<td>LSA</td>
<td>Labor Standard Act</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>MFN</td>
<td>Most-Favored-Nation Treatment</td>
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<tr>
<td>MNC</td>
<td>Multinational Corporation</td>
</tr>
<tr>
<td>MOTS</td>
<td>Ministry of Tourism and Sports of Thailand</td>
</tr>
<tr>
<td>NDRC</td>
<td>National Development and Reform Commission</td>
</tr>
<tr>
<td>TAT</td>
<td>Tourism Authority of Thailand</td>
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<tr>
<td>WEF</td>
<td>World Economic Forum</td>
</tr>
<tr>
<td>WFOE</td>
<td>Wholly Foreign Owned Enterprise</td>
</tr>
<tr>
<td>WTO</td>
<td>World Tourism Organization</td>
</tr>
<tr>
<td>WTTC</td>
<td>World Travel and Tourism Council</td>
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1.1 Background and Problems

Tourism industry, one of the main service industries in the world, plays an important role in both economic and social development in many countries. Data collected from World Travel and Tourism Council (WTTC) shows a strong start of global tourism in 2017. International tourist arrivals at a global level in the first quarter of last year grew strongly by 6.2 %, compares to the same period in 2016. \(^1\) Estimate of tourism receipts directly contributes to the Thailand’s Gross Domestic Product (GDP) of 12 trillion Baht range from 9 % (1 trillion Baht) in 2013 to 17.7 % (2.53 trillion Baht) in 2016. \(^2\) After taken into account of indirect travel and tourism receipts, the total receipts in 2014 was estimated at 19.3 % (2.3 trillion Baht) of Thailand’s GDP. The global average for tourism revenue is 9 % of GDP. \(^3\) Apart from economic development, tourism is considered as one of a significant factor to overcome the poverty. Tourism influences social revenues and job opportunities increasing among the local community. It also raises the living level of local people to be self-employed, sell their local products and services. \(^4\)

Due to a cooperation of Association of South East Asian Nations (ASEAN) to accelerate the region’s steadiness in economy, social and cultural development, tourism has driven the economy of the region by focusing on ASEAN’s framework in

\(^1\) World Travel and Tourism Council, Monthly Economic Impact (August 2017)
\(^2\) Chatrudee Thepparat, ‘Tourism to continue growth in 2017’ Bangkok Post (Bangkok 17 February 2017)
\(^3\) Turner Rochelle, ‘Travel & Tourism, Economic Impact 2015, Thailand’ (London 23 August 2016)
order to attract international arrivals around the globe to travel to South East Asia. With aims to improve economic growth and enhance participation among neighbourhood countries, ASEAN Economic Community (AEC) was established in response to this purpose with the slogan “One Vision, One Identity, One Community.” Tourism was designated by the members countries to be the main goal in the AEC’s strategy in order to promote tourism in the region as “Single Destination” where every country is connective as one destination for the international tourists. Moreover, Thailand, one of the attractive destinations in the world, was promoted as the “Door to ASEAN” because of its geographical factor and infrastructure availability which are attractive to international travelers and foreign investors. Thailand turns to be a connective spot for both regional and international visitors who travelling around ASEAN countries because of its charming spot and favorable resources in all kinds of tourism aspects, i.e., sports, health care, spa, cultural, eco-activities and affordable luxury shopping. Since the Ministry of Tourism and Sports (MOTS) and Tourism Authority of Thailand (TAT) have promoted tourism campaign to the international market, especially in Southeast Asia, America and European market, the rapidly growth

5 Association of Southeast Asian Nations, ‘ASEAN Motto’ <http://asean.org/> accessed 23 August 2017
7 Chaowarat Yongjiranon and Sirivish Toomgum, ‘Thailand is door to ASEAN: Jetro’ The Nation (Bangkok, 9 November 2013)
8 ‘ตัวเลขท่องเที่ยวจะเขยอมใต้เปา“กอบกาญจน์”เดินหน้าเพิ่มการพักและรายได้ด้านไทยยั้งโลกกระแส’ มติชน (กรุงเทพ, 4 พฤศจิกายน 2559) (‘Tualek Tongteawthai Young Dai Pao”Kobkarn”Dernna Perm Wan Lae Raidai Dun Hub Lowcost’ [Numbers of Thai tourism reach the goal “Kobkarn” goes forward to increase staying period and promote Thailand as a hub of low-cost destination] Matichon (Bangkok, 4 November 2016)
of the tourists coming from China has consecutively generated revenue to the country. The revenue from tourism currently becomes the main source of the country’s income. The continued growth of world tourism in the figures Nos.1 and 2 as presented below show that Thailand has successfully reached a goal to become a dream destination for the international tourists.

Table 1.1 Number of Foreign Arrivals and Income (Updated January 2017)

<table>
<thead>
<tr>
<th>Year</th>
<th>Foreign Arrivals (million)</th>
<th>Income (trillion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>19.23</td>
<td>0.78</td>
</tr>
<tr>
<td>2012</td>
<td>22.35</td>
<td>0.98</td>
</tr>
<tr>
<td>2013</td>
<td>26.54</td>
<td>1.21</td>
</tr>
<tr>
<td>2014</td>
<td>24.81</td>
<td>1.45</td>
</tr>
<tr>
<td>2015</td>
<td>29.88</td>
<td>1.48</td>
</tr>
<tr>
<td>2016</td>
<td>32.59</td>
<td>1.64</td>
</tr>
</tbody>
</table>

To pursue the ‘single destination’ idea, Thai governmental authorities collaborate with private sectors and they have agreed to create a direction for tourism promotion and development in accordance with the region’s strategy to promote Thailand as a quality tourist destination through international stage. The five-year national tourism plan implementation was set up to enhance an ability of our tourism competitiveness in global tourism based on fairness, stability and sustainability tourism concepts. Despite the success of increasing in number and the income from tourism, there are some obstacles caused from changes in circumstances in tourism industry contexts. The effect comes from both internal factors (such as the political situation of the country and private sector adjustment) and external factors (such as competition in tourist industry, consumer behavior, expectations of tourists, technology development trend, innovation, international and regional cooperation).

Table 1.2 Annual Number of Tourists\textsuperscript{11} (Updated January 2017)

<table>
<thead>
<tr>
<th>Year</th>
<th>ASEAN (million)</th>
<th>Europe (million)</th>
<th>China (million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>5.1</td>
<td>5.59</td>
<td>1.72</td>
</tr>
<tr>
<td>2012</td>
<td>5.65</td>
<td>6.28</td>
<td>2.79</td>
</tr>
<tr>
<td>2013</td>
<td>6.16</td>
<td>7.41</td>
<td>4.61</td>
</tr>
<tr>
<td>2014</td>
<td>6.03</td>
<td>6.77</td>
<td>4.63</td>
</tr>
<tr>
<td>2015</td>
<td>5.63</td>
<td>7.89</td>
<td>7.93</td>
</tr>
<tr>
<td>2016</td>
<td>8.66</td>
<td>6.17</td>
<td>8.76</td>
</tr>
</tbody>
</table>

\textsuperscript{11} supra note 10.
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:\textsuperscript{12}

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, there are some obstacles which has been arisen from the enforcement of Travel Agency Business and Tour Guide Act B.E. 2551 (2008) that is not fully functional with the current condition of tourism industry which result a big impact to our country as mentioned below.

Firstly, travel agency business stated in Travel Agency Business and Tour Guide Act B.E. 2551 (2008) refers to the business relating to guiding tourists for touring or other purposes of travelling. The travel agency business operator may provide one or several services or conveniences including lodging, food, tour guide, or other services as prescribed in the Ministerial Regulation to tourists. Since the law had launched until today, it has never been any meaning of other services designated in the Ministerial Regulation to extend the scope of travel agency business broader than its existing meaning. This circumstance has brought up a problem of identifying whether a business relating to facilitate or in connection with the tourists is a travel agency or not. The law has never involved a business providing transportation for tourists as a type of travel agency business even the nature of transportation business is to

\textsuperscript{12} Remark of Tourism Business and Guide Act B.E.2551 (2008)
encourage travelling. Unlike the foreign laws in many countries, where transportation is designated as a travel agency business.

When the scope of travel agency is limited, the term “travel agency or tour operator” is still in doubted as mentioned in Section 24 that: “a tour operator shall not cause any damage toward tourism industry.” The travel agency or tour operator who causes the damage to the tourism industry does not mean to other tourism business who is not mentioned in the scope of law. If the person who causes the damage is not the tour operator, there will be no fault because the penalty according to the criminal procedure must be interpreted strictly. Therefore, when the law is ineffective to enforce, the subject matters in Thailand’s tourism industry will not be truly protected. Moreover, the punishment imposed on the tour operator who causes any damage toward tourism industry, destroying tourist attractions and commit harm to tourists will be fined for 500,000 Baht as mentioned in Section 82 of Tourism Business and Guide Act B.E. 2551 (2008). In fact, if any action causes deterioration and damages to natural resources, the value of damages cannot be paid by money. In the eyes of the greedy entrepreneurs, the profit gaining from tourism business is worth paying the fine imposed by law. Thus, to protect national tourism sites and restrain the infringement action of any person toward tourism industry, the fine rate should be adjusted.

Secondly, foreign investors use Thai nationals as nominee to operate some types of business in Thailand including travel agency business that is preserved for Thai people. Travel agency business or known as tour operator needs a registration for special license before starting the business in Thailand and only Thai owners have legal right to register for travel agency business license. With regard to the reasons behind an enforcement of Travel Agency Business and Tour Guide Act B.E. 2551 (2008), various types of tourism business benefit from the use of national resources that should be reserved for Thai people. Any individuals or identities who desire to establish a travel agency business in Thailand must be Thai national who meets the qualification required by laws and relating regulations. Prior to their commencement of a travel agency company, they are required to apply for a travel agency business license from
the government authority in Thailand which is the Department of Tourism (DOT). The law does not allow foreigners to own and participate in the travel agency business in Thailand. However, it is a low-cost investment but very profitable, foreigners always keep eyes on and seek for ways to avoid the laws. In practice, many tour operators are questioned whether they have used Thai agents as their nominee to set up the business as either an entrepreneur or a corporate entity. In this sense, foreigners are pleased to hire Thai people who are willing to represent them as their agents for travel agency business license registration.

Nominee seems to appear in both individual and corporate travel agency business. In case of the corporate travel agency, the provisions of law only require for nationality of juristic person to be “Thai juristic person” in order to apply for the tourism business license. Shareholders of the company are children under age of 20, while the counterfeit identification card is used to register for individual travel agency business. Those Thai juristic persons may hire their legal assistants as managing partners or use names of dead persons as their directors of the companies. When these foreign business operators using the gap of law to engage in the forbidden business in Thailand, the country has lost a bulk of revenue that should be contributed to local people.

Lastly, the law and regulations relating qualifications of tour guide, controlling measures and authorizing tour guide license may cause a problem of using unlicensed tour guide. The country often faces a deficiency of licensing tour guides in some languages to provide services for tourists both individuals and group tours. The amount of the licensed tour guides in Thailand collected between 2008 until present are about 42,000 compared to the average of numbers of international tourists which are about 25 million people coming to Thailand during the same period. This reflects a lack of licensed tour guides to the tourists’ demand. The other problem occurs when there are tourists from countries where their languages, such as Russia and Svenska for Norwegian, are not frequently used in Thailand and not many licensed tour guides have skills to communicate with those tourists. Lack of licensed tour guides for tourists from China also becomes a significant problem in recent years with a rapid growth of
Chinese market in Thailand. Practically, demand is more than supply, the licensed tour guides will raise up their service fees. Those tour operators who cannot afford their tourists for unreasonable price of service fee will solve this problem by providing unlicensed tour guide for their clients which are unlawful. If foreign inbound tourists often face this situation, their travel destination will be changed from Thailand to other country which will affect to the country’s income. Therefore, the old-fashioned of the applicable law relating to the tour guide should be adjusted to be efficiency responsive for the present tourism situation.

1.2 Hypothesis

The existing laws and regulations relating tourism industry, tourism business, tour operator and guide in Thailand are not adequate to apply with the current tourism situation and fail to tackle unfavorable impacts of zero-dollar tours. To modify the law by allowing foreigners to operate travel agency business and being tourist guide like many foreign countries could be the better solutions to reduce the problems of using nominee and tour guide. Additionally, addressing more regulations and legal measure to control foreign travel agency business could be necessary to solve the problem and facilitate tourism industry. The legitimate rights and interests of tourists will be fully protected by law, if the scope of travel agency business covers any person who arranges transportation service for the tourists.

1.3 Objective of Study

a. To study the current situation of tourism industry, tourism related business and travel agency business in Thailand.

b. To analyze legal issues arising from the existing laws and effects of inadequate or gap of laws in the area of tourism business and guide.

c. To study the concept in controlling tourism business in other foreign laws.
d. To study and propose the appropriate measure or solutions in order to effectively apply with the real situations and provide the best interest to the Nation as a whole.

1.4 Scope of Study

This thesis focuses on the current circumstances in tourism industry occurring from the gap of Travel Agency Business and Guide Act B.E. 2551 (2008) for perceiving the problems and finding new legal measures or better solutions to improve and control the tour operators and guides and also to study on the government authorities, relating government officers and researches concerning tourism area.

1.5 Methodology

The study method in this thesis is based on documentary research concerning study and analysis of textbooks, articles, newspaper, journals, government publications, electronic databases, information on the internet, relating domestic and foreign laws. The methodology on this thesis also concentrates on the experts’ opinions and the interviews conducted with officers of the Department of Tourism are also included.

1.6 Expected Contribution

a. To understand the nature of present situation in tourism industry, tourism related business and travel agency business in Thailand.

b. To understand the legal issues arising from the existing laws and effects of inadequate or gap of laws in the area of tourism related business and tour guide.

c. To conceive the concept in controlling travel agency business in the way that it ought to be and understand the concept in other foreign laws.
d. To be able to provide the appropriate legal measures or solutions in order to effectively apply with the real situations and grant the best interest for every partied involved in this industry.
CHAPTER 2
TOURISM INDUSTRY IN THAILAND

Although the past performance of tourism promotion scheme has been successful in terms of numbers and income from tourism, but some limitation stills remain as shown in the travel and tourism competitiveness index of World Economic Forum (WEF). In 2016, Thailand’s tourism competitiveness was ranked 43rd of 140 countries, or 9th of 25 countries in Asia Pacific region by WEF which travel and tourism standards remain the weakest point, followed by the availability of infrastructure and business environment. Although the country faced political crisis affecting tourism image, it could quickly recover its tourism, showing confidence of tourists, meanwhile Thai tourism is the cheap tourist destination in some international aspects. Thailand tourism has long accumulated problems that hinder development to increase long-term competitiveness including degradation of tourist attractions, concentration of tourists, lack of facilities and travel staffs, government management and safety issues in tourists’ lives and properties. Therefore, Thailand still needs to rely on tourism income as the main economic base for the country as well as a source of income distribution and employment to enhance the quality of life for the Thai community and society, and the direction of development should be reviewed in line with the state of the facts, potential, and opportunity, and for the goal of being a sustainable quality tourist destination.

As the tourism business is a source of the country’s income, there are some groups of greedy businessmen coming up with legal gaps as a channel to perform unfair business practices and exploitation methods to get benefits from foreign tourists. By gathering information on the problems encountered by foreign tourists and emerging from the tourism industry, it was analyzed into four topics as follows;

1) Problems from criminal offences violated to life, body and property of human such as stolen, robbery, extortion, murder, assault, rape, etc.;

2) Problems on unfair tourism business practices and services such as fraudulent exploitation, disregard for standards, double standards on foreign tourists, and non-availability of services or good facilities from government agencies or other related officials;

3) Problems on accidents including natural disasters and accidents caused by service providers’ ignoring on quality and standard of services;

4) Problems from deterioration and disordered tourist attractions.

The above information is overall of tourism problems, but this thesis will focus on the second topic - the problems on unfair tourism business practices and services, which are the most destructive to tourism industry. According to law enforcement and my further research, Travel Agency Business and Tour Guide Act B.E.2551 (2008) and the revision (B.E.2559) still remain the legal problems on the scope of travel agency business, the use of nominee in travel agency business operation, zero-dollar tour and problem of tour guide. An overall tourism industry and tourism business in Thailand, factors, types, importance, idea of foreign investment in travel agency business and the mentioned legal problems and benefits of foreign investment in tourism business will be further described in this chapter.

2.1 Overview of Tourism

2.1.1 Definitions of Tourism and Travel

Travel means to any activities engaged in by people who travelling from place to place called tourist. Generally, it is defined as a movement of an individual for recreational purposes in a short period of stay. The tourist’s destinations are always the locations with tourism capability, such as national parks,

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14 The IRTS 2008, Chapter 2 para.2.4
monuments, museums, beach and big cities, etc. Sometimes, it also refers to an activity of traveling for leisure.

In order to make the collection of tourism statistics more simply and proper for the world tourism situation, tourism was reviewed in the International Convention held by World Tourism Organization (WTO) in 1991 that "tourism comprises the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes not related to the exercise of an activity remunerated from within the place visited." Additionally, International Recommendations for Tourism Statistic 2008 (IRTS 2008) was created to place conceptual framework, research methodology, statistical data collection and meaning of concerning words in tourism industry. It identifies tourism as a business or industry that engages in providing services and facilities to tourists. Tourism covers activities like actual travel and transport services, accommodation while travelling, restaurant and other catering services, fun and enjoyment, and organizing sightseeing activity for tourists. Tourism cannot happen without the movement of the tourists by using any type by means of transportation.

Although, tourism and travel are always used interchangeably, but travel has its generic term that means to an individual's movement from place to places, and doing activities without reasons related with everyday life when arriving at place of destination. When someone talks about travelling, it usually refers to a long journey. The IRTS 2008 also defines travel as an activity undertaken by individuals and group of individuals called travelers for purposes of work, business and enjoyment. Travel is usually classified into two categories that are leisure travel and business travel. Leisure travel is a vacation away from daily life and work for the enjoyment

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purpose, while business or corporate travel refers to travelling for the business or work purpose.

2.1.1.1 Factors of Tourism

(1) Tourist

All tourists are travelers, but not all travelers are tourists. In general, tourist is a person who travels for recreational purposes, family reasons, health, meetings, or in representative capacity of any kinds (scientific, administrative, diplomatic, religious, athletic, etc.). Sometimes, people travel for business reason in other place than their residence. The term tourist includes the long and short stay visitors and excursion.

(2) Tourism Site

Tourism sites, the place where have capability for tourism purposes, are included with wide range of tourism resources such as natural resources, archaelogy, architecture history, religious, cultural and local life-style tourist attractions. Recently, traditional and folk custom become famous among foreign tourists to seek out local people life style in both natural tourist attractions and man-made.

(3) Tourism Infrastructure

The ease of travelling is based on infrastructure of the destination country, the more convenience for tourists to access the basic facilities is lead to an improvement on tourism industry as a whole. The well-established infrastructure within the country will raise safety and security to the tourists while they are travelling. The infrastructure provided by government such as transportations, telecommunication, public utilities, and waste disposal system has benefit over the public as to the tourists. Other service providers by private sector such as accommodation, restaurant, exhibition center, business operators, shopping center and souvenir shop are included to facilitate tourists needed for their recreation.

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18 Tourism Authority of Thailand Act B.E.2522 (1979) Section 4
(4) Government Sector

Government sector is a major unit responsible for issuing laws and regulations, supervising and coordinating with the relevant authorities. The government also establishes the infrastructure within the country as well as to promote tourism in both direct and indirect ways. The country gets benefits from government through the public relation on tourism campaigns publicizing good image and introducing tourist activities and tourist attractions in Thailand to international. Moreover, the government gives support on the operation of public transportations and foreign investment in businesses related to tourism. It also supervises on the business operation of private sector within the country to be complied with laws and regulations. At the same time, the government is responsible for standardize of environment, public policy, expression of culture and traditions, and quality of life of the community which are the indirect of government supports.

(5) Private Sector

Private sector operated in tourism industry includes private tourism association, club and businesses such as hotels, restaurants, tour operators, tour guides, car rental, tourism activity providers, shopping and souvenir business. This sector has influenced to tourism industry because they directly facilitate to tourists with their service. If these businesses could furnish fanciness to the tourists, they would get great response in returning of visitors.

(6) Local Community

The local community being as a tourism resource in an aspect of host country, is a directly stakeholder in tourism industry because they are a cultural expression and identity representative. In this sense, local community has played an important role to impress the tourist especially the tourists who love to experience

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21 Ibid.


23 Ibid.
local lifestyle. The local community, in other words, owner of tourism resources could be volunteers and show the value of community expressed through their appearances, friendly character, smile, lifestyle and cultures.

2.1.1.2 Types of Tourism

(1) Domestic Tourism

Domestic tourism, the first historical form of tourism, is defined as tourism involving residents of one country traveling within that country.\(^{24}\) The tourist does not need to carry passport and visa or currency exchange. From a geographical viewpoint, domestic tourism may range from local excursion, regional trips to national level travels.

(2) Inbound Tourism

The activities of non-residents travelling in the given country for not more than one consecutive year and not less than 24 hours.\(^{25}\) The travel purposes are for leisure and business, but not for permanent work or gaining money.

(3) Outbound Tourism

Outbound tourism involved activities of the residents leaving their countries to visit another country\(^{26}\) with the same purposes of inbound tourism.

2.1.2 Tourism Industry

Tourism industry, the main service industry, involves with various service sectors that are directly associated with tourism-related business. Tourism has direct, indirect and induced contributions to the economic values and provides benefits for consumers at the specific time and place, also produces goods and service

\(^{24}\) The IRTS 2008, Chapter 2, para.2.39

\(^{25}\) UNSD & UNWTO Workshop, *Forms of Tourism*, (July 2006)

\(^{26}\) *Ibid.*
catering for tourists’ need. As one of the world’s largest industry relating to both direct and indirect businesses, it needs special techniques, labors, commodities to support its structure organizing and marketing management. 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.

2.1.2.1 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. Currently, the tourism industry is shifted into soft industry that has a great role in enhancement the economic growth more than other business because of its cost does not rely on other factors, but it depends on civilization of local community. Moreover, productivity of the tourism industry offering to tourist is the beauty of nature, man-made architectures, traditions and customary way of life

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27 Kanathip Thongraweewong, Kodmai Keawkub Karntongteaw [Tourism Law] (1st edn, Nititham 2015)). P.14

which are concrete and sustainable. Tourism business does not need a lot of capital, but its prosperity comes from individual satisfaction on quality of service providing. The country and communities gain benefit from this industry in many ways as states below.

(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. When one country buys something from another country it called an import, on the other hand when one country sells something to another country it is an export. Many countries battle to achieve a positive balance of payment from tourism industry by attracting tourists around the world, who are regarded as exports. When residence of a country travelling abroad, that is regarded as an import that causes foreign currency exchanging. In the tourism industry, purchasing goods and service or paying commissions to travel agency and the wages paid to employees are invisible export because it is a replacement between payment and contentment.

Tourism performance in Thailand has been in pleasant results by producing foreign currency income more than 1,000 billion baht in 2015 and taken the first place of the country’s income compared to others export industries. An increasing of foreign tourist every year also resulted to the money flows and enhanced the stability of economic system. In order to approach more income throughout tourism industry, the country has to create a strategy of attracting the tourists to local souvenirs, local food, and local service.

(2) Employment Opportunity

Tourism industry a limitless industry that needs man-service, has provides benefit on employment opportunities of both business operators, local

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30 Figure No.1
people and other industries.  

There are two types of employments in tourism industry which are direct and indirect employments. Direct employment includes all jobs that directly result from tourist expenditures. Indirect employment means to jobs resulting from the effects of the tourist expenditures. In addition, type of tourist activity influences on type and number of job originated. Labor related to primary accommodation businesses such as food, hotel and transportation has a higher demand than other tourism businesses, following by skilled and semi-skilled workers such as tour guide, local craft mans and souvenir businesses. 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.

(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. Tourism contribution is the money spent by tourists minus the purchases by the tourism sector to service these tourists. 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 business owners, local businesses, selling arts and handicrafts can make profit through their businesses called private income.

(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. As we have a unique cultural expression, Thailand is well-known among foreign to experience Thai style and perceive our long history expressing through people’s

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31 Supra note 23.
32 Supra note 1.
lifestyle, languages, foods, arts, architectures, folks, and cultures. Tourism is a stage of cultural exchange, for example, visitors may enjoy local food and culture while local may learn foreign languages and acquire a desire for fashion imported by the tourists. The tourism is a significant key showing an identity of the country. On the ground of cultural exchange, it encourages people to preserve the country's legacy inherited from the past to new generation as cultures show prosperity of the past. When that foreign cultures seem more suitable for our nation, sometimes foreign cultures are adopted by Thai people to improve our society to be universal. 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.

2.1.2.2 Tourism Industry and Foreign Investment

As tourism sector is the most important driving factor towards steady state level of economic growth of the country, quality of tourism productivity, technological progress, capital and tourism workers are the main forces behind the national achievement of tourism industry. Meanwhile, 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. 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 contributions of FDI allow

33 Sherif H. Seid, *Global Regulation of Foreign Direct Investment* (1st edn, Ashgate 2002) p.10
domestic firms to adopt the utilization of these methods to improve their domestic production performance.\textsuperscript{34}

When an individual or corporate from one country invests in assets or ownership stakes of a corporate based in another country, it is called foreign investment. It involves the transfer of tangible and intangible properties from one country into another for the purpose of their use in that country to create prosperity under the total or partial control of the assets’ owner.\textsuperscript{35} The foreign investment is a modern trend of globalization economy, where multinational firms have investments in various countries. Overall, when there is a foreign investment in one country, it is a good sign that often leads to growth of jobs and income in that country. As more foreign investment comes into a country, it can lead to the greater investments because others see the country as economic stability. The foreign investments can be classified into direct and indirect investments as summarized below.

\textbf{(1) Foreign Indirect Investment}

An indirect investment of foreign business normally occurs when companies, financial institutions and private investors purchase positions or stakes in foreign companies on a foreign stock exchange. It sometimes refers to a foreign portfolio investment (FPI), a movement of money for the purpose of buying shares in a company established in another country. The indirect investment also includes other security instruments through which capital is raised for ventures and debt instruments such as bonds.\textsuperscript{36} The investors in portfolio investment have no management power of the company where their shares of ownership in it. In addition, the portfolio investment is unprotected by the customary international law against commercial risks which the investors must be aware of.

\begin{itemize}
\item \textsuperscript{34} Albiman, Masoud Mohammed, ‘What Are the Impact of FDI to Economic Growth?’, (2014) 4 p.80
\item \textsuperscript{35} M Sornarajah, \textit{The International Law on Foreign Investment}, (2\textsuperscript{nd} edn, Cambridge University Press 2004) p.9
\item \textsuperscript{36} \textit{Supra} note 34.
\end{itemize}
(2) Foreign Direct investment (FDI)

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.\(^{37}\) The key feature of foreign direct investment is that it is an investment made that establishes either effective control of, or at least substantial influence over, the decision making of a foreign business. Foreign direct investments can be made in various ways, including the opening of a subsidiary or associate company in a foreign country, acquiring a controlling interest in an existing foreign company, or by means of a merger or joint venture with a foreign company. 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.\(^{38}\)

2.1.2.3 Promotion and Protection of Foreign Investment

Effective state intervention is assumed to be an integral part of a successful economic intervention. Public policy relating to the promotion of foreign investment and international trade plays an important role to enhance the competition between states.\(^{39}\) Among international communities, the principles of international law accept the sovereignty of state in order to safeguard the integrity of each country The role of state is determined by its territorial jurisdiction in which the


\(^{38}\) *Supra* note 17.

state has authority and function over individuals and properties within its territory.\textsuperscript{40} The evolution of international laws relating to foreign investment toward foreign business and property in the territory of state is based on customary international law, treaty, and internal law regulating the standard treatment towards the foreigners. Thus, when there is a foreign investment in the territory of state (host country), its operation must be governed by the law of the host country which is summarized below.

\textbf{(1) Admission of Investment}

The admission of investment is generally agreed by the states based on an idea that any investment creating mutual benefits between the investor and the host shall be promoted under international law. The provisions relating to the admission of foreign investment always found in the traditional bilateral investment treaties (BITs) whereby the parties undertake to promote and admit investments by investors of the other party.\textsuperscript{41} When becoming the parties of BITs, the internal law and regulation to admit the foreign investment have to be enacted in accordance with the treaties. Moreover, the investments are required to receive a permission in written form and subject to the laws of the host state.

\textbf{(2) Fair and Equitable Treatment Standard}

This principle begins with general practice of states which is the classical international law standard. It has not yet been entirely clarified the exact meaning but each state has its own normative content depending on state practice, doctrine and decisions of international tribunals.\textsuperscript{42} Fair and equitable is a flexible standard and broadly assumed under general international law that a host state is

\begin{flushleft}
\textsuperscript{40} J.G. Stark, \textit{Introduction to International Law} (10\textsuperscript{th} edn, Butterworth 1994) p.242
\textsuperscript{41} Chulalongkorn University, \textit{Negotiation of Joint Venture Agreement between Thai and Foreign Investors Guidebook}, (1\textsuperscript{st} edn, Chulalongkorn University 1992) p.96
\textsuperscript{42} F.A. Mann, \textit{Note British Treaties for the Promotion and Protection of Investment} (The British Yearbook 1981) p.243
\end{flushleft}
expected to give reasonable protection to foreigners and their property. The foreign investors are ensured to be fair and reasonable treated on the ground of equity and non-discrimination. Their rights and freedom are guaranteed by the Rule of Law in which everybody is subjected to the law. Any government action that affect to individuals’ rights and liberty is unlawful, unless it has specified by law. However, fair and equitable standard still remains problem to determine its legal term, it has an efficiency protection toward foreign business than other principles.

(3) National Treatment

National treatment, in the context of international investment, assumes that foreign investors have guaranteed by the host state to have equal treatment similarly to the nationals within its jurisdiction. The principle is always regulated in the bilateral treaty and the foreign investment promotion and protection agreement as to ensure that the rights and advantages of foreign investors are at the same standard as the nationals such as tax benefits. Most of investment treaties contain national treatment obligations to protect against discrimination on the nationality basis. Although the national treatment has influenced foreign investors,
the principle is basically recognized in the treaties that foreign investors may subject to less favorable treatment because of their status and security factor of the state.\textsuperscript{47}

(4) Most-Favored-Nation Treatment (MFN)

Normally, MFN treatment is considered as a customary way to negotiate for establishment and treatment rights for foreign investors. MFN clause in a bilateral treaty refers to a provision which a state agrees to accord the other contracting parties treatment that is no less favorable that the treatment granted for the third states.\textsuperscript{48} The MFN treatment is likely to national treatment in a context of it creates a non-discrimination obligation to nationals or individuals of other nations.\textsuperscript{49} Therefore, MFN treatment in foreign investment aspect guarantees that the standard treatment granted by the host state to the contracting state shall not less favorable than award to the foreign investors of the third state. In other word, if the third state receives any privilege rights from the host state, then such rights also accord to the contracting state. Moreover, in practical way, national treatment and MFN treatment can be regulated in the treaty and both or either of these clauses can become effective upon a decision of the contracting parties.

2.1.3 Travel Agency Business and Tour Guide

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. Various of tourism products and services are provided by the travel agency to facilitate the tourists including with tour guide, accommodation, food, insurance and other tourism services.

\begin{itemize}
\item \textsuperscript{47} Salacuse, J.W., ‘BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact of Foreign Investment in Developing Countries’, \textit{24 International Lawyer} (1990) 668
\item \textsuperscript{48} Andreas R. Ziegler, \textit{Standards of Investment Protection: Most-Favoured-Nation (MFN) Treatment}, (1\textsuperscript{st} edn, Oxford 2008) p.59
\item \textsuperscript{49} P. Acconci (eds), \textit{Most-Favoured Nation Treatment and International Law on Foreign Investment} (Forthcoming 2008)
\end{itemize}
The main purpose of travel agency business is making revenue from these tourism products and services.

Meanwhile, in providing services for both national and international tourists, the travel agency needs the tour guide to be its representative to facilitate the tourists. The identities of the country have expressed through the knowledge about history, art, culture and traditions performed by the tour guide. They also support to create a friendly relationship between foreign tourist and local community as well as a good reputation between the countries.

2.1.3.1 Definitions and Types of Travel Agency

Travel agency has been classified by ASEAN Common Competency Standards for Tourism Professionals (ACCSTP) in two categories; tour operator and travel agent.\(^{50}\)

1. **Tour Operator**

   The tour operator or tour wholesaler has been defined by International Forum of Travel and Tourism Advocates (IFTTA) as a person who arranges package tour and intermediary offers to the public. The package tour is normally comprised with of two or more services such as tour guide, accommodation entertainment, transport and travel insurance, etc.\(^{51}\) In other words, the tour operator is a business of producing and designing a package tour including with goods and services from sub-sector of tourism industry. The tour operators will quote the whole services in wholesale price and offers to other travel agencies.

2. **Travel Agency**

   Travel agency is always used interchangeably with tour retailer. It means a person who are authorized to sell the tourism products or services

\(^{50}\) ASEAN Common Competency Standards for Tourism Professionals (2012)

\(^{51}\) Legal Terms, International Forum of Travel and Tourism Advocates (IFTTA) <http://iftta.org/glossary.> accessed 30 November 2017
arranged by the tour wholesaler\textsuperscript{52} to the tourists as a middleman\textsuperscript{53}. The travel agencies may also design a package tour by their own idea and sell to the public or sell the tourism products directly to the tourist on behalf of tourism service providers in each sub-sector of tourism industry and receiving commission from these service providers.

\textbf{2.1.3.2 Types of Tourist Organized by Travel Agency}

There are various types of tourist classified by different characteristics of traveler. When we talk about travel agency classified by travel style, there are individual traveler and group travelers.

\textbf{(1) Foreign Individual Tourist (FIT)}

FITs are now commonly described by a fully independent traveler or tourist. Sometimes, the term FIT means to free independent traveler, frequent independent traveler, and foreign independent traveler.\textsuperscript{54} They always travel solo, couples, or small intimate groups of friends or family as well as design their own itineraries and arrange their own travel plan, unlike group tours with any imposed schedule. Generally, FITs have above-average incomes and ability of purchasing to allow their independent travel desire, which the travel cost is more expensive than traveling on a package tour. The route of FITs avoids mass tourism in favor of an independent approach to explore their chosen destinations on their own and at their own pace with an emphasis on enjoying the local food, architecture, history, tradition and culture. Recently, FITs are now popular in tourism market resulted from the rise of using internet for every aspect of travel planning. But sometimes FITs may consult with travel professionals who are experienced in providing services for own trips and more exotic destinations.

\textsuperscript{52} \textit{Supra} note 27. p.177

\textsuperscript{53} Ginger Todd and Susan Rice, \textit{Travel perspective: A guide to becoming a travel professional} (1\textsuperscript{st} edn, Delmar Thomson Learning, 2003), p.6-7

\textsuperscript{54} นิศศา ศิลปะเสรฐ, อุตสาหกรรมการท่องเที่ยว (พิมพ์ครั้งที่ 7, ส้านักพิมพ์แห่งจุฬาลงกรณ์มหาวิทยาลัย 2560) หน้า 262 (Nissa Silpaseth, Udsahagum Karn Tongteaw [Tourism Industry] (7\textsuperscript{th} edn, Chulalongkorn University 2017)). p.262
(2) Group Inclusive Tourist (GIT)

GITs practically refer to the tourists travelling in a group of at least 5 people. The program tour is arranged by tour operator in a package and sell to the tourists. Normally, an average of one group is about 20-30 tourists, and the tour operator provides vehicles, hotels, restaurants, attractions, and travel itineraries for the group tour and advertise the price for customers who are interested in buying a tour package, which can be called a comprehensive tour.

Figure 2.1 FIT and GIT Routes

2.1.3.3 Definitions of Tour Guide

Tour guide is always defined as a person who regularly provides services in guiding tourists to various places by performing knowledge in relation with recommendation and various kind of knowledge for the tourists. It is also explained by other professors as shown below.

55 Ibid. p.263
A person who perform services including guiding, giving knowledge and facilitating the tourists to places within a period of time.\textsuperscript{56}

A person who indicates tourism path and perform knowledge behind tourist attractions to the visitors.\textsuperscript{57}

Table 2.1 Numbers of Tour Guide in Thailand in Thailand Collected by DOT\textsuperscript{58} (Updated November 2017)

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Tour Guide</td>
<td>46,031</td>
</tr>
<tr>
<td>Specific Area Tour Guide</td>
<td>21,241</td>
</tr>
<tr>
<td>Total</td>
<td>67,272</td>
</tr>
</tbody>
</table>

Table 2.2 Numbers of Tour Guide in Thailand Collected by DOT\textsuperscript{59} (Updated November 2017)

<table>
<thead>
<tr>
<th>Language</th>
<th>Amount</th>
<th>Language</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>English</td>
<td>50,645</td>
<td>Vietnamese</td>
<td>189</td>
</tr>
<tr>
<td>Chinese (Mandarin)</td>
<td>9,823</td>
<td>Swedish</td>
<td>81</td>
</tr>
<tr>
<td>Japanese</td>
<td>6,692</td>
<td>Arabic</td>
<td>66</td>
</tr>
<tr>
<td>French</td>
<td>2,329</td>
<td>Danish</td>
<td>39</td>
</tr>
<tr>
<td>Thai</td>
<td>1,261</td>
<td>India</td>
<td>30</td>
</tr>
<tr>
<td>Korean</td>
<td>1,168</td>
<td>Burmese</td>
<td>29</td>
</tr>
</tbody>
</table>

\textsuperscript{56} Marc Mancini, \textit{Conducting Tours: A Practical Guide} (3\textsuperscript{rd} edn, Thomson Learning 2000) p.4
\textsuperscript{57} กุลวรา สุวรรณพิมล, หลักการมัคคุเทศก์ (พิมพ์ครั้งที่ 3, แสงดาว 2556) หน้า 74 (Kulwara Suwanpimol, Lak Kam Makkuted [Principle of Tour Guide] (3\textsuperscript{rd} edn, Sangdao 2014)). p.74
\textsuperscript{58} Department of Tourism, Statistics Review 2017 <http://www.tourism.go.th accessed 30 November 2017> Accessed 14 February 2018
\textsuperscript{59} Ibid.
2.1.3.4 Types of Tour Guide

(1) On-Site Guide

It refers a special tour guide who can guide tourists only in the limited tourist attractions and period of time, such as guided tours in the museum, historical and archaeological sites. Working model of the on-site guide is likely to volunteering that may not receive any payout.

(2) City Guide

The city guide must be qualified by law of the country and certified legal license by the government official. Commonly, the city guide is knowledgeable about backgrounds and history of tourist destinations or cities. A relationship between the tour operator and the city guide is governed by an agreement that the tour guides will receive payment during working period.

2.1.3.5 Importance of Tour Guide

Being the tour operator’s representative to facilitate the tourists is the main responsible of the tour guide. Apart from guiding tourists to various places, the professional tour guide is also a beneficial tool of the tour operator to promote and strengthen the tourists’ confidence toward their businesses. Because of any inconvenience service may occur at any time during travel, the tour guide is a
problem solver for the tour operator in dealing with the facing problem among the tourists and other tourism business entrepreneurs. Likewise, they also help the tour operator build up a good relationship between other service providers such as accommodations, restaurants and souvenir shops.

The tour guide is the first travel facilitator since the tourists’ arrival until their departure. Any inconvenience during the trip become easier because of an assistance of the tour guide. As the tourists’ personal assistance, they are source of information of various tourist attractions and being knowledge provider about history, religious, culture, traditions and other inquiries required by the tourists. The tour guide helps to reduce any tourism risks toward the tourists during travelling such as missing, information misunderstanding and scamming. Besides, travelling with the tour guide is more comfortable because safety is always ensured to the tourist, especially in risky area. They also help the tourist to spend with reasonable goods and services.

Moreover, tourism sites deterioration problem at present comes from improper behaviors of some group of tourists causing long-term damage to the country that the tour guides are required to solve this problem with the government officers. To maintain condition of tourist attractions and surrounding areas, travel instructions for each type of tourism sites needs to be informed to the tourists. The tour guide are key mechanisms to notify the tourists how to protect historical and man-made tourism sites as well as to preserve natural tourism sites. In addition, the tour guides help to promote many unpublicized beautiful tourist attractions are beyond the reach in to the eyes of visitors.

2.2 Problem of Zero-Dollar Tour

2.2.1 Characteristic of Zero-Dollar Tour

By an expansion of Chinese tourism market in Thailand, Chinese tourists are now accounted for 27 percent of all foreign travelers. There are 120 million Chinese people travelling abroad each year compared to the total of 1,300 million people in China, whereas 40 million people travel with the tour operators and the rest
are individual travelers.\textsuperscript{60} The estimated length of stay remains for one week with their spending around 30,000 - 40,000 THB (US$1,000 - 1,300) per person, per trip.\textsuperscript{61} Normally, an average spending of each Chinese tourist is approximately 6,400 THB (US$180) per day, which is more than other visitors’ average spending of 5,690 THB (US$160) per day. From my working experience with the tourists from China, they always travel in groups (not exceeding 30 people) more than individual travelling, because of their difficulties in many ways including language and cultural diversity. The strong advantage of Chinese group tour is the high potential spending on goods and services in large amount.

When the most of tourists and the highest spending in tourism market come from China, it causes the unfair business practices toward the Chinese travelers. Some of tourism business entrepreneurs performed misconduct on the business practices with the purpose to exclusively control the Chinese tourism market with their business network. This is called “Zero-Dollar Tour”, “Zero-Tour Fare”\textsuperscript{62} which is one type of low-quality tour.\textsuperscript{63} Phenomenon of Zero Dollar Tour mostly exists

\textsuperscript{60} ด้านธัษฎ์ พงษ์พัชรเทพ, ‘มือถือเครื่องเดียวเที่ยวทั่วไทย’ (BLT, 30 พฤศจิกายน 2559) <http://www.bltbangkok.com/ article/info/3/5> accessed 6 December 2016 (Danaithan Phongpatchrathornthep, ‘Mue Tue Kruang Deaw Teaw Tua Thai’ [Traveling over Thailand with a mobile phone], (BLT, 30 November 2016)

\textsuperscript{61} Wanwisa Ngamsangchaikit, ‘Chinese spend more in Thailand’ TTR Weekly (Bangkok 3 June 2013)

\textsuperscript{62} ทีมเศรษฐกิจ, ‘เปิดโปงภัยร้าย ‘ทัวร์ศูนย์เหรียญ’ บั่นทอนกองท่องไทย’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)).

\textsuperscript{63} Low-quality tour refers to a package tour with poor service that normally sell to tourists at very low price or price lower than cost. The term low-quality tour includes zero-dollar tour and kick-back tour that provides substandard tourism services and unfair conditions towards tourists.
among Chinese inbound tourists who travel with group tour to several destinations in Thailand such as Bangkok, Pattaya, Phuket and Chiang Mai since 1980’s. The tourists are tricked to buy cheap package tour in their country, but their expenses become greater upon arrival in Thailand. 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. Somehow, the other low-quality tour called “Kick Back Tour” is also happened when Thai tour operator is willing to pay for numbers of tourists to the Chinese tour operator instead of selling package tour to them. 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.

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. On the other hand, it results negative impacts toward our tourism industry. Most of the money generated by this type of business falls into the hands of foreign tour operators rather than Thai tourism industry. There is around 305 billion THB was annually generated by zero-dollar tour business. The chart below shows the operations of Zero-Dollar Tour.

Figure 2.2 Modus Operandi of Zero-Dollar Tour (Updated October 2017)
2.2.2 Factors of Zero-Dollar Tour

From my working experience in tourism field, the factors of zero-dollar tour can be classified into four categories as explained below.

2.2.2.1 Tour Operator

In the vicious Zero-Dollar Tour, two types of tour operators mentioned in the chart are tour operator in China who operates outbound tour (outbound tour operator) and Thai tour operator who receives inbound tourists (inbound tour operator). Normally, many inbound tour operators in Thailand usually offer their package tour prices to the outbound tour operators in China to select the best offer that they could make profit from selling the package tour in China. Unlike the Zero-Dollar Tour, the inbound tour operator will negotiate with the outbound tour operator for number of group tours through selling package tours in very low price from which the outbound tour operator can gain more profit. Sometimes, the offer price touches down to zero dollar that the outbound tour operator could receive numerous profits without any expense. This deal encourages the outbound tour operator to transfer a great number of tourists to the inbound tour operator in Thailand, and it is the beginning of the process called Zero-Dollar Tour. At the same time, the inbound tour operator will arrange the program tour by contacting their network business entrepreneurs, hotels, and restaurants in order to take the tourists to spend money in these places where they can share profits with the tour operator.

2.2.2.2 Tour Guide

Tour guide is involved with the Zero-Dollar Tour as they are influenced by tour operator to lead group tour in consideration of extra commission separated from the regular wages. The extra commission for the tour guide bases on the basis of the tourists’ spending at the checkpoints. When the number of Chinese tourists is increased, the tour operator will reduce its cost by hiring non-licensed tour guide with Chinese speaking skill to lead the group tour instead of using authorized tour guide with license. The tour operator believes that the unauthorized tour guide who speaks the same language with tourists can persuade the Chinese tourists to spend their large amount of money at the checkpoints. Sometimes, when the tour
guide who provides service for the group tour get unpaid, he uses tactics to take advantage from the tourists in many ways, for examples, creating false history, tradition, information of tourist attractions and deception in faith to sell charm or amulet in very high price to the tourists. Some tourists also face with the fraud on the product original, quality of goods and service, and sometimes, are forced to buy optional tours other than package tour. If the tourists reject to do so, they will be served by uncomfortable trip with inappropriate services such as locking the bus door so that the tourists cannot get off, closing air conditioner inside the bus, not giving the room key card, and not taking to the restaurant. The activities as mentioned above are illegal offence, and also affect the economic stability and tourism image of the country.

2.2.2.3 Bus Company

As the travel needs transportation, all kinds of transportation are the most influence service to fulfil convenience for group tours and support the program tours. Mostly, the tour operators always contact the bus rental company to be their agents in rendering this service as this is the high cost business, and not all of tour operators have their own buses. Once the bus is rented, the driver has to strictly follow the program without taking the tourists to other places. In addition, the service’s fees are normally included in the package tour, and the tourists are not required to pay for any extra amount. The bus company may involve in the zero-dollar tour when the bus drivers are induced to receive extra commission from shop owners if they take the tourists to their places for spending. However, several cases show that these shops are owned by the bus company themselves who play the greatest role in zero-dollar tour process. They will make a deal with the tour operators to render free rental bus service if the tour operators allow them to take group tours to their stores for shopping. They avoid bringing group tours to local shops and convenience stores for shopping with the purpose to keep the tourists away from spending in other places. Likewise, if the locals want the buses to stop over, they have to pay service fee to the bus company.
2.2.2.4 Tourist Checkpoint

As mentioned in the previous paragraph about the negotiation between the tour operators and the business entrepreneurs to control the tourist spending within the business network or technical term called “tourist checkpoint”, the tour operators will prepare a list of the tourist checkpoints where the group tours have to visit including jewelry shop, leather product shop, herbal shop, souvenir shop, religious sites, bus company, hotel and restaurant. The tourists are directly put into the route of Zero-Dollar Tour program as soon as they arrive at the airport, also taken to all checkpoints during their trip where Thai people are not allowed to go inside. To limit the tourists spending within their business network where the prices of goods and services are much higher than market price, the poor tourists are not allowed to visit tourist sites and shopping center other than the program tour. When the tourists make purchases, these network shops shall give 30 - 70% of the profit in return to the inbound tour operators depending on the tourists’ spending amounts.

2.3 Characteristic of Use of a Thai National as a Nominee in Foreign-owned Travel Agency Business

Travel agency or tour operator, the important player in tourism industry as designers of travel experiences, contribute the vibrancy of Thailand’s economy, provide good jobs for nationals, and deliver memorable experiences to visitors and locals. The tour operator, as a part of tourism industry, by nature is a travel intermediary who provides service for tourists while travelling. Recently, the travel industry has been evolving with rapid technological growth and changes in consumer travel habits. The majority of tourists have self-travel behavior, which usually travel with the utilization of internet and mobile application. However, there is a great amount of tourist who need tour operators to facilitate their travel services to various tourist destinations inside and outside the country. The behavior of travelling by tour

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64 Tourist Police Bureau, Zero-Dollar Tour Report (2017)
operator’s service is involved with various service providers under package tour contract with a special character; that is, the tourists or consumers have to make a payment in advance. The country, therefore, should raise up awareness of tourism promotions and the high-quality tourist attractions in order to maintain benefit for every parties involved in tourism industry.

Foreigners can own a firm and enter into various types of business transactions through Thai agents, including nominees holding under agreement and receiving rights by marital status. The purposes of marriage with Thai national to evade the law are to obtain the rights in possession of properties and to apply some types of business registration in Thailand. Mostly, the foreign affiliates who have foreign customers in Thailand have registered their firms representing by Thai nominees as Thai juristic person in order to have the right to buy lands and properties. In practice, these firms operated by foreign owners have entrepreneurs and lawyers in charge of facilitating their business structure and background. Such transactions have resulted in economic impacts in both positive and negative ways. Moreover, it affects the security, society, and culture of the country. It also has an indirect effect on increasing the state budgetary used for the entry of the foreign businesses. Tourism sector is also one of attractive markets for the foreign investors, but there are some limitations for them to operate tourism business in Thailand. Thus, using nominee is the way to avoid the law of their business establishment.

Other than being the famous destination for travelers, Thailand is also 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.\textsuperscript{66} 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. Recently, the total travel agencies registered in Thailand are 12,391, whereas 347 of them are associated with Chinese travel agencies,\textsuperscript{67} who may involve with the zero-dollar tour. 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 Chinese inbound tourism markets.

Causation of this problem comes up with an intention to control the payment of GITs 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 GITs are taken to visit for purchasing goods or services. As a result, the income from GITs at these checkpoints directly goes to the foreign agencies, rather than contributes to Thai local tourist businesses. The chart below shows how nominees involve in tourism businesses.

\begin{center}
\includegraphics[width=\textwidth]{chart.png}
\end{center}


\textsuperscript{67} Pol.Col.Surasak Surinkeaw PCS(2017)
The word “nominee” is generally defined as a person or entity who is named or designated to act for another. Likewise, in legal term, it refers to a person who bares legal title for the benefit of others or holds the position as a successor to other’s rights, and receive benefits in return under a contract or agreement. In legal context, according to Black’s Law Dictionary, nominee is defined as “a person designated to act in place of another, usu. in a very limited way” and as “a party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.” as well as a person who is proposed for an office, membership, award, or like title or status.”

Saruenee Arachawanuntakul explained nominee as a person or entity holding shares or securities of other persons who are actual shareholders, being the beneficial owner of the securities. The purpose of using nominee can be shown in good and bad intentions of both parties. By using nominees in good faith, its purpose will not avoid the law, such as the convenience of shares trading in the same family in order to keep trade secret. Foreign investors also use nominees in a good faith for

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68 Dictionary of Economic and Business Terms (5th Edition), Jack P. Friedman, Barron’s.
the convenience and flexibility of portfolio management. Unlike the intention in good faith, the bad intention is to avoid the law for some reasons such as disguising the actual shareholder, stock speculating and money laundering.69

Nominee shareholder is also explained by some scholars as a person who is not an actual owner, registers as the legitimate owner of shares in a company’s shareholder list on behalf of the ultimate shareholder under a contract or agreement. The actual shareholder or ultimate shareholder’s name will not be declared on the company’s shareholders list or any documents announced to the public.70

Whether nominee shareholders appear in the operation of many businesses in Thailand, it cannot be concluded that this activity violates the law and morality. To justify the use of nominee shareholder, the facts and objectives must be considered. In fact, the suspicious transaction examination and law enforcement methods are sensitive matters and limited in practices. It is difficult to be implemented by enforcing common measures to control such complex transactions made through the nominee shareholders. This issue has become a fundamental problem related to economy, society, and security that cannot be resolved tangibly. The objectives of nominee shareholder can be made in good faith and bad faith that are classified below.

2.3.1 Using Nominee Shareholder with Good Faith

The use of nominee shareholders with good faith can happen from several reasons concerning law and business management reasons. According to the company law of Thailand, establishing a company needs 3 persons to complete the qualification required by law without any limitations about nationalities.71 The first business reason caused by the purpose to raise capital promote capital market

71 Civil and commercial code of Thailand B.E.2559 (2016) Section 1110
investment. Secondly, to keep trade secret and investment methods of the expert investors who are followed by other trade competitors, the nominees are used with good intention to protect their business benefit. Lastly, the nominee shareholders are found in personal funds, which sometimes lack of skillful investors, and needs the specialists to take care of their investment in order to reduce risks and gain profit.

2.3.2 Using Nominee Shareholder with Bad Faith

In general, using nominee shareholders with bad faith refers to an activity of a person with his intention to conceal the actual shareholder who may not qualified by law to hold property rights, and the agent agrees to pay benefit in return to the nominee shareholders. Nominee is always found when the foreign business attempts to register for some business types reserved for Thai nationals, for examples, newspaper, tourism and radio broadcasting, and the businesses that are not permitted for the foreigners.

2.4 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. 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. Some travel agencies decide to take a risk by hiring illegal tour 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.

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72 Om Jotikasthira, ‘Tour guides: ‘Savage’ foreign criminals steal our jobs’ Bangkok Post (Bangkok, 10 July 2017)

73 Ibid.
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

2.5 Conclusions

Thailand has one of the most developed tourism markets in Asia. Tourism industry, known as the largest source of the country’s income, composes of variety of tourism-related businesses that create employment opportunities to local people in both public and private sectors. The development of tourism industry has led to an improvement of infrastructure within the country and well-being standard of the nationals. The country recently welcomed more than 32 million international visitors and it is expected to be a prime tourist location in the coming years. Not only the attractive tourist spots, but the business opportunities in tourism sector are also interesting. Travel agency business, a sub-sector in tourism business plays an important role of providing tourism services and products for both national and foreign visitors, but only Thai people can operate travel agency business in Thailand. In many developed countries where tourism market is a source of their income, the rights of foreign investors to establish the travel agency business are guaranteed by laws. They believe that new technology will be transferred to the people, whereas scale of employment and income of local people will be increased.
Unlike in Thailand tourism industry where the phenomenon of zero-dollar tour is existing and tends to increase the use of Thai nominees of foreign business entrepreneurs who are involved in tourism industry, especially in travel agency business. Because Thai laws are not facilitated the foreign investors to the establish travel agency business in Thailand where this business is limited for Thai nationals, the illegal activities avoid the laws are committed by hiring Thai people or using of Thai identification number to register a travel agency business license. The situation of zero-dollar tour also reflects to the problem of old-fashioned tourism law of Thailand that the transportation provider who is a direct supporter to furnish the purpose of tourism and fulfil an enjoyment of the tourist, is not included in the scope of travel agency business. In practice, the bus company is the most powerful party in arranging a package tour for tourists because it has bargaining power towards the travel agency. The study also found that sometimes, the bus companies themselves have committed with the zero-dollar tour activity by monopolizing the travel agency to create the package tour to the specific shopping places where are under an operate of their companies. The tourists and tourism industry would not be fully protected, if there is any damages or fraudulent causing by these transportation providers. The problem of use of illegal tour guide is also resulted from zero-dollar tour when the law restriction on this career for Thai nationals but the travel agency wants to reduce the tour guide payment by hiring Chinese people without tour guide license. The authorized tour guide who are able to communicate Chinese request for the unreasonable payment, whereas Thai tour guide who are able to communicate Chinese request for the unreasonable payment, whereas the illegal tour guide can be paid with the low-rate.

In my opinion, raising opportunities for the foreigners to participate in travel agency business and being tour guide in Thailand would be a good signal towards our country. The improvement of tourism law in accordance with the current tourism situation would also benefit to every parties involved in tourism industry.
CHAPTER 3
SOLUTIONS TO PROBLEMS OF TRAVEL AGENCY BUSINESS
AND TOUR GUIDE IN FOREIGN LAWS

This chapter aims to study foreign laws in order to obtain the better solutions to solve the current problems in Thailand’s tourism industry. The study focuses on tourism law in China and South Korea where the laws are effective to apply with their tourism industry. The tourism industry of these countries is 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. However, both countries have similar legislative platform that concern on the protection of right and legal benefit of tourists. In addition, these countries encourage foreigner to participate in tourism-related business based on principle of liberalization. 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.

3.1 Chinese Laws

Due to the development of tourism industry and foreign investment in tourism business in China, tourism laws and regulations have been issued to guarantee the lawful rights of tourist and tourism business operated by foreign entity. Catalogue of Industries for Guiding Foreign Investment are the laws governing on foreign investment. Besides, Regulation on Travel Agencies and Detailed Rules for the Implementation of the Regulation on Travel Agencies and are special formulated for the purposes of strengthening administration of travel agencies, tour guide, ensuring the legitimate interests of tourists and travel agencies in order to create the healthy development of tourism sphere. In the aspects of protection legitimate rights of tourists, regulation the order of tourism market and reasonably utilization of tourism resource, Tourism Law of the People’s Republic of China is a special law governing on
these matters in order to promote sustainable tourism development. The tourism law and Regulations on Administration of Tour Guides also regulates on the relevant characteristic and standard performance of tour guide, one of an influence figure in tourism industry.

3.1.1 Foreign Travel Agency Business and Investment in China

According to Catalogue of Industries for Guiding Foreign Investment together with the Law of Foreign-Funded Enterprise are the key mechanisms that allow foreign direct investment in China. It was revised by the National Development and Reform Commission (NDRC) and the Ministry of Commerce of China which became effective on July 28, 2017 (the 2017 Catalogue). Foreign investment was classified into three categories: Catalogue of Encouraged Foreign Investment Industries, Catalogue of Restricted Foreign Investment Industries and Catalogue of Prohibited Foreign Investment Industries including restrictions on investment forms and shareholding proportion. Any foreign businesses that are not listed in these FDI Catalogues are permitted for the foreign investment including investment in tourism business as a tour operator.

Besides, with an aim to promote the development of China's national economy, Law of People's Republic of China on Foreign-funded Enterprise revised in 2014 allows foreign investors to set up foreign-funded enterprises in two options. The foreign investors can engage in a project proposed by enterprises or institutions within China or they may propose investment projects by themselves. In term of foreign-funded enterprise, it means to any foreign enterprises, foreign economic organizations and individuals with their own capital. However, the foreign-funded enterprise does not include any business branches set up in China by foreign companies and other foreign economic organizations.74

74 Law of the People's Republic of China on Foreign-funded Enterprises 2007 Article 2
3.1.1.1 Types of Foreign-Owned Travel Agency Business in China

The foreigners can engage in the entry travel agency business but they are not allowed to establish branches of travel agencies. The regulations also limit the foreign investor to operate domestic travel or inbound travel business, whereas outbound tourism relating to going abroad of Chinese citizens is not permitted for the foreigner. The features of outbound tourism include taking Chinese people form the mainland of China to Hong Kong, Macau and Taiwan. When the foreign investors decide to operate their own project, they can apply for the wholly foreign-owned travel agency. If they choose to propose the business by becoming partners of the existing travel company with Chinese partner, the country allows them to operate joint venture travel company in two forms that are Chinese-foreign equity joint venture and Chinese-foreign cooperative joint venture. To apply for an establishment of domestic and inbound tourism business, they are required to have registered capital not less than RMB300,000 (1,500,000 baht) with a travel business license granted from the administration in the area of business located. The types of travel agency business that the foreigner can invest are summarized below.

(a) Wholly Foreign Owned Enterprise (WFOE)

An enterprise with limited liability that its registered capital is solely contributed by foreign investor including a foreign company, individual or companies. This type of enterprise does not include any branches established in China by foreign enterprises and other foreign economic organizations. The term branches included the representative offices which are not generally engaged in direct activities of the business and the branch companies engaged in operational activities. When WFOE generates income, it has to pay tax to the Chinese Government but its profit can be repatriate back to the investor’s home country.

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75 Regulations on Travel Agencies 2009 Article 23
76 Regulations on Travel Agencies 2009 Article 21
77 Regulations on Travel Agencies 2009 Article 7
(b) Chinese-Foreign Equity Joint Venture (EJV)

An enterprise with limited liability jointly established between foreign individuals, companies, or other economic bodies and Chinese economic bodies for the purpose of sharing risk in proportion of the registered capita. Each party agrees to share profits and losses in equal proportion to their respective contributions. The equity joint venture business model requires foreign investors to invest at least 25% of the registered capital and the investment can be currency, buildings, industrial property or equipment. The entity is considered a Chinese legal entity and must abide by Chinese laws after the registration. The enterprise is allowed to employ Chinese labors without any government’s intervention as well as it is able to purchase land and build their own offices. Especially, the benefits granted from this type of foreign have substantial and lawful reduction of various fiscal charges, as well as dividends received can be transferred out of the country.

(c) Chinese-Foreign Cooperative Joint Venture (CJV)

An enterprise established in China under a cooperative joint venture agreement between foreign individuals, companies, or other economic bodies and Chinese economic bodies. The rights and obligations of parties involved in cooperative joint venture including distribution, investments, operations and sharing proportion of risks and profits are relied on the cooperative contract terms signed at the beginning of investment. According to this business model, Chinese partner usually provides labor, facilities, land and buildings, whereas the necessary technology, key equipment and capital are furnished by the foreign partner. The characteristic of this business type is more flexible than the equity joint venture in which the cooperative venture contract terms may agree and renew upon the consent of the parties involved and examine by the approval authorities. Additionally, the Chinese party is stipulated to be an owner of all assets once the date of expiry is reached while the foreign investor is also permitted to withdraw their registered capital from the cooperative venture during the period of the cooperative venture contract.
3.1.1.2 Requirements for Travel Agency Business Establishment

(1) Foreign Party

All types of individual foreign investor or enterprise who involved in travel agency business in China is abided by Chinese laws and relating tourism regulations. Once the foreign investors engage in a travel agency or enterprise, the main purpose of the travel agency must be undertaking tourists. Prior to an establishing the travel agency in China, the foreigner has to be a member of tourism association within the home country with a good international credit and having advanced management experience of travel agencies. Additionally, it needs a reliable performance represented through the total annual turnover amount of each type of investment as required by Chinese laws to meet the standard as followings.

(a) A wholly foreign-owned travel agency based in the mainland of China is required to have annual revenue not less than US$500 million.

(b) A Chinese-foreign equity joint venture and a Sino-foreign cooperative joint venture based in the mainland of China is required to have annual revenue not less than US$40 million.

(c) A wholly foreign-owned travel agency based in Hong Kong and Macao is required to have annual revenue not less than US$25 million.

(d) A Chinese-foreign equity joint venture based in Hong Kong and Macao is required to have annual revenue not less than US$12 million.

(2) Chinese Party

The laws also impose on Chinese individual or enterprise who becomes a party in joint venture travel agency that must be established under Chinese law. The Chinese party must have a good background on its performance according to the standard of law in the past three years. Besides, they have to meet the prudence requirements and the requirements for special industry as specified by the competent tourism administration department of the State Council.

(3) Travel Agency Business Application Requirement

As operating travel agency in China does not a restriction business for the foreigner, Detailed Rules for the Implementation of the Regulation on
Travel Agencies is governing law for the establishment of the travel agency. The Detailed Rules requires the new coming travel business to meet the qualification and submit all documentary needed to the tourism administrative department of each area where the business is located, normally at the provincial level. The require documents are as the following:

(a) An application for establishment of travel agency covering in English name and Chinese abbreviation, address of the office, full name of the applicant and department accepting the application, form of enterprise, name of the Application, time of application, contributors and amount and ways of contribution;
(b) Resume and identity certification of the legal representative;
(c) Articles of association
(d) Capital verification certification issued by a capital verification institution established according to law;
(e) Certification of the business place;
(f) Certification of description of business facilities and equipment; and
(g) A notice on pre-approval of enterprise name issued by the administrative for industry and commerce.

3.1.1.3 Scope of Travel Agency in Chinese Law

The most important matter in the provision of tourism laws is the scope of technical terms used in tourism industry that may be difference in each country. The various of technical term in each country refer to the objectives of law and relating matters that the laws want to protect. The term “tour operator” or “travel agency” are similar business character of arranging tourism activities and facilitating for tourist, but it has broader scope in Chinese laws.

Definition of “travel agency” appears in the Regulation of Travel Agencies as the business entities involving in soliciting, organizing and receiving

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78 Detailed Rules for the Implementation of the Regulation on Travel Agencies 2009 Article 8
tourists, providing tourism services and conducting domestic travel business, inbound travel business or outbound travel business.\textsuperscript{79} The relevant tourism services provided for tourists when soliciting, organizing and receiving tourists also refer to the following activities:

(a) Arranging transportation service;
(b) Arranging accommodation service;
(c) Arranging catering services;
(d) Arranging tourism activities including sightseeing, leisure vacation and other services;
(e) Providing tour guide service or team leader; and
(f) Providing tourism consultant service and tourism activities design.

The following tourism services may entrust to the travel agency to responsible for:

(a) Booking tickets, accommodation and applying for the formalities for entry, exit, visa, etc. of the out bound travel business on behalf of tourists;
(b) Handling transportation, accommodation, catering, conference and other matters for business trip, conference, exhibition, study tours and other official activities on behalf of organs, public institutions and social group;
(c) Handling transportation, accommodation, catering, sightseeing, leisure vacation, conferences and other matters of business activities, incentive travel, etc. on behalf of an enterprise; and
(d) Other tourism services.

\textbf{3.1.2 Laws and Regulations on Low-quality Tour in China}

According to the perspective of the laws, Chinese government has obligations to improve all kinds of public tourism services, create a pleasure tourism

\textsuperscript{79} Regulations on Travel Agencies 2009 Article 2
atmosphere and fulfill enjoyment toward tourist activities. When zero-dollar tour or low-quality tour exists in the tourism industry, it presents an unusual of tourism route and substandard touring features. For instance, the tourists may threaten to do shopping in particular places where the price of goods and product are unreasonable high because of the profit gained has to allocate to the tour guide. Sometime the tourists may feel uncomfortable because the tour guide forces them to pay for optional services that have never shown in the program. Since the low-quality tour became the top issue causing unfavorable effects toward Chinese tourism industry over decades, the issue was placed priority by the government and relevant tourism authorities in China to resolve. The Regulations on Travel Agencies and Tourism Law of the People’s Republic of China are enacted to oversee these problematic matters.

3.1.2.1 Pricing Control

The legal measure controlling on the price of package tour has stipulated in Chinese Tourism Laws in order to prevent an appearance of low-quality tour that any behavior of soliciting tourists to buy a package tour at the price lower than its cost of travel agency is prohibited. Apart from the services providing in the travel contract, the travel agencies are not allowed to solicit the tourists for other services payment without their consent.\textsuperscript{80}

Additionally, the travel agencies are prohibited from luring tourists with unreasonable low-price tourism activities, or receiving illegal benefit such as rebates or commission by arranging shopping or any services that requires additional payment. Moreover, any circumstance of arranging the tourists to shop in specific places or providing tourism services with extra payment are forbidden, unless both parties have agreed upon this condition.

3.1.2.2 Quality Control

Apart from pricing control, quality of tourism products and services are the other important issues concerning the tourists’ rights that Chinese government is bound to protect. When a tourism contract exists, the information

\textsuperscript{80} Regulations on Travel Agencies 2009 Article 27
created by the travel agencies in tourism contract for the purpose of attracting and organizing the tourist must be correct and accurate81, whereby the travel agencies have obligations to fulfill the conditions indicated in the contract. Any additional tour schedules altered from the contract by the travel agency are prohibited, as well as the conducts of cheat or threat the tourists.82 The alternative itinerary may arise in case of the occurring of force majeure. In addition, the travel agencies and their employees are prohibited from arranging visits or taking part in any program or activity that violates to the laws, regulations and social ethics of China.83

Likewise, the travel agencies and tour guides are required to ensure safety and security for the tourists by conducting authentic explanations and explicit warnings for any dangers toward life, body and property of the tourists during the travelling. The necessary safety measures must be adopted by both of travel agencies and tour guides to guarantee for the tourists’ safety,84 as well as the tourism products and services must be qualified85 in order to maintain practical standards of the travel agencies and other tourism service providers.

Moreover, the travel agencies are required to employ tour guide or tour lead with certification prescribed by Chinese authority to facilitate the tourists86 and the duties sated in the above paragraph must be followed at all time during the trip.

3.1.2.3 Contract Termination and Liability of Travel Agency

In case of any violations to the law, the tourists have their legitimate right to terminate the contract and require the travel agency for returning

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81 Tourism Law of the People’s Republic of China 2015 Article 32
82 Regulations on Travel Agencies 2009 and Article 69 Tourism Law of the People’s Republic of China 2015 Article 33
83 Tourism Law of the People’s Republic of China 2015 Article 33
84 Regulations on Travel Agencies 2009 Article 39
85 Tourism Law of the People’s Republic of China 2015 Article 34
86 Tourism Law of the People’s Republic of China 2015 Article 36
their purchases and paying the returned purchases in advance, or refund the payment within 30 days from the end of vacation.  

The travel agency has to responsible for any breach of tourism contract, if it fails to perform the contract obligations or perform its contracted obligations in a way that does not conform to the agreement. For instance, continuing to fulfill the contract, adopting remedy measures, making compensation, etc. are the responsibilities that may be taken into account of the travel agencies. The travel agency is liable for any damages toward or property of the tourists caused from the breach of contract. In the situation that the travel agency has ability to carry on its obligations according to the contract but it refuses to perform even the tourists request, and it causes to serious consequences like harming the tourists’ personal health or retaining the tourists, they may request the travel agency to compensate damages. On the other hand, the travel agency has no liability if personal damage or property loss occurred from the tourists themselves. Additionally, the travel agency has to responsible for any personal damage or property loss caused to the tourists in free time because of the travel agency fails to perform its obligation of giving appropriate safety warnings or offering assistance. Eventually, the travel agency’s business license may be revoked, if it conducts any operation that violate to tourism law and relevant regulations and such activities cause severe effect to the tourists and tourism industry.

3.1.3 Laws and Regulations on Tour Guide in China

To establish a tour operator or travel agency, a tourism authority must follow Tourism Law of the People’s Republic of China 2015 revised by China National Tourism Association (CNTA). In the tourism operation, the travel agency shall meet the requirements by the law which the tour guide is one of tourism services that

87 Tourism Law of the People’s Republic of China 2015 Article 35
88 Tourism Law of the People’s Republic of China 2015 Article 70
the tour operator must provide for tourist.89 When the travel agency organizing outbound tourism groups or organizing and receiving inbound tourism groups, shall send a tour lead or tour guide for the group.90

3.1.3.1 Qualification and Requirement of Tour Guide

For the requirements for the tour guide must be complied with is to complete the qualification of tour guide, passing the test and signing a labor contract with the travel agency or registered in relevant tourism organizations may apply for a tour guide certificate.91 The tour guide certificate can be granted for any citizen of the People's Republic of China, who has an academic degree conferred by a high school, a secondary specialized school or higher, is in good health, and possesses basic knowledge and language skills catering to the needs of tour-guiding, may take part in the examination for tour guide qualification; those who have passed the examination shall be issued a Tour Guide Qualification Certificate by the tourism administration department of the State Council or the tourism administration departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government delegated by the tourism administration department of the State Council.92 In addition, anyone who possesses the language skills of a special language but has not obtained a Tour Guide Certification Certificate, if a travel agency needs to employ him to temporarily conduct tour-guiding activities, the travel agency shall apply to the tourism administration departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government for obtaining a Temporary Tour Guide Certificate for him.93 In conclusion, be a tour guide in China is not restricted for its citizen only, there

89 Tourism Law of the People’s Republic of China 2015 Article 28
90 Tourism Law of the People’s Republic of China 2015 Article 36
91 Tourism Law of the People’s Republic of China 2015 Article 37
92 Regulations on Administration of Tour Guides 1999 Article 3
93 Regulations on Administration of Tour Guides 1999 Article 4
is an exception for the foreigner who has an ability in a special language can register for a Temporary Tour Guide Certificate when the travel agency needs to hire.

Those who have obtained a tour guide certificate, got the required academic degrees, language ability and experience in the tourism industry, and signed a labor contract with a travel agency may apply for a tour lead certificate.\(^{94}\) Tour guides and tour leads must provide services under the designation of a travel agency, and must not provide services as a tour guide or tour lead as individuals.\(^{95}\) When providing services, tour guides/tour leads shall wear their tour guide certificate or tour lead certificate, observe professional ethics, respect the custom and religious beliefs of tourists, tell and explain to the tourists norms of civilized tourist behaviors, guide the tourists to travel in a healthy and civilized way, and stop behaviors which violate social morality. For anyone who conduct guiding service without a tour guide certificate shall be imposed fine of not less than 1,000 yuan and not more than 30,000 yuan. If the tour guide receives illegal earning, it shall be confiscated.\(^{96}\)

Tour guides and tour leads shall strictly follow the itinerary, shall not alter it or stop the services they are providing without permission or to ask for tips from tourists or lure, cheat, compel or force tourists in a disguised form to make purchases or participate in tourism activities that require additional payment.\(^{97}\)

**3.1.3.2 Characteristic of Tour Guide Contract in China**

As the law stated that the tour guide must sign a labor contract with the travel agency, it is a guarantee that every group tours have the tour guides provided by the travel agency and a lack of the tour guide shall not take place in China.

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\(^{94}\) Tourism Law of the People’s Republic of China 2015 Article 39

\(^{95}\) Tourism Law of the People’s Republic of China 2015 Article 40

\(^{96}\) Regulations on Administration of Tour Guides 1999 Article 18

\(^{97}\) Tourism Law of the People’s Republic of China 2015 Article 41
Moreover, China has a proper standard on the tour guide welfare system and their safety during work performing in which the travel agencies when sign labor contracts with the tour guides they have to pay the remuneration and social insurance premiums for them. In case a travel agency temporarily hires a tour guide to provide services for tourists, the travel agency shall pay the tour guide in full amount the tour guide service fee. To avoid the tour guide bearing on other travel expenses, when the travel agency sends a tour guide to provide services for a tourist group, the law requires the tour operator to make the payment in advance and they are prohibited to collect any charges from the tour guide.98

3.2 South Korean Laws

As South Korea has the similar tourism background to Thailand where an identity and diversification of traditional heritages unlike anywhere in the world, have drawn attention of foreign tourists to visit. The high personal freedoms within the country became a source of pop culture such as K-pop and K-drama that influenced toward its tourism industry and indicated the unique characters of Korean style. The individuality of pop culture is globally known as Korean Wave that lead to the rise of tourists from foreign countries outside Korean. With the high personal safety, social security, healthcare quality, high quality infrastructure and ease of business investment have encouraged the tourists to enjoy Korean atmosphere as well as the foreign investors. Likewise, South Korean economic also relies on tourism sector whereby Korea Tourism Organization (KTO), a government-invested organization of the Republic of Korea (South Korea) under the Ministry of Culture and Tourism, who plays role to promote the country’s tourism industry in accordance with Tourism Promotion Act. The main responsibilities of KTO are mainly focus on the tourism promotion and development of tourism infrastructures and relating features in tourism industry within the country according to the international sustainable tourism development scheme. The organization is also accountable for local cooperation between government and

98 Tourism Law of the People’s Republic of China 2015 Article 41
other sectors as a tourism consultant and approach of new technology to nurture Korean tourism industry. With the purposes to contribute tourism promotion by creating a proper tourism environment, developing tourism resources, fostering the tourism industry and ensuring the rights of tourists, Tourism Promotion Act was enacted to strengthen these matters. Additionally, Korean government has created positive efforts to attract FDI by adopting an open-door policy in various business sectors including tourism industry. The promotional activities to foster proper environment for foreign investment have been carried out by the government as well as Foreigner Investment Promotion Act and Foreign Exchange Transaction Act were enacted to support this approach with various incentives for foreign investors. The information in this part will study on the context Korean laws and practice concerning legal issues in tourism industry.

3.2.1 Foreign Travel Agency and Investment in South Korea

Tourism is one of the high potential sectors that foreign investors can involve in several business types in Korean whereby their rights are guaranteed by Foreigner Investment Promotion Act 1997 to be equally treated with domestic businesses. The government has set up targets focusing on high value added and the improvement of proper sphere for the foreign investment within tourism sector including an expansion of the transportation network, domestic and international, and improvement of living conditions for foreign residents. The series of relevant measures are also adopted such as tax benefits, provision of proper sites and financial support for the foreign investment that expects to create a positive result on the local economy, etc. According to Korean Laws, FDI has benefits to the foreign investors as follows:99

1) Profits gained from FDI including profits from stocks, including dividends, principle and interest paid as per loan agreements or royalties concerning technological transfer have no restriction on remittance out of the country;

2) Both foreign investors and foreign-invested businesses are treated equally to their Korean counterpart, unless otherwise stipulated in relevant laws. They are eligible for treatment more favorable than their Korean counterparts in terms of tax benefits or private contracts related to the disposal of assets and;

3) Foreign investors are liberalized and not subjected to any investment restrictions according to the general principle of liberalization of FDI, unless otherwise stipulated in relevant laws.

Foreigner can engage in four types of corporations that local corporation and private business are under the Foreigner Investment Promotion Act, whereas branch and liaison office are governed by the Foreign Exchange Transactions Act as shown in the figure below. Foreign-invested corporation in forms of local corporation and private business are classified by the Foreigner Investment Promotion Act as domestic corporation which their identities are separated between the foreign investor and the company. Unlike branch and liaison office forms under the Foreign Exchange Transaction Act, they are sorted as foreign corporation that the parent-company and branch are a single entity.

Figure 3.1 Establishment of Foreign Business in South Korea (Updated May 2017)

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Ref. code: 25605701040197TJR
3.2.1.1 Types of Business Establishment Under Foreign Investment Promotion Act

(1) Local Corporation

A foreigner or a foreign-based business investing through the establishment of a subsidiary is regarded as a domestic corporation with limited liability under the Foreigner Investment Promotion Act and Commercial Law. The minimum capital of foreign investment in local corporation is 20 million KRW (Korean Won) and not over 100 million KRW. Before the establishment of local corporation, all the information and documents are required to notice to KOTRA (Korea Trade-Investment Promotion Agency) or foreign exchange bank for granting permission. Besides, the ratio of investment must be 10% or more of the total capital invested and the investor have to complete both amount and ratio conditions at the same time. The funds must be remitted from overseas and cannot be processed through FDI notification procedure if it has been earned in Korea. Moreover, its accounting and settlement are separated from the foreign investor where the income generated from all domestics and overseas operation must be taxable to Korean government.

(2) Private Business

In actual operation of the business, there is no difference between a private business and a local corporation that the procedure for starting or closing of this type of business is simple. This business type is usually established for small-sized businesses with the minimum capital invested not over 100 million KRW. It is required relatively little burden of social responsibility, but experiences difficulty in fund supply and securing talented employees due to its low creditworthiness.

3.2.1.2 Types of Business Establishment Under Foreign Exchange Transaction Act

(1) Branch (Registered Foreign Company)

A limited liability foreign company that is permitted by designated foreign exchange bank and Ministry of Strategy and Finance to engage in profit-generating activities. An establishment of branch has no limit capital
requirement. In addition, its accounting is in accordance with the parent-company located overseas, but only earnings generated in Korea is taxable to the government.

(2) Liaison Office (Representative Office)

A liaison office is a non-taxable entity with no minimum capital requirement whereby it is unable to involve in any profit-generating activities. It is limited the scope of operation within non-revenue generating activities including researching, advertising, public relation and other solely activities conducting for its parent-company. It is not subject to taxes in Korea except for payroll and value-added tax reporting.

3.2.1.3 Advantages of FDI in South Korea

(1) Exemptions and Financial Support

Depending on the size of your investment, location or industry, there are a number of economic free zones in Korea that offer exemptions or reductions in corporate, income, acquisition, and property tax for foreign-invested companies. They also offer various financial and site support for cash grants, infrastructure and rent based on the ‘Special Designation and Management of Free Economic Zones, Foreign Investment Promotion Act.

(2) Immigration and Visa

Since October 2012, in order for an investor to be eligible for an investment visa (D-8), they must establish a corporation through the FDI notification process. In other words, they will need a minimum investment of 100,000,000 KRW. Those who hold residential status (F-2), overseas Koreans (F-4), permanent residence (F-5), and foreigners married to a Korean spouse (F-6) are exempt from the investment requirements but their businesses will not be considered as foreign-invested companies. In the case of dispatching an employee from the head company to lead the branch or liaison office, the individual must prove that they have worked for the head company for at least one year. Providing that they are able to do so and have all the relevant documents, they should be eligible for an intra-company transferee (D-7) visa.
In conclusion, the majority of the South Korean tourism industry is supported by domestic tourism that a foreign corporation is not allowed to register as a domestic private business. In other words, with regard to the principle of liberalization and fair trade in Korean law, it allows foreign-invested company in 2 forms that are local corporation and private business to invest in tourism industry and the Korean government also encouraged foreigners to invest in the country as well. The foreign tourism business investment in Korea is broadly for the foreign investors, the travel business and services operation are allowed for the foreigners when they completed the requirements by law mentioned above. This idea is helpful to avoid the problem of using nominee in the business operation only tourism business but also other business.

3.2.1.4 Scope of Tourism Business and Travel Agency in South Korean Laws

According to Tourism Promotion Act 2007, the special law governing on Korean tourism industry, gives definition of “tourism business” as a business of facilitating tourists in connection with tourism and providing tourists with transportation, lodging, meals, sports, amusement, recreation or other services. Tourism business operator is also stated in the law as a person who has completed the registration to obtain permission or designated to operate a tourism business.\(^{101}\) In other words, any individuals or corporations who want to operate any kinds of tourism business have to register for tourism business license prior to the start of business.

The tourism business is divided into 7 categories as followings:\(^{102}\)

(a) Travel business is the business of acting as an agent for travelers or business operators to arrange transportation, accommodation, or other facilities incidentally required in travelling to provide the tourists with services of arranging the use of such facilities, vicariously signing contracts, or furnishing them with information about travelling and other convenience for travelling;

\(^{101}\) Tourism Promotion Act Article 2

\(^{102}\) Tourism Promotion Act Article 3
(b) Tourist accommodation business includes hotel business and resort condominium. Hotel business is the business of operating facilities suitable for the accommodation of tourists to provide tourists with such facilities, or operating facilities for meals, sports, recreation, relaxation, performances, or training programs to provide tourists with such facilities along with accommodation.

Resort condominium business means the business of operating facilities suitable for accommodation and cooking for tourists to provide its members, co-owners, or other tourists with such facilities, or operating facilities for meals, sports, recreation, relaxation, performances, or training programs to provide them with such facilities along with accommodation;

(c) Tourist-use facility business includes the business of operating facilities suitable for meals, sports, recreation, relaxation, cultural activities or arts, leisure activities, etc. for use by tourists or the business of operating two or more different types of facilities as specified by Presidential Decree, along with facilities for tourist accommodation, etc. (hereinafter referred to as “tourist accommodation”) for use by members or other tourists;

(d) International conference business means the business of operating facilities installed properly for holding international conventions (including seminars, forums, and exhibitions; hereinafter the same shall apply) with a capacity for creating demand for large-scale tourism, or acting as an agent for vicariously executing commissioned business affairs related to planning, preparing, proceeding with international conventions;

(e) Casino business means the business of operating an exclusive business facility in which certain players make a profit while other players sustain a loss as a consequence of probabilities, playing with specific implements such as dice, cards, and slot machines;

(f) Amusement facility business is the business of operating facilities or machines installed for amusement or games for use by tourists (including a business of operating facilities or machines installed for amusement or games for the
purpose of attracting tourists or running advertisements, etc., while carrying out other businesses); and

(g) Tourist convenience facility business is the business of carrying out any project, or operating any facility, deemed capable of contributing to the promotion of tourism, except the tourism businesses defined under subparagraphs 1 through 6.

However, the word “travel agency” used in Korean tourism industry is different from Chinese Tourism Law in which the travel agency in Korean tourism law refers to a person who has completed the registration of a travel business in order to conduct a travel business, tourist accommodation business, tourist facilities business and international conference business as stated in Article 3 in term of package tour. Prior to the operation of travel agency, it has to complete the requirements prescribed by Ordinance of the Ministry of Culture, Sports and Tourism.\(^{103}\)

3.2.2 Laws and Regulations on Low-quality Tour in South Korea

3.2.2.1 Legal Control

The legal measures controlling on low-quality tour appears in the Tourism Promotion Act including insurance policy for tourists, qualification of travel agencies required by laws and travel contract compliancy. Every tourism business operators have to be a membership in mutual aid fund or carry on an insurance policy during their tourism arrangement for the tourists in case of any damage or loss sustained by him/her due to an accident or any other event arising in connection with the relevant business. The travel agencies may deposit the business guarantee instead of insurance or aid fund.\(^{104}\) Additionally, the travel agency and the tourist are bound by travel contract signed by both parties where the itinerary and terms and conditions are delivered in written form to the tourists. Any information, optional tour or itinerary changing by the travel agencies must obtain the tourist’s consent prior to modify the

\(^{103}\) Tourism Promotion Act Article 12

\(^{104}\) Tourism Promotion Act Article 9
contract as well as all safety information must be provided to the tourists when entering into the contract. In case of conveying a facility of tourism business to another person or allow another person to operate the business, the assigned person must be qualified by law.

In addition, Korea has designed a special guideline since 1998 to oversee the travel agency who are dedicated to attract the Chinese tourist, especially the Chinese group tour called “guideline for the implementation of travel agencies who are designated to attract the tourists from China.” With the purpose to promote friendly relation in cooperative tourism between South Korea and China, the Korean travel agencies who can offer the package tour for the Chinese tourists must be designated by Korean government authorities including Ministry of Culture, Sports and Tourism after an approval of China’s Tourism Business Committee as well as it must be a member of Korean Association of Travel Agents (KATA). The Ministry of Culture, Sports and Tourism is a government in charge with an association for efficient management and guidance supervision for the dedicated travel agencies.

Moreover, roles of the designated travel agencies are specified in the guideline requiring them to ensure safety to the Chinese tourists and to prevent them from committing any illegal activities during their travelling. In order to avoid the zero-dollar tour phenomenon, the designated travel agencies are prohibited to set up unreasonable or cheap price package tour for the purpose of attracting the Chinese group tour. Any behavior of attracting the tourists to the shopping mall with receiving

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105 Tourism Promotion Act Article 14
106 Guideline for the Implementation of Travel Agencies Dedicated to Attracting Chinese Group Tour 1998 Article 2
107 Guideline for the Implementation of Travel Agencies Dedicated to Attracting Chinese Group Tour 1998 Article 6
commission is also an unlawful activity for the travel agencies according to the guideline.108

3.2.2.2 Government Action

Korean government forces to undertake the current situation prevalent among Korean travel agencies who compete to sell package tour at rock-bottom prices to foreign tourists. The actions aim to prevent the domestic travel agencies from selling package tour at unreasonable price or lower than its cost as well as to nurture a healthy tourism atmosphere in the Korean tourism industry. The action called three strike system which an electronic supervision system is brought up by the Ministry of Culture, Sports and Tourism to supervise the travel agencies who operate with the low-quality tour. The system consists of three steps: warning, one-month suspension of operations and cancellation of licenses.

The unqualified travel agencies will be evaluated in order to separate into under-qualified company category. The evaluation criteria include operation performance, observation of the laws and others. In additions, the travel agencies who employ unqualified tour guides two times will not be able to continue operating, while in the past the limit was three times. Currently, tour guides have to pass an exam in order to receive a certificate to operate legally, and the exam is conducted by the Human Resources Development Service of Korea and the Tourism Ministry. Other actions are installing a report center where both nationals and tourists can report legal violations to the Korea Tourism Organization (KTO) and jointly inspecting violations with the police.109

108 Guideline for the Implementation of Travel Agencies Dedicated to Attracting Chinese Group Tour 1998 Article 9
3.2.3 Laws and Regulations on Tourist Guide in South Korea

Tour guide in Korean Law refers to a person who provides expert explanations about tourism resources including history, culture, arts and nature. This person gives the tourists opportunities to understand, appreciate and experience such tourism resources.¹¹⁰

There are two types of tour guide in Korea; tourist guide and culture tour guide.¹¹¹ Tourist guide refers to a professional tourist guide working in several languages who guide the foreign tourists throughout the tour course and explain about Korean history and culture. Culture tour guide means a volunteer worker that commentates about the cultural heritage and tourist attractions of their respective region so that domestic and foreign tourists can understand their value and significance. From the statistic in 2016 shows the total of tour guides are 26,784 people¹¹², most of them are Japanese, Chinese and English speaking.

3.2.3.1 Qualifications and Requirement of Tour Guide

To be a tour guide in Korea, a person needs a master degree or higher also need a bachelor’s degree in Korean Study from a Foreign university along with at least one year experience in the relevant field. Anyone who graduated from a domestic Korean university (including prospective graduates) in Tourism or History Major can also apply for a tour guide license. For any who graduated from a community college or higher are required to have a tour guide-interpreter license in order to apply.¹¹³ Since 2009, tour guides in Korea will have to go through a qualifying examination according to the Tourism Promotion Law revision, expecting to raise the

¹¹⁰ Tourism Promotion Act 2011 Article 2
¹¹¹ Tourism Human Resource Development Institute Korea Tourism Organization, ‘Tourism Human Resources Development Program’ (1 April 2016)
¹¹² Tourism Human Resource Development Institute Korea Tourism Organization, ‘Number of Tourist Guides’ (1 April 2016)
overall quality of tour guides and obliging prospective tour guides for inbound tourists to pass an examination and receive certification. The idea came up which the tour guide represents Korea identity worldwide express to tourists by foreign languages. If they don’t meet certain qualifications, adverse side effects might arise to the country. Not only fluent speaking a foreign language but the tour guide must realize to Korean culture and background.

Under the revised rules, all tour guides for foreigners in Korea, regardless of nationality, will now be required to receive the certification. The qualification test consists of a written examination, language test and a personal interview. Those who majored in the tourism industry will be exempted from part of the written exam, and the language test can be substituted for by other official foreign language tests. The test is conducted by the Human Resources Development Service of Korea (HRDSK). The biggest difference in the new test will be the interview. The old interview assessed foreign language proficiency and tourism information separately, whereas now the information must be conveyed in the selected language. The new test gained support from the industry because the old one was rather impractical. Existing tour guides will be given a one-year grace period to take the test, but will be completely banned from working as tour guides after that period ends.114

Moreover, the tour guide must have a license to get this job. The license is a national certified license in the interpretation field administered by the Ministry of Culture, Sports and Tourism. Due to an amendment of the tourism law in 2009, all travel agents targeting foreign tourists require tour guides with the tour interpreter license. Since these guides are responsible for conducting guided tours for foreign visitors, they must have knowledge of Korean cities and tourist spots, Korean history along with a good command of the required foreign language.

The information above can be concluded that, applying a tour guide in South Korea does not limited to the citizen only. Anyone who completes the process administered by the Ministry of Culture, Sports and Tourism, the law requirements and pass the test can apply for the tour guide license. Korean law has considered on the qualification of a person who becomes the tour guide more than other issues because their idea is set up as the tour guide is a person who represents their country and show their identity through the international.

3.2.3.2 Characteristic of our Guide Contract in South Korea

According to Korean Tourism Promotion Act amended in 2009, the relevant tourism business operators including travel agency who aims for foreign tourists shall employ the qualified tour guide and interpreter who pass the examination conducted by Ministry of Culture, Sports and Tourism.\(^{115}\) Generally, a relationship between tour guide and travel agency according to Korean laws is an employment contract.\(^{116}\) Sometimes, the tour guide can be employed as a dispatch worker which is a non-regular type of employment contract requiring professional knowledge, skills and working experiences. The dispatch agreement refers to the use of employees of another company by way of worker dispatch where there is a distinction between outsourcing of work and worker dispatch, based on whether the employee is supervised or ordered by his or her own employer or the client company.\(^{117}\)

The rights of tourism workers are guaranteed by South Korean Constitution, whereby all citizens have the right to work within the country and receive minimum wages and working conditions to ensure human dignity. Any gender discrimination in employment and working conditions are forbidden.\(^{118}\) Under both of the employment contract and the employment of dispatch worker contract, the tour guides are also protected at the same labor protection standard as well as

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\(^{115}\) Tourism Promotion Act Article 38

\(^{116}\) Remark of Tourism Promotion Act and Remark of Labor Standard Act


\(^{118}\) Constitution of South Korea Article 32
receive benefits at the same level prescribed by laws. Korean Labor Standard Act (LSA) is the major law prescribes the minimum work conditions and standards that an employer must provide to its employees, including minimum standards for working hours, overtime pay, vacation and other paid leave, severance, and other allowances and benefits. It applies to every employer that continuously employs 5 or more employees, including foreign employers with 5 or more employees at any office or workplace in Korea. The employment standards will supersede any inferior contractual terms used for the employee. In case of any violations of the certain LSA provisions caused by the employers, they are punishable by criminal sanctions.

3.3 Conclusions

According to the study of foreign solutions including Chinese laws and South Koreans laws based on the similar tourism situation between these countries and Thailand, the foreign laws have more effective methods and proper standards used with their tourism context. Chinese laws allow 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. The foreign travel agency must be guaranteed by being a member of tourism association within the home country with a good international credit and having good experiences. It is bound to apply for travel agency business license prior to the establishment of business. 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.

In my opinion, China has the responsive laws 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. Moreover, foreign investment in tourism business in China is broadly with the Chinese government aims to develop the business law model based on principle of liberalization and fair trade. 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. Establishing 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, I think Korean laws are very efficiency to 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 interwoven 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.
CHAPTER 4
ANALYSIS ON PROBLEMS OF TRAVEL AGENCY BUSINESS AND TOUR GUIDE IN THAI LAW AND RECOMMENDATIONS

Tourism laws, a cluster of specific laws relating to tourism industry in Thailand, are not yet gathered in a form of code and appear in different acts. There is no single law governing on tourism sector in Thai legal system. The laws relating to travel agency business establishment in Thailand are Travel Agency Business and Tour Guide B.E.2551 (2008), Civil and Commercial Code of Thailand B.E.2548 (2005), Foreign Business Act B.E.2542 (1999) and Decree on professional and occupational careers forbidden for the foreigner B.E.2522 (1979). Travel Agency Business and Tour Guide Act is the fundamental law applying for the purposes of regulating travel agency business and tour guide and protecting legal benefits of tourists. It was firstly enacted in B.E.2535 (1992) in order to support an increase of travel agency business and to develop the standard of travel agency business and guiding service in Thailand.\(^{119}\) Due to the blooming of tourism market in Thailand, Travel Agency Business and Tour Guide Act was amended in B.E.2551 (2008) as to strengthen tourist protection measures from unfair practice occurring from tourism service provider. The most important point of the second revision was focused on preservation of travel agency business and tour guide for Thai nationals only.\(^{120}\) It was secondly amended in B.E.2559 (2012) in order to address more appropriate regulations and qualifications of travel agency business entrepreneur and tour guide were addressed to the Act.\(^{121}\)

Nowadays, the effective Travel Agency Business and Tour Guide Act contains 8 contents as follows:

1) Travel Agency Business and Tour Guide Committee;
2) Travel Agency Business;

\(^{119}\) Remark of Travel Agency Business and Tour Guide Act B.E.2535 (1992)

\(^{120}\) Remark of Travel Agency Business and Tour Guide Act B.E.2551 (2008)

\(^{121}\) Remark of Travel Agency Business and Tour Guide Act B.E.2559 (2016)
3) Tour Guide;
4) Tour Leader;
5) Travel Agency Business Fund;
6) Supervision;
7) Penalties and;
8) Transitional provisions

However, unsolved legal and practical problems about travel agency business and tour guide are remained during the tourism circumstance changing that will be analyzed in this chapter by focusing on the 2nd – 3rd contents of this Act.

4.1 Travel Agency Business in Thai Law

The most significant matter before going to the process of travel agency business establishment is to study the scope of travel agency business under Thai law. “Travel agency business” in Section 4 of Travel Agency Business and Tour Guide Act B.E.2551 (2008) means a business of facilitating travel activities, for pleasure or otherwise, of tourists by providing either one or more services or facilitations such as accommodation, food, tour guide, or any other service as prescribed in the Ministerial Regulation.\(^\text{122}\)

4.1.1 Requirements for Travel Agency Business Registration

The travel agency business under Thai law can be established in 2 types as their qualifications and restrictions described below.

4.1.1.1 Individual Travel Agency Business

An establishment of a single individual travel agency business under Thai law, the travel agency business operator has to follow the requirements stated by Travel Agency Business and Tour Guide B.E.2551 (2008). Any individual person who wants to apply for an individual travel agency business license shall comply with the following qualifications: \(^\text{123}\)

\(^\text{122}\) Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 4
\(^\text{123}\) Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 16
1) being not less than twenty years of age on the date of submission of an application;

2) being Thai nationality and;

3) having domicile or residence in the Kingdom of Thailand.

Other than the above requirements, the applicants must not be under the following prohibitions:

1) being bankrupt or under a receiving order period;

2) being a person with unstable or imbecile mind, or being incompetent or quasi-incompetent;

3) being a person with travel agency business license or tour guide license has been suspended;

4) being a person with travel agency business license has been withdrawn under section 46(1), (3) or (4) or a tourist guide license has been withdrawn under section 63(1), (2), (3), or (4) and such withdrawal has not reached the five years period up until the date of submission of an application for the travel agency business operating license;\(^\text{124}\)

5) having been withdrawn of a travel agency business license under section 46(5) or a tourist guide license under section 63(5);

6) having been withdrawn of a tour leader registration and such withdrawal has not reached the five years period up until the date of submission of an application for the travel agency business license.

**4.1.1.2 Corporate Entity Travel Agency Business**

Corporate travel agency can be operated in Thailand in several types of juristic person under provisions specified in Thailand Civil and Commercial Code B.E.2548 (2005) including partnership, limited company and public limited company. When the corporation want to operate travel agency business, it has to follow the particular requirements according to Travel Agency Business and Tour Guide Act (Vol.2) B.E.2559 (2016) Section 8.

\(^{124}\) The 2nd Revision Travel Agency Business and Tour Guide Act (Vol.2) B.E.2559 (2016) Section 8
Guide B.E.2551 (2008) as the special law governing on the features of travel agency business. Any juristic person and its director who applies for a travel agency business license shall comply with the following requirements.125

1) being a juristic person under Thai laws with an objective to operate a tourism-related business. If it is a registered partnership126, an unlimited liability partner shall be Thai nationality. If it is a limited company127 or a public limited company128, not less than fifty-one percent of the company’s capital shall be held by a natural person of Thai nationality and more than one-half of the company’s directors shall be Thai nationality;

2) the director or a person with the power to manage on behalf of the juristic person shall have qualifications and not be under the prohibitions under section 16.

There are some restrictions regulated for the corporate travel agency business establishment as the followings:

1) being a juristic person who is under the prohibitions under section 16(2)(c), (d) or (e);

2) having a partner who is under the prohibitions under section 16(2)(c), (d) or (e) or having a partner who vacated a registered partnership under the prohibitions under (2)(a) and such vacation has not reached the five years period up until the date of submission of an application for the travel agency business license;

3) having a shareholder whose shares exceed five per cent, who is under the prohibitions under section 16(2)(c) (d) or (e), or having a shareholder who vacated from being the director or a person with the power to manage on behalf of the juristic person which is under the prohibitions under (2)(a) and such vacation has not reached the five-year period up until the date of submission of an application for the tourism business operating license;

125 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 17
126 Civil and Commercial Code of Thailand B.E.2559 (2016) Section 1012
Nothing in (2)(b) and (c) shall apply to a person who is a partner, a director, or a person with the power to manage on behalf of the juristic person, who is able to prove that he or she does not take part in or is not a party to the actions of the juristic person which causes it to be under the prohibitions under (2)(a).

4.1.2 Travel Agency Business License

According to Section 15 of Travel Agency Business and Tour Guide B.E.2551 (2008), everybody who want to operate travel agency business in Thailand need to apply for travel business license and complete with the qualifications of travel agency business operator as required in Section 16 and 17 of this Act. The government unit in charge with the travel agency business license permission is the Travel Agency Business Registration and Tour Guide Office of Department of Tourism (DOT). After filing an application for the travel agency business license, it will be taken into a consideration of the registrar to allow for the license. In case of corporate entities, the corporates cannot operate travel agency business until the travel agency business is granted. The travel agency business license has 2 years validity counting from the day it is granted.\[^{129}\]

4.1.2.1 Types of Travel Agency Business License\[^{130}\]

(1) Specific Area

The travel agency business with the specific area license is limited to operate its service only in the specific provinces where allowed by the license and surrounding areas within the same country zone. Besides, the tourists who purchase the service from this type of travel business agency must be Thai nationals. The serial number of specific area always starts with 13/ and followed by five digits.

\[^{129}\] The 2\(^{nd}\) Revision Travel Agency Business and Tour Guide Act (Vol.2) B.E.2559 (2016) Section 22/1

\[^{130}\] Ministerial Regulation on Travel Agency Business Permission B.E.2556 (2013) Part 1
(2) Domestic

Domestic travel agency business license allows the travel agency business to provide tourism service within the territories of Thailand. The domestic travel agencies are not allowed to bring the tourists out of the country or provide any tourism service outside Thailand. Additionally, purchaser of domestic tourism service must be Thai nationals and the serial number showing on the license starts with 12/ and followed by five digits.

(3) Inbound

Character of inbound travel agency business license are similar to with domestic travel agency business license that is the inbound travel agency can provide tourism service in all area located in the country. However, the customers of inbound travel agency are limited for the foreign tourists. The number appearing on this license type starts with 14/ and followed by other five digits.

(4) Outbound

The travel agency who is permitted to receive an outbound travel agency business license can provide tourism service for both nationals and foreign tourists. It can bring the tourists to travel outside the country as well as travelling within the territories. Normally, its business license starts with 11/ and followed by other five digits number. The outbound travel agency business also has to renew its license every 2 years.

4.1.2.2 Travel Agency Business Protection Fund

Travel agency business protection fund is the guarantee collected from both individuals and corporate entities when they apply for all types of travel agency business license to the Travel Agency Business Registration and Tour Guide Office, Department of Tourism. The guarantee can come from one or more valuable items including cash, bank guarantee, Thai government or state enterprise bound which the principal and interest are guaranteed by Thai government. The amount of guarantee depends on the types of travel business license as mentioned

131 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 18
in Ministerial Regulation. The purpose of guarantee is to indemnify tourist in case of any injury or damages occurred from the travel agency towards tourists and the travel agency does not compensate for damages. In such case, the Travel Agency Business Registration and Tour Guide Officer, on behalf of Minister of Ministry of Tourism and Sports is authorized to reimburse the compensation to the tourists.

Before receiving travel agency business license, the applicants of each type of license have to place an amount of guarantee collected by the Travel Agency Business Registration and Tour Guide Officer for the protection fund. The guarantee depends on each type of travel business license: 10,000 Baht for specific area, 50,000 Baht for domestic, 100,000 Baht for inbound and 500,000 Baht for outbound.

4.1.3 Exception for the American Citizens to Operate Travel Agency Business in Thailand

According to the concept of Travel Agency Business and Guide Act and Foreign Investment Act of Thailand, any foreign individuals and corporate entities are not allowed to operate and register for travel agency business license in Thailand because of economic reason. The law clarifies that Thai nationals are not yet ready to compete with foreigners in operating travel agency business, unless upon obtaining permission from the Director-General with the approval of the Commission. Due to a good relationship and close cooperation between Thailand and the United States for long time, particularly the purpose to encourage trade and other contacts as a key element of economic growth and political understanding, both countries have signed the bilateral agreement called “Treaty of Amity and Economic Relations” on May 29, 1966. It replaced Treaty of Friendship, Commerce and Navigation 1937 but still contained general substances of the previous treaty. In essence, special privileges

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132 Ministerial Regulation on Travel Agency Business Protection Fund B.E.2555 (2012)
granted by the Treaty of Amity and Economic Relations 1966 provide the American citizens two majors benefits including a permission to maintain a majority shareholding in wholly American-owned company located in Thailand and receiving national treatment on the basis of Thai nationals. They are protected by national treatment complying with the international law. Under the treaty, it is entitled privileges in return to Thai nationals who establish tourism business in the United States and protected by law concerning foreign investment.  

As a result, the American has right to approach benefit and operate travel agency in Thailand according to the treaty, however, this right is not claimed to be absolute right of every foreign investors. It has to take into consideration of the government about advantage and disadvantage among parties involved in tourism industry. Minister of Ministry of Tourism and Sports of Thailand on behalf of the government, is responsible for granting permission of such rights to the foreign investors who meet the qualifications required by law. Once the American investors want to register tourism business, as travel agencies, the 3 characters of business registration are allowed; individual, juristic person and company. The individual who want to register for a tour operator license must be American citizen, as well as the juristic person and company must be incorporated under the principle of Thai company law. The rights of the Americans to operate travel agency businesses don’t have to comply with Foreign Business Act B.E.2542 (1999), because Tourism Business and Guide Act B.E.2551 (2008) is the special law governing on these matters. Thus, the travel agencies business operated by the Americans are not bound by any provisions regulated in Foreign Business Act B.E.2542 (1999).

thailandus-treaty-of-amity-and-economicrelations/87f66f0bec2f0f9edad8d240b263c40d> accessed 2 May 2017

134 Remark of Treaty of Amity and Economic Relations 1966

Although, the national treatment does not include any business reserving for Thai nationals as stated in the Treaty, whereat travel agency business is classified in List 3 of Foreign Business Act B.E.2542 (1999) as a reserving business for the Thai nationals only. However, the national treatment will not award to the foreigners, unless their rights to operate such business are authorized by the Minister of Ministry of Tourism and Sports of Thailand.

4.2 Tour Guide in Thai Law

This section will clarify general information about tourist guide and the qualification of being tour guide in Thailand.

4.2.1 Requirements for Tour Guide License

According to Section 49 of Travel Agency Business and Tour Guide Act B.E.2551 (2008), any person who wants to be a tour guide has to apply for a tour guide license to the Office of Registrar, Department of Tourism. The applications must be complied with Section 50 and the following qualifications:\textsuperscript{136}

1) being not less than eighteen years of age on the date of submission of an application for a tourist guide license;
2) being of Thai nationality;
3) having been graduated at a bachelor’s degree or equivalent in the field of tourist guide study or tourism study consisting of tourist guide subjects, or having been graduated at a diploma degree in the field of tourist guide study or tourism study consisting of tourist guide subjects not less than as prescribed by the Committee, or having obtained a certificate of proficiency or written certification that the applicant has passed a training course on tourist guide pursuant to the curriculum as prescribed by the Committee;
4) passing the tourist guide examination as prescribed by the Committee.

There are also some prohibitions for the applicants as the followings:

\textsuperscript{136} Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 50
1) being a chronic alcoholism or being addicted to narcotics or being infected with chronic disease as prescribed by the Committee;

2) being a person with tourist guide license or tourism business operating license is being suspended;

3) having been withdrawn of a tourism business operating license under section 46(1), (2), (3) or (4) or a tourist guide license under section 63(1), (2), (3) or (4) and such withdrawal has not reached the five years period up until the date of submission of an application for a tourist guide license;

4) having been withdrawn of a tourism business operating license under section 46(5) or a tourist guide license under section 63(5);

5) having been withdrawn of a tour leader registration for less than five years up until the date of submission of an application for a tourist guide license.

For those who avoid the law or being a tour guide without license shall be liable to imprisonment for a term of not exceeding 6 months or not more than 50,000 baht fine, or both.137

4.2.2 Types of Tour Guide in Thai Law

There are two types138 of tour guide classified by tourist attraction area that any person who want to participate therein shall complete all requirements by laws in each types of tour guide license. The person who holds general tour guide license can perform his job in every area of Thailand, whereas the specific area tour guide license can work only the permission area.

4.2.3 Legal Relation Between Tour Guide and Tour Operator

A relationship between the tour guides and tour operators under the applicable laws of Thailand is a hire of work contract whereby the tour operators agree to pay remuneration to the tour guides for guiding service. It is a mutual contract with legal binding in accordance with Thai Civil and Commercial Code Section 587 which the tour guide, as a contractor, agrees to accomplish a definite work for a tour operator,

137 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 87
called an employer, who agrees to pay remuneration of the result of work. By nature of the hire of work contract, the contractor is free to work and not in a control of the employer, and the remuneration is always paid when the work is done. Unlike the hire of service contract under Section 575, the employee agrees to render services to the employer, who agrees to pay remuneration for the duration of the services.

There is also a court judgement supporting the above idea as shown in Labor Court Judgement No.6067/2545 (2002) that “an essence of the work performed by the tour guide is to bring tourists on the tour schedule and the wage rate depends on the success of each job that is a hire of work contract.”

However, under the hire of work contract, the tour guide has shortage of welfare and stability in the career as shown in the Analysis of Stability of Tour Guide Career in Economic Crisis. Unlike Labor Law, it ensures benefit, welfare, appropriate treatment between employers, employees and the organization that enhance stability in the career for employees.

4.3 Low-Quality Tour Control in Thai Law

4.3.1 Pricing Control

Travel Agency Business and Tour Guide Act regulate low-quality control measures on the price of package tour that the travel agency cannot provide free services or service which its fee is lower than its cost. The travel agency is also prohibited from charging for additional payment apart from showing in the payment methods or advance agreement with the tourist.

4.3.2 Quality Control

The quality control of package tour in Travel Agency Business and Tour Guide Act requests the travel agency not to change travel itinerary from the

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139 Pattanun Wasasiri, 'Job Security of Independent Guides During Economic Crisis' (MSSA thesis, Thammasat University 2010) p.27

140 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 31

141 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 30
advertising program or without permission of the tourists. Travel agency is prohibited to change itinerary during a period of tour unless the tourists give consents thereto. In addition, the travel agency has to provide legal tour guide with the tourist and must provide travel insurance for tourists, tour guides and tour leaders in order to ensure safety while traveling.

4.4 Analysis on Legal Problems of Travel Agency Business and Tour Guide Act

This section will analyze the impacts arising from loopholes of Travel Agency Business and Tour Guide Act B.E.2551 (2008).

4.4.1 OA Transportation Co., Ltd. Case and Scope of Travel Agency Business

OA Transportation Co., Ltd. is a transportation company located in Lad Krabang, Samut Prakarn with around 2,000 employers. The company owns more than 2,000 coaches and small buses rental for tourists and being the owner of 11 affiliate companies. The company was accused as operating travel agency business without permission and involved in the biggest zero-dollar tour in Thailand. OA Transportation Co., Ltd. offered other travel agencies for free service bus in exchange with these travel agencies must arrange shopping programs at the four subsidiary companies to the tourists and received commission in return. Later, Court of the

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142 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 27
143 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 29
144 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 33
145 Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 34
146 Supra note 62.
First Instance dismissed the accuse by the reason that, the company was not involved in any type of travel agency business that needed to get a license and not an activity of zero-dollar tour. However, the company was appealed by the inquiry team for tax avoidance worth of 7,500 Million baht.\textsuperscript{148}

Since Travel Agency Business and Tour Guide Act has become effective, the Ministerial Regulation has never been legislated to designate the other services extending “travel agency business” mentioned in Section 4. Thus, any business shall be identified as travel agency business when it provides service or facilities including accommodation service, food and catering service and tour guide service. Apart from these mentioned services, the other service providers relating to tourism are not recognized as the travel agency business. From this point, the private sector who operates the business of transportation service is not included in any mean of travel agency business under Travel Agency Business and Tour Guide Act B.E.2551 (2008). Although the transportation provider is one of direct contributions towards tourism industry, it is not classified as either tourism business operator or travel agency business operator under Thai laws. Because tourism refers to the movement of tourists for recreational purpose whereas transportation service is a significant factor to tourists other than lodging, catering and tour guide. In both FITs and GITs routes, the tourists need the transportation service to facilitate them while they are travelling to the variety of tourism sites. Tourism will not achieve its recreational purpose without transportation service providers.

Transportation provider such as bus company, one of several types of transportation services, has influenced towards travel agency business because most

\textsuperscript{148} คดี ‘โอเอ’ไม่จบ สรรพากรแจ้งจับ โกงภาษีอีก 7,000 ล. ‘ไทยรัฐ’ (กรุงเทพ 16 กันยายน 2559) <https://www.thairath.co.th/content/1071584> accessed 23 May 2018 (‘Kadee OA Maijob Sunpakorn Jang Jab Gong Pasee 7,000 Lan’ [OA Transportation was accused for Tax cheating 7,000 Million baht] Thairath (Bangkok 16 September 2016)).
of the tourists who travel with the package tour always require for the private bus service. The travel agencies normally provide GITs with the bus service in order to save their cost and make the group tour easier to be transported. Travelling by private bus service provider becomes the most convenience for both the tourists and the travel agencies to designate the program. Because not all of the travel agencies have their own bus, it is undeniable to rent a service from the private bus provider. Practically, the bus service providers, who have agree to facilitate the group tour, are directly involved in a kind of business of facilitating the travel from place to places for pleasure. In this sense, the private bus providers should be described as a type of travel agency business under Travel Agency Business and Tour Guide Act B.E.2551 (2008) who also need to register for travel agency business license.

Based on the objectives of law to ensure safety and security of the tourists and protect them from any unfair practice committed by the tourism service provider, the tourism officers who are in charge of tourist protection should aware of this loophole. Nowadays, the bus provider is considered as the most powerful business in arranging transportation for the tourists who travel with package because of its bargaining power towards the travel agency and tour guides. The travel agency is attracted by free of charge but they have to take the tourists to shop at shopping places owned by the bus company. Meanwhile, the tour guides have drawn their attention on commission paid by the shop owners when the tourists make payments. The process can be assumed that the bus provider has conducted a zero-dollar tour itself, but no law governing on this matter as long as transportation service provider has never been classified as travel agency.

4.4.2 Impacts Arising from Loopholes of Travel Agency Business and Tour Guide Act

4.4.2.1 Economic Impact

When Thai tour operators involve in the zero-dollar tour, they have to bear for all costs of the program tour including accommodation, transportation, food and tour guide service. This situation causes misconduct among the tour operators, tour guides and business network, trying to earn money back from
the tourists by selling over price optional tours, goods and services other than defined in the normal program tour. Apart from the fact that tourism business structure has been distorted by zero-dollar tour, there is recently infiltration of Chinese capitalists over the Chinese tourism market and other related businesses in some famous tourist destinations. The businesses establish their consortium nominee representing counterfeit Thai identification card to register for tourism business license and other related businesses such as hotel, resort, restaurant and shop without the government control.

At the beginning, these capitalists will continuously bring many charter flights of Chinese tourists with 200 seats per flights to visit Thailand twice a week, and use services from local business entrepreneurs. Later, they will claim for consistency of the local business owners to force them to become partners in their businesses. If these local business owners do not give the consent thereto, the business agreements will be terminated or changed to other service providers instead. Although restaurants and hotels in Pattaya used to be flourished by the tourists from Russia and Eastern Europe over the years, it began to be suffered after Eastern Europe and Russia faced the economic downturn. As a result, these businesses fully shared the benefit with Chinese tour companies by providing services for the Chinese group tours. The tourism business distortion caused serious damage to the tourism market, especially in Phuket and Pattaya, when the Chinese capitalists who once reserved the restaurant and accommodation for the long-term service, tried to become partners thereof. If the negotiation was unsuccessful, their service would be cancelled and transferred to the other networking business. When many of the local businesses were held by the Chinese capitalists, Thailand’s resources were destroyed without tax collection or any benefit returned to the country and the local people. The low-quality tour has affected the entire tourism industry, economic stability and tourism image of the country.

4.4.2.2 Losing Tourism Image and Identity of the Country

Tourism image of the country becomes “cheap tourist destination” because the quality of tourism is fluctuated by the cost of service
provided for the tourists, and tourism demand also focuses on quantities of tourists more than their quality. The identities of Thailand are expressed through our history, culture, tradition, language, religious belief and taste of Thai food which are the sources of pride in Thailand and quite different from other countries in the world. However, the tourists who travel with the low-quality tour cannot access to the genuine Thai identities, but they are guided to travel at man-made tourist attractions and shop in the specific places instead. Because Chinese people love shopping while they are travelling in different places, the high price goods and souvenirs are sold by the tour guide inside the bus and every shop where the bus stops over. Sometimes, the story and belief of some religious sites are disguised by the tour guide who tries to sell amulet and charm for the tourists. Likewise, the tourists are refused to go to any local community tourism sites in order to keep them away from local products shopping. As a result, the bad reputation of the country is widely known in the international level due to the tourists’ comments and complains after returning to their country on what they have faced in Thailand.

4.4.2.3 Causing Deterioration to Tourism Site

As the zero-dollar tour has produced the low-quality tourists to Thailand, the crowd of tourists often causes detrimental effects on the places they visit. The business owners involving in this curious business mostly focus on the quantities of tourists and the money they could gain from them, not the tourism sustainability. Lack of social responsibility of business entrepreneurs and tourists’ carelessness have led to significant damage towards natural and cultural tourism sites. Social and cultural diversities of foreign tourists become the most concern on their improper behaviors, especially, the tourists from China. A number of low quality tourists cause disorders to the tourism sites, as well as pollutions to natural tourism sites once often attracted a large number of visitors.

4.4.2.4 Increasing Illegal and Substandard Tour Guide

Due to the government policy to encourage revenue gaining from the foreign tourists, tour guides become one of necessary key mechanisms as a facilitator for tourists. It is the closest facilitator for tourists who provide knowledge
about history, arts and culture, as well as assisting the tourists upon facing problems during the trip. The career has influenced toward tourism industry as it creates the first impression and returning of the tourists. Because of national security reason, the occupation is considered as a career in 39 occupations reserved for Thai national under the Royal Decree regulated on prohibition career for foreigners B.E.2522 (1979), and under Tourism Business and Guide Act B.E.2008 (2551) that regulated on nationality of the tour guide that it must be Thai national only.

Besides, the tourism promotion has drawn attention among Chinese people to experience Thailand. There are approximate 8 million Chinese tourists travelling to Thailand each year, and the tour guides who are able to communicate in Chinese are needed. During the tourists’ demand for tour guide exceeds supply available in tourism market that influences to high competition among the skilled-tour guides in special languages, the remuneration paid to the tour guide are raised up. The movement of the oncoming low-quality group tour that trends to increase in numbers, causes an appearance of substandard and illegal tour guides. By the reason to reduce cost of package tour, the uncertified tour guide with low-rate remuneration seems like the best option for the tour operators. By nature of the zero-dollar tour, the tour operators concentrate on selling high price optional tours, including services and products at high price, whereas the tour guides are concentrated by commission when the tourists make payments.

The problems are also raised by the global development on job performance. In this regard, personnel skills, specific knowledge, ability to communicate in foreign languages of tourism stuffs, and human development expertise are required for tourism workers. Tourism laws and regulations, tourism worker standards, minimum wages and welfare of the tour guide in many countries have been improved in quality of human resources. Unlike Thailand where the country has less support to tourism human resources, the tour guides have shortage welfare and stability in their careers, especially, when they are involved in zero-dollar tour.
4.4.3 Impacts of Allowing Foreign Travel Agency Business and Tour Guide

FDI and foreign workers contribute to tourism industry by increasing foreign exchange earnings, job opportunities and local incomes. It also develops tourism infrastructures and strengthen the quality of tourism services by import new technologies and skilled-labors from foreign countries. On the other hand, FDI may result negative impacts to the tourism industry if the foreigners become more active in travel agency business and tour guide professional.

By nature of foreign tourists when travelling abroad, they are more comfortable to deal with the travel agency operating by people from the same country and easier to communicate by using the same language and travel style. If the country gives a permission to the foreigners to apply for travel agency business in Thailand, foreign travel agency businesses will be rapidly growth in tourism and become more favorable than Thai travel agencies among the foreign tourists. Although tourism sector needs capital from foreign countries, an increasing of foreign travel agency business may shorten the opportunities of Thai nationals to operate this business. However, it also be a great chance for Thai tourism business operators to improve their standard, quality and service at the international level. Additionally, the numbers of zero-dollar tour operators may increase if the country legally allows Chinese tour operators to register travel agency businesses in Thailand. The government and all relevant tourism authorities shall give priority on this matter and strengthen an enforcement of the existing law.

Moreover, permitting foreigners to apply for tour guide license and perform guiding service in Thailand also result negative impact to the people who are legally working in tourism industry. There is going to be more competitive in the career that Thai tour guides need to be aware of.

4.5 Recommendations

After studying on the comparison of Thai law and foreign laws relating to travel agency business and tour guide in chapter 3, there are some recommendations that I would like to propose to the existing travel agency business and tour guide law
of Thailand. The following information will express new regulations and amendments could be the better solutions to solve the problem and facilitate tourism industry as a whole.

4.5.1 Addressing Transportation Provider to the Scope of Travel Agency Business

In order to reduce the problem of zero-dollar tour in our tourism industry that is essentially operated by the transportation providers, an explanation of travel agency business shall be revised by adopting the ideas from Chinese and South Korean tourism laws.

Travel Agency Business Act of Thailand should adopt the idea of grouping tourism-related business from South Korean Tourism Law. Tourism business is explained as the business of facilitating tourists in connection with tourism and providing tourism services such as transportation, accommodation, catering, recreation activities, tourism services, etc. Travel business in South Korea’s tourism law is a subcategory in tourism business that refers to an agent for traveler or business operator who arrange the mentioned tourism services or other facilities required in travelling. The law undertakes all types of transportation providers who facilitate the tourists in associate with tourism as travel business. Additionally, tourism laws of China can 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. Therefore, I would like to propose new legislation in Section 4 of Travel Agency Business Act of Thailand as the statement shows below:

“Travel agency business means a business of facilitating the travel, for pleasure or otherwise, of the tourists by providing or arranging either one or more services or facilitations including transportation service, accommodation, food, tourist guide, tourism activities, or other service as prescribed in the Ministerial Regulation.”

If it is necessary, more services and other types of tourism activities can be addressed in the Ministerial Regulation. In case of any injuries arisen out of the transportation providers’ activities toward tourists, they will be specifically bound by
this Act in order to reimburse the damages for the injuries. The transportation providers also have the responsibility toward tourism industry, otherwise they will be punished by this Act.\textsuperscript{149}

\subsection*{4.5.2 Permitting Foreign Investment in Travel Agency Business}

Due to tourism promotion among ASEAN countries and around the world, the concept of liberalization economic was adopted to increase competitiveness of the member countries into global community.\textsuperscript{150} Free trade and investment were focused in the region to reduce the dependence on the third-country markets and strengthen the bargaining power of the member countries in the world economy. Foreign investment can increase well-being and living standards of people based on the principle of establishment of an economic community. Tourism is one of developing sectors of many countries that needs the movement of capital, goods, services, and skilled labors from others to improve tourism infrastructure of each country. Since foreign investment has encouraged economic growth and improved many of technologies and knowledge into our industries, it is necessary to allow foreign investment in tourism industry or as travel agency business in order to increase potential and quality of tourism service. Moreover, the idea of Chinese law should be adopted to limit types of travel agency business license that foreign travel agency business can operate. Domestic and inbound travel agency business could be allowed for the foreigners by the reason that these two types of travel agency business generate local income, whereas the outbound does not create the income with in the country. Professional in travel agency business in the home country also required for those foreigners who prefer to operate travel agency business in Thailand.

The following statement should be addressed to Section 16/1 of the existing law:

\begin{flushright}
\footnotesize
\begin{itemize}
\item Travel Agency Business and Tour Guide Act B.E.2559 (2016) Section 24 and 82
\item Ministry of Foreign Affairs, ‘ASEAN Community’<http://www.mfa.go.th/asean/th/customize> accessed 22 May 2018
\end{itemize}
\end{flushright}
“A foreigner applying for a travel agency business license who is a natural person shall:

(1) have the following qualifications:
   (a) being not less than twenty years of age on the date of submission of an application for travel agency business license;
   (b) having legal work permit in the Kingdom of Thailand;
   (c) having profession skills in travel agency business;
   (d) being a member of tourism association
   (e) all domestics and overseas operation shall be taxed to Thai government”

(2) not be under the prohibitions stated in Section 16(2)

For the foreign entities of travel agency business, the concepts of tax collection and tourism worker employment of Korean law are interesting, and should be adopted to Thai law. The tourism workers must be professional in tourism business with the certificate granted from government authority. Besides, the idea of being partnership with Thai people or having Thai shareholders and director in appropriate proportion should be adopted at the beginning. The following statement should be addressed to Section 17/1 of the current law:

“A foreigner applying for a travel agency business license who is a juristic person shall:

(1) have the following qualifications:
   (a) being a juristic person with an objective to operate travel agency business. If it is a limited company or a public limited company, not less than fifty percent of the company’s capital shall be held by a natural person of Thai nationality and more than one-half of the company’s directors shall be Thai nationality;
   (b) the director or a person with the power to manage on behalf of the juristic person shall have qualifications and not be under the prohibitions under section 16.
(c) having head office in the Kingdom of Thailand;
(d) having profession skills in travel agency business;
(e) being a member of tourism association;
(f) all domestics and overseas operation shall be taxed to
Thai government;
(g) the professional tourism workers who have Thai
nationality shall be employed at lease twenty percent of the total employees

4.5.3 Permitting Foreigner to Engage in Tour Guide Professional

The problems of 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. The following statement should
be amended to Section 50(1) of the current law:

“A person applying for a tourist guide shall:
(1) have the following qualifications;
(a) being not less than eighteen years of age on the date of
submission of an application for a tourist guide license;
(b) being a person who admires to Thai cultures and respects to
Thai laws;
(c) having been graduated at a bachelor’s degree or equivalent
in the field of tourist guide study or tourism study consisting of tourist guide subjects,
or having been graduated at a diploma degree in the field of tourist guide study or
tourism study consisting of tourist guide subjects not less than as prescribed by the
Committee, or having obtained a certificate of proficiency or written certification that
the applicant has passed a training course on tour guide pursuant to the curriculum
as prescribed by the Committee;
(d) passing the tourist guide examination as prescribed by the
Committee.”

Employment contract according to bot foreign laws should be
applied with the legal relation between the tour operator and tour guide as a better
solution to enhance human dignity, labor protection and minimum wages to this occupation. As this idea is successful in Korea and China, I believe the employment contract under labor law of Thailand will ensure legal rights and benefits to the tour guide. The following statement should be revised to Section 33 of the existing law:

“In arranging for a tour guide or a tour leader to accompany the tourists, a travel agency business shall **sign a labor contract with the tour guide who is granted a legal license** or a tour leader who is registered under this Act.”

Moreover, the labor contract between both parties also benefits to the tourists that they will have the tour guide at all time of travelling. The problem of insufficient tour guide will not occur anymore.
CHAPTER 5
CONCLUSIONS

From studying in detail of Travel Agency Business and Tour Guide Act B.E.2551 (2008) in Chapter 4, unsolved legal problems are found from the enforcement of this Act which affect the image of Thailand’s tourism industry, rights and legal benefits of tourists. Moreover, the restriction of foreign investment in travel agency business results in low-quality tourism service and substandard tour guide in tourism market. Some problems have arisen from incomplete and inappropriate elements of Travel Agency Business and Tour Guide Act while some problems need to be resolved by amending the laws. This chapter summarizes the entire problems and proposes new legislative solutions and proper methods to resolve the difficulties arising from this Act.

The certain unsolved legal and practical problems and differences matters relating to Travel Agency Business and Tour Guide Act of Thailand and foreign laws are listed below.

1) Zero-Dollar Tour and Scope of Travel Agency Business in Thai Law

According to the serious situation of zero-dollar tour summarized in chapter 2, the transportation providers such as the bus company, seems to play a significant role in this activity more than other figures because of its higher financial power. The bus company also has bargaining power over tour operators and tour guides when group tours have been arranged. When we look into the context of tourism and travel, a movement of individuals and tourism activities need transportation service because tourist attractions are immovable by nature. However, the transportation service providers have never been classified by any mean of travel agency business stated by laws. As a result, these transportation providers do not have duties and responsibilities under Travel Agency and Tour Guide Act in order to protect rights and benefits of the tourists. Once any damage caused by the transportation providers towards tourism industry, they are also not penalized by this Act.
The scope of travel agency business in Thai laws does not include transportation providers as travel agency business, while all types of transportation providers are subcategory of travel agency business in both Chinese and South Korean laws. Extending the scope of law will be the best solution to resolve this problem.

2) Problem of Use of a Thai National as a Nominee in Travel Agency Business

Using of nominee in travel agency business happens with two reasons: using nominee with good faith and using nominee with bad faith. The legal problems occur when the purpose of use comes from bad faith of the business people. For those who operate individual travel agency, the identification number of dead persons may use to create false identification cards in order to register for the individual travel agency business. In the case of corporate entities, Thai nationals are discovered as nominee shareholders in corporate travel agency business hiring by the actual owner or shareholders. In fact, travel agency business is known as a preservation career for Thai nationals, unless the foreigners are granted permission from the Minister of Ministry of Tourism and Sports. Additionally, the American citizens are excepted under the Treaty of Amity signed by the United States of America and Thailand that they have a legal right to operate tourism business in Thailand. Moreover, these problems are intensified by zero-dollar tour because the activity returns higher profit and commission to the travel agency than the regular way of business operation, whereas the penalty is less. Although this issue is clearly stated in the existing law, but many foreign business people continue to behave illegally and cause serious damage to the tourism industry. Nowadays, travel agency business in Thailand needs foreign capital but it never been legally controlled by registration system of government authorities. It reflects that the law is improper to apply with the current tourism situation, and the amendment is required in order to reduce or eliminate these problems.

The rights of foreigners to participate in tourism 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
However, according to foreign laws, the liberalization is given to any person. Thai tourism business will not be fully successful as long as the country ignores to learn new knowledge, techniques, and technologies development from other countries. Giving a chance for foreigners to participate in tourism business could be the better way to improve ability of Thai tourism participants and create the greater tourism atmosphere.

3) Problems of Tour Guide

Legal and practical problems arisen out of the restriction on nationality of tour guide in the current law are lack of legal tour guide in some foreign languages, increase of substandard tour guide, using illegal tour guide to reduce cost and shortage welfare, and stability under hire of work contract. The following news shows the current situation that members of tourist guide association in Thailand called for justice from government authorities because of foreign tour guides working without permission. These members suffered from some tour operators using illegal tour guides to scramble their jobs that caused they had no work. Other similar news can also be found from the internet many times in a year. The reasons behind the protest of these tour guides came from the problems as abovementioned. In addition, the intention to reduce cost of travelling of people who operate zero-dollar tour has increased these problems. Allowing foreigners who admire in Thailand and respect in our cultures to join this career may help these problems alleviated.

Thai laws have similar legal measures controlling low-quality tours to Chinese and South Korean laws. However, Thai laws do not enforce that the relationship between travel agency and tour guide shall be governed by labor contract. Therefore, it leads to the problem of tour guide shortage.

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151 Foreign Business Act B.E.2542 (1999) Section 6, 8, 7, 10 and 12
Moreover, the characteristics of hire of work contract between tour guide and travel agency or tour operator do not encourage human dignity and social security in the occupation, unlike the law of both foreign countries where legal rights of the tour guide are protected by labor contract that guarantee for the tourists to have the tour guide at all time. The hire of work contract has less labor protection standard than employment contract such as safety, wages guarantee and welfare. Enforcement of labor contract between both parties shall be the solution of these problems.
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APPENDICES
APPENDIX A
DETAILED RULES FOR THE IMPLEMENTATION OF
THE REGULATION ON TRAVEL AGENCIES

Issuing Authority: China National Tourism Administration
Document Number: Order No. 30 of the National Tourism Administration of the People’s Republic of China
Date issued: 04-03-2009
Effective date: 05-03-2009
Level of Authority: Departmental Rules
Area of Law: Tourism

Chapter I General Provisions

Article 1 These Detailed Rules are formulated according to the Regulation on Travel Agencies (hereinafter referred to as the Regulation).

Article 2 The “relevant tourism services provided when soliciting, organizing and receiving tourists” as mentioned in Article 2 of the Regulation shall mainly include the following:

(1) Arranging for transport services;
(2) Arranging for accommodation services;
(3) Arranging for catering services;
(4) Arranging for sightseeing, leisure vacation and other services;
(5) Providing services of tour guides or team leaders; and
(6) Providing services of tourism consultation and tourism activities design.
Travel agencies may accept entrustment to provide the following tourism services:

(1) Accepting the entrustment of tourists to book tickets and accommodation, and handle the formalities for exit, entry, visa, etc. on behalf of tourists;
(2) Accepting the entrustment of organs, public institutions, and social groups to handle the transport, accommodation, catering, conferences, and other matters for the business trips, study tours, conferences, exhibitions and other official activities of the aforesaid institutions;
(3) Accepting the entrustment of enterprises to handle the transport, accommodation, catering, conferences, sightseeing, leisure vacation, and other matters for all kinds of business activities, incentive travel, etc. of enterprises; and
(4) Other tourism services.

The services such as handling the formalities of exit and visa as mentioned in the preceding paragraph shall be handled by the travel agencies that have the right to operate the outbound tourism business on behalf of tourists.

**Article 3** The term “domestic tourism business” as mentioned in Article 2 of the Regulation shall refer to the travel agencies’ businesses of soliciting, organizing and receiving residents of the mainland of China to travel within the territory of the mainland of China.

The term “inbound tourism business” as mentioned in Article 2 of the Regulation shall refer to the travel agencies' businesses of soliciting, organizing and receiving foreign tourists to travel in China, tourists from Hong Kong Special Administrative Region and Macao Special Administrative Region to the mainland of China, and residents of Taiwan region to the mainland of China, and the their businesses of soliciting, organizing and receiving foreigners in the mainland of China, and residents of Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region in the mainland of China to travel within the territory of the mainland of China.
The term “outbound tourism business” as mentioned in Article 2 of the Regulation shall refer to the travel agencies’ businesses of soliciting, organizing, and receiving residents of the mainland of China to travel abroad, and to Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region, and their businesses of soliciting, organizing, and receiving foreigners in the mainland of China, and residents of Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region in the mainland of China to travel outside the mainland of China.

**Article 4** The tourism administrative departments at and above the county level shall, according to the Regulation, these Detailed Rules and their functions, apply classified management and territorial jurisdiction to the supervision and management of travel agencies and their branches.

**Article 5** Travel agencies shall be encouraged to apply the service quality grading system; the professional, network-based and brand-oriented development of travel agencies shall be encouraged.

**Chapter II Establishment and Modification of Travel Agencies**

**Article 6** The “business place” as provided for in Article 6 (1) of the Regulation shall meet the following requirements:

(1) It shall be the houses for business use to which the applicant has the property rights, or which are leased by the applicant for not less than one year; and
(2) The houses for business use shall satisfy the needs of the applicant for business operation.
Article 7  The “business facilities” as provided for in Article 6 (2) of the Regulation shall include at least the following facilities and equipment:

(1) More than two fixed telephone lines;
(2) Fax machines and copiers; and
(3) Computers that can connect with the network of the tourism administrative departments and other tourism operators.

Article 8  To apply for establishing a travel agency, an applicant shall submit the following documents to the tourism administrative department of the province, autonomous region or municipality directly under the Central Government (hereinafter referred to as the tourism administrative department at the provincial level, similarly hereinafter):

(1) An Application for Establishment of Travel Agencies, which shall cover the Chinese and English names and English abbreviation of the travel agency under application for establishment, the address of the to-be-established travel agency, the form of enterprise, the contributors, the amount and ways of contribution, the full name of the applicant and the department accepting the application, the name of the Application, and time of application;
(2) The resume and identity certification of the legal representative;
(3) Articles of association;
(4) Capital verification certification issued by a capital verification institution established according to law;
(5) Certification of the business place;
(6) Certification or descriptions of business facilities and equipment; and
(7) A Notice on Pre-approval of Enterprise Name issued by the administrative department for industry and commerce.
The tourism administrative department at the provincial level may commission the tourism administrative department at the level of a districted city (including autonomous prefecture and league, similarly hereinafter) to accept the application of the party concerned, and make a decision on approval or disapproval.

Article 9 A tourism administrative department accepting an application may conduct on-the-spot inspection on the business place, business facilities and equipment of the applicant, or entrust the tourism administrative department at a lower level with the inspection.

Article 10 Where a travel agency applies for outbound tourism business, it shall submit to the tourism administrative department of the State Council the documents issued by the original tourism administrative department that issued the permit, which prove that it has engaged in the business of travel agencies for two years or more, and is not subject to any punishment more serious than fine for a consecutive two years by the administrative body due to infringement upon the legitimate rights and interests of tourists.

Where a travel agency obtains the permit for operating outbound tourism business, the tourism administrative department of the State Council shall replace the business permit for travel agencies with a new one. The travel agency shall handle the modification registration of business scopes at the administrative department for industry and commerce upon the strength of the new business permit for travel agencies.

The tourism administrative department of the State Council may commission the tourism administrative department at the provincial level to accept applications of travel agencies for operating the outbound tourism business, and make decisions on approval or disapproval.
Where a travel agency applies for operating the border tourism business, the Interim Measures for the Administration of Border Tourism shall be applicable.

Where a travel agency applies for operating the tourism business to Taiwan region, the Measures for the Administration of the Travel of Mainland Residents to the Taiwan Region shall be applicable.

**Article 11** For the needs of business operation, a travel agency may apply to the original tourism administrative department that issued the permit for issuing the duplicate of the business permit for travel agencies.

The tourism administrative department of the State Council shall formulate a uniform format of the business permit for travel agencies and its duplicate, which shall be printed respectively by the tourism administrative department of the State Council and the tourism administrative departments at the provincial level.

Where the business permit for travel agencies or its duplicate is damaged or lost, the travel agency shall apply to the original tourism administrative department that issued the permit for replacement or re-issuance.

Where a travel agency applies for reissuing the business permit for travel agencies or its duplicate, it shall publish a statement declaring that the original permit is damaged or void due to missing in any newspaper published within the province, autonomous region, or municipality directly under the Central Government where the it is located, or on the website of the tourism administrative department at or above the provincial level.

**Article 12** Where the name, business place, any contributor, legal representative or any other registration matter of a travel agency is altered, the travel agency shall
handle the modification registration, and file it for archival purpose with the original tourism administrative department that issued the permit upon the strength of the modified Business License of the Legal Person Enterprise.

Where a travel agency terminates its business operation, it shall handle the formalities of cancellation, and file it for archival purpose with the original tourism administrative department that issued the permit upon the strength of the cancellation documents issued by the administrative department for industry and commerce.

Chapter III of the Regulation shall be applicable to the foreign-invested travel agencies.

No travel agency may introduce foreign investment without authorization.

Article 13 A commercial bank designated by the tourism administrative department of the State Council for travel agencies to deposit the quality assurance fund shall submit written commitments bearing the following contents:

(1) Agreeing to conclude an agreement conforming to Article 15 of these Detailed Rules with a travel agency depositing quality assurance fund;
(2) (Within three workdays after a tourism administrative department at or above the county level or a people's court transfers the quality assurance fund according to the Regulation,) notifying the tourism administrative department at the provincial level at the place where the travel agency is located of the information and amount of the transfer, and providing the documents of transfer issued by the tourism administrative department at or above the county level or photocopies of the effective legal documents issued by the people's court; and
(3) Assuming the obligation of making up where the quality assurance fund is decreased not due to any of the circumstances as provided for in the Regulation.
Travel agencies shall select the banks to deposit the quality assurance fund within the scope of banks designated by the tourism administrative department of the State Council.

**Article 14** Where a travel agency deposits quality assurance fund in a bank, it shall open a separate account and determine the term of deposit which shall not be less than one year. At the expiry of the term of deposit, it shall timely handle the formalities for renewal.

**Article 15** Within seven workdays after a travel agency deposits, renews or increases the deposit of quality assurance fund, it shall submit the certification documents of depositing, renewing or increasing the deposit of quality assurance fund, and the agreement on utilization of quality assurance fund concluded between it and the bank to the tourism administrative department that issued the permit.

The agreement as mentioned in the preceding paragraph shall cover the following contents:

(1) The travel agency and the bank agree to the utilization of quality assurance fund according to the Regulation; and

(2) The travel agency and the bank make commitments that no entity or individual may use the quality assurance fund except under the documents of transferring the quality assurance fund issued by the tourism administrative department at or above the county level, the documents of reducing or refunding the quality assurance fund issued by the tourism administrative department at or above the provincial level, or the effective legal documents confirming that the travel agency has damaged the legitimate rights and interest of tourists issued by the people's court.

**Article 16** Where a travel agency meets the conditions for reducing the amount of quality assurance fund as provided for in Article 17 of the Regulation, the original
tourism administrative department that issued the permit shall, at the request of the travel agency, issue to it the documents of reducing the amount of the quality assurance fund within 10 workdays.
APPENDIX B
REGULATION ON TRAVEL AGENCIES

Promulgation Date: 2009-05-01
Promulgation Number: Decree of the State Council of the People’s Republic of China No. 550
Promulgation Department: the State Council of the People’s Republic of China
Source: http://www.fdi.gov.cn/1800000121_39_4577_0_7.html

Chapter I General Provisions

Article 1 The Regulation is formulated for the purpose of strengthening administration of travel agencies, ensuring the legitimate interests of tourists and travel agencies, maintaining the tourist market order and boosting the healthy development of tourism.

Article 2 The Regulation shall apply to the establishment and operation activities of the travel agencies in the People’s Republic of China.

Travel agencies herein refers to the business entities engaging in such activities as soliciting, organizing and receiving tourists, providing services related to tourism and conducting domestic travel business, inbound travel business or outbound travel business.

Article 3 The competent tourism administration under the State Council shall be responsible for the supervision and administration of the travel agencies across China.

The travel administrations under the local people’s governments at or above the county level shall be responsible for the supervision and administration of travel agencies in the administration areas according to responsibility.
Relevant departments including industry and commerce, pricing, business and foreign exchange under the people’s governments at or above the county level shall conduct supervision and administration of travel agencies according to responsibility by law.

**Article 4** Travel agencies shall adhere to the principles of free will, equality, fairness and good faith in the operation activities, improve the quality of service and safeguard the legitimate rights and interests of tourists.

**Article 5** Trade organizations of travel agencies shall in accordance with the articles of association provide service for travel agencies and exert the role of coordination and self regulation to guide travel agencies to conduct legal, fairly competitive and bona fide operation.

**Chapter II Establishment of Travel Agencies**

**Article 6** For applying for establishment to operate domestic travel and inbound travel business, a travel agency shall be qualified for the following requirements:

1. Fixed place of business;
2. Necessary business facilities; and
3. Registered capital no less than RMB300,000.

**Article 7** For applying for establishment to operate domestic travel and inbound travel businesses, a travel agency shall file an application to the competent travel administration in the province, autonomous region or municipality directly under the Central Government where it is domiciled or the competent travel department in the city divided into districts which has been entrusted and submit related documents as prescribed in Article 6 herein. And the competent travel administration accepting the
application shall make a decision whether or not to approve within 20 working days upon receiving the application. Where an approval is given, the administration shall grant the travel agency business license to the applicant, and the applicant may hold the license to handle registration of establishment in the industry and commerce administration; where no approval is given, the administration shall notify the applicant and explain reasons in written form.

Article 8 In case a travel agency operates for two years after acquiring the license and is imposed a fine or more severe penalty by administrative organs for infringing on the legitimate rights and interests of tourists, it may apply for outbound travel business.

Article 9 For applying for outbound travel business, a travel agency shall file an application to the competent travel administration under the State Council or the competent travel administration in the province, autonomous region or municipality directly under the Central Government which is entrusted. And the administration shall make a decision whether or not to approve within 20 working days upon receiving the application. Where an approval is given, the administration shall renew the travel agency business license to the travel agency, and the travel agency shall hold the renewed license to handle registration of alteration in the industry and commerce administration; where no approval is given, the administration shall notify the applicant with reasons thereof in written form.

Article 10 In case a travel agency sets up a branch, it shall hold the duplicate of the travel agency business license to handle the registration of establishment in the industry and commerce administration where the branch is domiciled and conduct a filing in the competent travel administration where it is domiciled within 3 working days upon its registration of establishment.
The establishment of a branch is not restricted by area, and the business scale of a branch shall not exceed that of the travel agency that establishes it.

**Article 11** In case a travel agency sets up the service outlet specially soliciting tourists and providing travel consultation services (hereinafter referred to as travel agency outlet), it shall handle the procedures of establishment registration in the industry and commerce administration and conduct a filing in the travel administration where it is domiciled.

Travel agency outlets shall be uniformly managed and shall not engage in other activities other than soliciting and consultation.

**Article 12** In the event the alteration of such registration items as name, place of business and legal representative of a travel agency or its business is terminated, it shall handle corresponding alteration registration or cancellation of registration in the industry and commerce administration and conduct a filing in the former travel administration within 10 working days upon the completion of registration to renew or hand back the travel agency business license.

**Article 13** One travel agencies shall open special accounts of quality deposit in the bank designated by the competent travel administration under the State Council deposit the quality deposit or submit to the travel administration giving approval the bank guarantee of guarantee quota acquired by law no less than corresponding quality deposit within 3 working days upon acquiring the travel agency business license.

Where a travel agency engages in domestic travel business and inbound travel business, it shall deposit the quality deposit of RMB200,000; and a travel agency engaging in outbound travel business shall increase of the quality deposit of RMB1.2m.
The interest of quality deposit belongs to the travel agency.

**Article 14** A travel agency that sets up a branch engaging in domestic travel business and inbound travel business every time shall increase the quality deposit of RMB50,000; for setting up a branch engaging in outbound travel business, it shall increase the quality deposit by RMB300,000.

**Article 15** The travel administration may utilize the quality deposit of travel agencies in any of the following circumstances:

1. In case a travel agency violates tourist contract and infringes the legitimate rights and interests of tourists, which has been verified by the travel administration; or
2. In case a travel agency inflicts the loss of tourist expenses paid in advance by tourists for dissolution, bankruptcy or other reasons.

**Article 16** In case a travel agency impairs the legitimate rights and interests of tourists in the judgment and ruling of the people’s court or other valid legal documents but rejects or has no finance for compensation, the people’s court may appropriate compensation from the quality deposit account of the travel agency.

**Article 17** In case a travel agency is not imposed a fine or more severe penalty for infringing on the legitimate rights and interests of tourists within three years upon paying or making up for the deficiency of the quality deposit, the travel administration shall lower 50% of quality deposit by the travel agency and issue an announcement to the public. And the travel agency may hold the voucher issued by the travel administration in the province, autonomous region or municipality directly under the Central Government to lessen its quality deposit.
Article 18 In case a travel agency whose quality deposit is utilized by the travel administration to compensate for the loss of tourists or lessened by law is imposed a fine or more severe penalty for infringing on the legitimate rights and interests of tourists, it shall make up for the deficiency of the quality deposit within 5 working days upon receiving the notice of make-up quality deposit by the travel administration.

Article 19 In case a travel agency no longer engages in travel business, it may withdraw the quality deposit from the bank with a voucher issued by the travel administration.

Article 20 The specific measures for the deposit and utilization of quality deposit shall be separately formulated by the competent travel administration and the finance department under the State Council together with relevant departments.

Chapter III Foreign Investment in Travel Agencies

Article 21 Foreign investment in travel agencies shall be subject to the provisions in this chapter; where no provisions are made in this chapter, it shall be subject to other relevant provisions of the Regulation.

The aforesaid foreign investment in travel agencies includes Chinese-foreign equity joint venture travel agencies, Chinese foreign cooperative travel agencies and wholly foreign-owned travel agencies.

Article 22 If establishing a foreign-invested travel agency, the investor shall file an application to the competent travel administration under the State Council and submit the qualified documents related to Article 6 herein. The administration shall finish examination and review within 30 working days upon accepting the application, and issue the examination and approval opinion for permitting foreign investment in travel
agency if approval is given; if no approval is given, it shall notify the applicant and explain the reasons thereof in written form.

The applicant holds the examination and approval opinion for permitting foreign investment in travel agency, the articles of association, and contract signed by both parties of Chinese foreign joint venture and cooperative business operation to apply to the competent commerce administration under the State Council for establishment of a foreign-invested enterprise. The administration shall in accordance with relevant laws and regulations make the decision whether or not to approve. If approval is given, it shall grant the approval certificate to the foreign-invested enterprise and notify the applicant to acquire the travel agency operation license from the competent travel administration under the State Council, and the applicant may hold the license and the approval certificate for foreign-invested enterprises to handle registration of establishment in the industry and commerce administration; if no approval is given, it shall notify the applicant and explain the reasons thereof in written form.

**Article 23** Foreign-invested travel agencies shall not engage in Chinese mainland residential travel business abroad and Chinese mainland residential travel business in Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan, but except otherwise the decisions by the State Council or free trade agreements and the Mainland and Hong Kong and Macao Closer Economic Partnership Arrangements signed by China.

**Chapter IV Travel Agency Operation**

**Article 24** Tourist service information provided by travel agencies shall be authentic and reliable and no false advertising is allowed.
Article 25 The travel agencies engaging outbound travel business shall not organize tourists to travel in the countries and regions out of the list of Chinese citizens’ outbound travel destinations publicized by the competent travel administration under the State Council.

Article 26 The travel activities for tourists arranged and introduced by travel agencies shall not contain any content in violation of the relevant laws and regulations.

Article 27 Travel agencies shall not solicit tourists at the price lower than the tourist cost or provide other paid services beyond the tourist contract without consent of tourists.

Article 28 Travel agencies shall, while providing service for tourists, sign with tourists the tourist contract, stating the following items:

1. Name, business scope, address, contact number and business license number of travel agency;
2. Name and contact number of travel agency operator;
3. Place and date of signing;
4. Departing place, stops and destination in tour schedule;
5. Arrangement of Service and standards for transportation, accommodation and catering in tour schedule;
6. Specific content and time of tours uniformly arranged by travel agencies;
7. Time and times of free activities of tourists;
8. Payable tourist expenses and means of payment by tourists;
9. Times of shopping, stay time and names of shopping places arranged by travel agencies;
10. Tours and prices separately paid by tourists;
(11) Conditions of cancellation and alteration of contract and deadline of notice in advance;
(12) Dispute settlement mechanism for violation of contract and corresponding responsibility;
(13) Phone number of supervision and complaints on and about tourist service; and
(14) Other content consulted by both parties.

Article 29 Travel agencies shall make authentic, accurate and full explanations on the specific content of the tourist contract while signing the tourist contract with tourists.

Where there is vagueness in the tourist contract or dispute over the understanding of the form clauses, the travel agencies shall conduct explanations according to usual understanding; where there are two or more explanations on the form clauses, travel agencies shall give explanations beneficial to tourists; and where form clauses and non-form clauses are inconsistent, travel agencies shall adopt the non-form clauses.

Article 30 In case a travel agency organizes Chinese mainland residents to conduct outbound tourism, it shall arrange full-process guides for the tourist group throughout the tour.

Article 31 Tour guides entrusted by the travel agency to receive tourists or the lead guides entrusted for organizing tourists in outbound tourism shall hold the tourist certificate and lead guide certificate as prescribed by China.

Article 32 Travel agencies shall by law sign a labor contract and offer the pay no less than the local lowest salary standard while employing tour guides and lead guides.

Article 33 Travel agencies and their entrusted tour guides and lead guides shall not conduct any of the following behaviors:
(1) Decline to fulfill the obligation in the tourist contract; 
(2) Alter the tour schedule arranged in the tourist contract not for force majeure; or 
(3) Cheat or threaten tourists to do shopping or participate in tours that shall be separately paid.

**Article 34** Travel agencies shall not require tour guides and lead guides to receive the tour groups that fail to pay for receipt and services or offer the fees lower than the cost of reception and services or require tour guides and lead guides to undertake the expenses related to the received tour groups.

**Article 35** In case a travel agency violates tourist contract and impairs the legitimate rights and interests of tourists, it shall adopt necessary remedy measures and timely report it to the travel administration.

**Article 36** In case a travel agency is required to entrust travel business, it shall entrust it to the travel agency with corresponding quality, solicit the agreement of tourists and sign a commission contract with the entrusted travel agency on issues of receiving tourists to decide the arrangements of services and standards for receiving tourists and agree on the rights and obligations of both parties.

**Article 37** In case a travel agency which entrusts its travel business to other travel agency shall offer fees no less than the cost of reception and service to the entrusted travel agency; and the entrusted travel agency shall not receive the tour groups which fail to pay for or insufficiently pay for the reception and services.

Where the entrusted travel agency violates contract and impairs the legitimate rights and interests of tourists, the travel agency that conducts entrustment shall undertake corresponding liability of compensation and thereafter may charge compensation from the entrusted travel agency.
**Article 38** Travel agencies shall insure the travel agency liability insurance. And the specific plan for travel agency liability insurance shall be separately formulated by the competent travel administration under the State Council together with insurance supervision and administration bodies under the State Council.

**Article 39** Travel agencies shall conduct authentic explanations and explicit warnings to tourists for the items likely endangering the security of tourists and property and adopt necessary measures to prevent hazards from occurring.

In the event there are situations endangering tourists’ safety, the travel agency, and its entrusted tour guides and lead guides shall adopt necessary measures and timely report to the travel administration; in the event such situations happen abroad, they shall timely report it to the embassy of the People’s Republic of China in the country, related Chinese institutes in the country and local police.

**Article 40** In the event tourist fails to return from abroad, the guide entrusted by the travel agency shall timely report it to the embassy of the People’s Republic of China and related Chinese institutes in the country. And the travel agency shall timely report it to the travel administration and the public security organ of China upon receiving the guide’s report and coordinate to provide information of the illegal immigrant.

In the event there occur the situation that tourist stays illegally in China while a travel agency receives inbound tourism, it shall timely report it to the travel administration, the public security organ and foreign affairs departments and coordinate to provide the information of the illegal immigrant.
Chapter V Supervision and Inspection

Article 41 Relevant departments such as tourism, industry and commerce, price, business and foreign exchange shall according to law strengthen supervision and administration of travel agencies and timely handle the illegal acts.

Article 42 Administrative departments of tourism, industry and commerce and price shall timely issue the supervision and inspection status to the public, with the content including issuing, alteration, revocation and withdrawal of the travel agency business license, illegal business acts and record of good faith of travel agency and tourists’ complaints.

Article 43 In the event travel agency impairs the legitimate rights and interests of tourists, the tourists may make complaints to tourism administrations, administrations of industry and commerce, competent price departments, competent commerce departments or foreign exchange administrations, which shall timely investigate and handle them according to their own duties and responsibilities upon receiving the complaints and inform the information related to the investigation and punishment to tourists.

Article 44 The travel agency and its branches shall accept the supervision and inspection of travel administration of its tourist contract, service quality, tourist security and financial books and report and submit statistic documents of business and financial information to the travel administration in accordance with relevant provisions of the state.

Article 45 Staff in the relevant departments of tourism, industry and commerce, price, business and foreign exchange shall not accept any present by travel agency, participate in shopping activities or tours at the expense of travel agency or make
private benefits for themselves, relatives and friends or other individuals and organizations via travel agency.

Chapter VI Legal Liabilities

Article 46 Travel administration or administration of industry and commerce orders travel agency to make corrections and confiscates illegal gains, and where illegal gains amounts to more than RMB100,000, a fine of one to five times illegal gains will be concurrently imposed; where illegal gains is less than RMB100,000 or no illegal gains is acquired, a fine of RMB100,000 to RMB500,000 will be imposed for a travel agency in violation of the Regulation in any of the following cases:

(1) In case a travel agency fails to acquire corresponding travel agency business license but engage in domestic tourist business, inbound tourist business and outbound tourist business;
(2) In the event the branch’s business scope goes beyond that as prescribed when established; or
(3) In the event service outlets of travel agency engage in other activities rather than soliciting and consultation.

Article 47 In case a travel agency transfers, rents or lends the travel agency business license, the travel administration shall order it to suspend business and make corrections from 1 month to 3 months and confiscate illegal gains; where situation is serious, the travel agency business license will be revoked. For the travel agency receiving transfer or lease and lending of the travel agency business license, the travel administration or the administration of industry and commerce shall order it to suspend illegal business and confiscate illegal gains and a fine of RMB100,000 to RMB500,000 is imposed.
**Article 48** In case a travel agency, violating the Regulations herein, fails to deposit, increase, make up for the deficiency of quality deposit in its quality deposit account or submit corresponding bank guarantee with the prescribed period, the travel administration shall order it to make corrections; for those declining to make corrections, the travel agency business licenses shall be revoked.

**Article 49** In case a travel agency, in violation of the Regulation, fails to insure the travel agency liability insurance, the travel administration shall order it to make corrections; for those declining to make corrections, the travel agency business licenses shall be revoked.

**Article 50** The travel administration shall order a travel agency to make corrections; for those declining to make corrections, a fine less than RMB10,000 shall be imposed for violation of the Regulation in any of the following cases:

1. In case a travel agency fails to conduct a filing to the former travel administration to renew or hand back the travel agency business license with the prescribed period while altering the registration items of name, place of business and legal representative or terminating business;
2. In case a travel agency fails to conduct a filing the travel administration where its branch is domiciled with the prescribed period while establishing a branch; or
3. In case a travel agency fails to submit statistic data of business and financial information to the travel administration not according to relevant provisions of the state.

**Article 51** In case a foreign investment travel agency, in violation of the Regulation, engages in Chinese mainland residential outbound tourist business and tourist business to Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan, or the travel agency engaging in outbound tourist business organizes tourists
to travel in the country and region out of the list of Chinese citizens’ outbound tourism destinations publicized by the competent tourism administration under the State Council, the travel administration shall be responsible to order it to make corrections and confiscate illegal gains, and where illegal gains is more than RMB100,000, a fine of once to five times illegal gains is imposed; where illegal gains are less than RMB100,000 or no illegal gains are acquired, a fine of RMB100,000 to RMB500,000 is imposed; and if situation is serious, the travel agency business license shall be revoked.

Article 52 In case a travel agency, in violation of the Regulation, arranges or introduces the tourist activities which include the content of violating relevant laws and regulations, the travel administration shall order it to make corrections and confiscate illegal gains, and a fine of RMB20,000 to RMB100,000 is imposed; if situation is serious, the travel agency business license shall be revoked.

Article 53 In case a travel agency, in violation of the Regulation, provides tourism service information including false content or false information for tourists, penalty shall be imposed by the administration of industry and commerce by law.

In case a travel agency, in violation of the Regulation, solicits tourists at the quota lower than the tourist cost, penalty shall be imposed by the competent price administration according to law.

Article 54 In case a travel agency, in violation of the Regulation, provides other paid services to tourists beyond the tourist contract without permission, the travel administration shall order it to make corrections and a fine of RMB10,000 to RMB50,000 is imposed.

Article 55 The travel administration shall order it to make corrections, and a fine of RMB20,000 to RMB100,000 is imposed; if situation is serious, the administration shall
order it to suspend business to make remedies from 1 month to 3 months, in case a travel agency, in violation of the Regulation, is in any of the following cases:

(1) Fail to sign tourist contract with tourists;
(2) The tourist contract signed with tourists fails to state the items as prescribed in Article 28 of the Regulation;
(3)Entrust tourist business to other travel agency without the permission of tourists;
(4)Entrust tourist business to unqualified travel agency; or
(5) Fail to sign commission contract with the entrusted travel agency on receiving tourists.

**Article 56** In case a travel agency, in violation of the Regulation, organizes Chinese mainland residents to conduct outbound tourism but fail to arrange a lead guide for the tour group throughout the tour, the travel administration shall order it to make corrections, and a fine of RMB10,000 to RMB50,000 is imposed; for those declining to make corrections, the administration shall order them to suspend business to make rectification from 1 month to 3 months.

**Article 57** In the event tour guide and lead guide entrusted by a travel agency, in violation of the Regulation, fails to hold the guide certificate or lead guide certificate as prescribed by the state, the travel administration shall order him to make corrections, and a fine of RMB20,000 to RMB100,000 is imposed on the travel agency.

**Article 58** In case a travel agency, in violation of the Regulation, does not pay its employed tour guides and lead guides or gives the pay lower than the standard of the local lowest salary, it shall be punished in accordance with relevant provisions in the Labor Contract Law of the People’s Republic of China.
Article 59 The travel administration or the administration of industry and commerce shall order it to make corrections, and a fine of RMB100,000 to RMB500,000 is imposed; the travel administration shall order tour guide and lead guide to make corrections and a fine of RMB10,000 to RMB50,000; if situation is serious, the travel agency business license, tour guide certificate or lead guide certificate shall be revoked, in case a travel agency violates the Regulation as follows:

(1) Decline to fulfill the obligation in the tourist contract;
(2) Alter the tour schedule in tourist contract not for force majeure; or
(3) Cheat and threaten tourists to do shopping or participate in tours that shall be separately paid.

Article 60 In case a travel agency, in violation of the Regulation, requires a tour guide and lead guide to receive the tour group that fails to pay for reception and service, or pay less than the cost of reception and service or requires a tour guide and lead guide to undertake related expenses of tour group, the travel administration shall order it to make corrections and a fine of RMB20,000 to RMB100,000 is imposed.

Article 61 In case a travel agency violates the tourist contract and impairs the legitimate rights and interests of tourists while necessary remedial measures are not adopted, the travel administration or the administration of industry and commerce shall order it to make corrections, and a fine of RMB10,000 to RMB50,000 is imposed; if situation is serious, the travel administration shall revoke the travel agency business license.

Article 62 In any of the following cases in violation of the Regulation, the travel administration shall order it to make corrections and suspend business to make rectifications from 1 month to 3 months; and if the circumstance is serious, the travel agency license shall be revoked:
(1) If the travel agency fails to pay the entrusted one for the reception and service; 
(2) If the travel agency pays the entrusted one less than the cost of reception and service; or 
(3) If the entrusted travel agency receives the tour group that fails to pay or pays insufficiently for reception and service.

**Article 63** The travel administration orders it to make corrections and a fine of RMB20,000 to RMB100,000 shall be imposed on the travel agency; a fine of RMB4000 to RMB20,000 shall be imposed on the tour guide and lead guide; if situation is serious, the administration shall order the travel agency to suspend business to make rectifications from 1 month to 3 months or revoke the travel agency business license, tour guide certificate and lead guide certificate, in case a travel agency and its entrusted tour guide and lead guide violates the Regulation in any of the following situations:

(1) If a travel agency fails to adopt necessary measures for handling situations endangering tourists’ security and timely report them; 
(2) If a travel agency fails to timely report the situation where tourist organized to conduct outbound tourism stays illegally abroad and coordinate to provide the information of the immigrant; or 
(3) If a travel agency fails to timely report the situation where the tourist received for inbound tourism stays illegally in China or coordinate in providing the information of the immigrant.

**Article 64** In case a travel agency is imposed criminal penalty for hindering territory (border) management, it shall not engage in the travel agency business activities within five years upon the completion of penalty execution; in case a travel agency is revoked the license, its main responsible person shall not serve as the main responsible person in any travel agency within 5 years upon the revocation of the license.
Article 65  In case a travel agency impairs the legitimate rights and interests of tourists in violation of the Regulations herein, it shall bear corresponding civil liabilities; if crime is constituted, criminal liability shall be investigated in accordance with law.

Article 66  Directly responsible executive and other directly responsible persons shall be punished according to law, in case a travel administration or other relevant departments and their staff violate the Regulation in any of the following situations:

1. Find illegal acts without handling them timely;
2. Fail to timely release to the public the supervision and inspection on travel agency;
3. Fail to timely handle the tourists’ complaints and inform tourists of the information related to investigation and punishment;
4. Accept the presents from travel agency;
5. Participate in the shopping activities or tours at the expense of travel agency; or
6. Make private benefits for themselves, relatives and friends or other individuals and organizations via travel agency.

Chapter VII Supplementary Provisions

Article 67  For investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan investing to set up travel agency, the Regulation shall apply mutatis mutandis.

Article 68  The Regulation shall enter into effect as of May 1, 2009, when the Regulations on the Management of Travel Agencies issued by the State Council on October 15, 1996 shall be repealed simultaneously.
APPENDIX C
TOURISM LAW OF THE PEOPLE’S REPUBLIC OF CHINA

2015-09-14 CNTAIC

Beijing, China, April 25 (Xinhua) Tourism Law of the People’s Republic of China
(Adopted at the 2nd session of the standing committee of the 12th National People’s Congress on April 25, 2013)


Chapter I General Provisions

Article 1 This law is made to protect the legitimate rights and interests of the tourists and tourism operators, regulate the order of the tourism market, protect and reasonably utilize tourism resources, and promote the sustained and healthy development of tourism.

Article 2 The law applies to the tours, vacations, leisure activities and other forms of tourism activities organized within the territory of or to go beyond the territory of the People’s Republic of China, and the business operations providing relevant tourism services.

Article 3 The State develops tourism, improves public tourism services, and protects tourists’ rights in tourism activities.

Article 4 The development of tourism shall follow the principle of unifying social, economic and ecological benefits. The State encourages all categories of market entities to reasonably and legally utilize tourism resources under the premise of effectively protecting them. Sightseeing sites built with public resources shall demonstrate their public nature.
**Article 5** The State advocates healthy, civilized and environmental ways of tourism, supports and encourages various social institutions to launch public tourism promotion activities for public welfare, and gives awards to the employers and individuals making outstanding contributions to promoting tourism development.

**Article 6** The State builds and improves tourism service standards and market rules, and prohibits industrial monopoly and regional monopoly. Tourism operators shall run business with integrity, compete fairly, and undertake their social responsibilities to provide safe, healthy, sanitary and convenient tourism services for the tourists.

**Article 7** The State Council builds and improves an integrated tourism coordination mechanism to make overall coordination for tourism development.

Local people’s governments above the county level shall strengthen the organization and leadership of tourism work, clearly designate specific tourism departments and institutions, and make the overall coordinate between tourism development, supervision and operation in their respective administrative regions.

**Article 8** Tourism industry organizations established in accordance with the law shall carry out self-regulation.

**Chapter II Tourists**

**Article 9** Tourists shall be entitled to select tourism products and services independently and refuse coercive trade behaviors of tourism operators.

Tourists have the right to get the true information on the tourism products and services they buy.

Tourists have the right to require tourism operators to provide products and services set forth in the contract.
**Article 10** The human dignity, national customs and religious beliefs of tourists shall be respected.

**Article 11** The disabled, the elderly and the minors shall enjoy due convenience and benefits in tourism activities in accordance with laws, regulations and relevant rules.

**Article 12** Tourists have the right to request for assistance and help in case their personal and property safety is in danger.

Tourists have the right to be compensated for in accordance with the law in case their personal safety and property are infringed.

**Article 13** Tourists shall observe public order and respect social morality in tourism activities, respect local customs, cultural traditions and religious beliefs, care for tourism resources, protect the ecological environment, and abide by the norms of civilized tourist behaviors.

**Article 14** Tourists are not allowed to harm local people’s legitimate rights and interests, interfere with the tourism activities of others or harm the legitimate rights and interests of tourism operators and tourism practitioners in tourism activities or when settling a dispute.

**Article 15** When purchasing and accepting tourism services, tourists shall truthfully inform the tourism operators of their personal health conditions relating to the tourism activities, and follow the safety warnings and requirements in tourism activities.

Tourists shall act in line with the measures taken by the State which temporarily restrict tourism activities in order to settle major emergencies, as well as the security and emergency response measures taken by relevant departments, agencies or tourism operators.

Tourists who conduct against safety warnings and requirements, or refuse to act in line with measures taken by the State which temporarily restrict tourism activities in order
to settle major emergencies, and security and emergency response measures shall bear corresponding responsibilities in accordance with the law.

**Article 16** Outbound tourists are not allowed to stay abroad illegally. Outbound tourists who travel in a group are not allowed to leave or separate from the group without permission.

Inbound tourists are not allowed to stay within the territory of China illegally, or leave or separate from the group without permission if travelling in a group.

**Chapter III Tourism Planning and Promotion**

**Article 17** The State Council and the local people’s governments above the county level shall incorporate the development of the tourism industry in the planning of national economic and social development.

The State Council, the people’s governments of municipalities, provinces, and autonomous regions, and people’s governments of prefectures and counties having districts with rich tourism resources under their jurisdiction shall organize the compilation of the planning for tourism development according to the requirements set in the national planning for economic and social development. When utilizing tourism resources covering multiple administrative regions that are good to be utilized as a whole, higher-level people’s governments shall organize the compilation, or relevant local people’s governments shall compile unified planning for tourism development through consultation.

**Article 18** The planning for tourism development shall have such content as the overall requirements and development goals of the tourism industry, the requirements on and measures for the protection and utilization of tourism resources, as well as the requirements on the development of tourism products, the improvement of the quality of tourism services, the construction of tourism culture, the promotion of tourism images, tourism infrastructure and the construction of public service facilities, as well as promotional measures.
Based on the planning for tourism development, the local people’s governments above the county level may develop special planning for developing and utilizing key tourism resources, and set special requirements for the tourism projects, facilities and supporting service functions in certain areas.

**Article 19** The planning for tourism development shall be matched with the master planning for land use, urban and rural planning, planning for environmental protection and the planning for protecting and utilizing other natural resources, cultural relics, among other humanistic resources.

**Article 20** People’s governments at all levels shall take into full consideration the requirements on the spatial layout and land for construction of relevant tourism projects and tourism facilities when developing the master planning for land use. The need to develop the tourism industry shall be taken into consideration when designing and constructing transport, communications, water supply, power supply and environmental protection infrastructure and public service facilities.

**Article 21** When utilizing natural resources and humanistic resources like cultural relics as tourism resources, relevant laws and regulations must be strictly abided by, the requirements on resources, ecological protection and the safety of cultural relics must be met, local traditional culture and customs must be respected and maintained, the regional integrity, cultural representation and local characteristics must be protected, and the need to protect military facilities must be taken into consideration. Competent departments shall intensify the supervision and examination of resource protection and the utilization of resources for the purpose of tourism.

**Article 22** Local people’s governments at all levels shall organize assessments of the implementation of the planning for tourism development compiled by the people’s governments of the same level, and shall make public the assessment result.

**Article 23** The State Council and the local people’s governments above the county level shall develop and organize the implementation of industrial policies beneficial
to sustained and healthy tourism development, push forward the construction of tourism and leisure activities, take measures to advance regional tourism cooperation, encourage the development of inter-regional tourism routes and product development, promote the integration of tourism with such fields as industry, agriculture, commerce, culture, health, sports, science and education, etc., and support minority areas, old revolutionary bases, remote areas and poor areas to develop tourism.

**Article 24** The State Council and the local people’s governments above the county level shall allocate funds based on the local conditions, and intensify the construction of tourism infrastructure, public tourism services and the promotion of tourism images.

**Article 25** The State develops and puts into practice the tourism image promotion strategy. The department in charge of tourism under the State Council shall be responsible for making overall planning for promoting the national tourism image abroad, build tourism image promotion institutions and network, and conduct international tourism cooperation and communication.

The local people’s governments above the county level shall be responsible for the overall planning of local tourism image promotion.

**Article 26** The department in charge of tourism under the State Council and the local people’s governments above the county level shall build a tourism public information and consultation platform if necessary to provide information and advisory services on scenic spots, routes, transport, weather, accommodation, safety and first aid to tourists. Competent departments in the people’s governments of prefectures and counties having districts under its jurisdiction shall set up tourism information centers at transport hubs, in commercial centers and places where tourists concentrate, and set signs in scenic spots or along the roads leading to major scenic spots when necessary.

The people’s governments of prefectures and counties having districts with rich tourism resources under its jurisdiction may open tourist passenger lines or tourist...
Article 27 The State encourages and supports the development of vocational education and training in tourism, and the improvement of quality of personnel engaged in tourism.

Chapter IV Tourism Operation

Article 28 The following requirements shall be met, approval from the tourism authority shall be obtained and industrial and commercial registration shall be made in accordance with the law in order to establish a travel agency, attract, organize and receive tourists, and provide tourism services:

(1) Having a fixed business site;
(2) Having necessary business facilities;
(3) Having registered capital that conforms to the regulations;
(4) Having necessary management staff and tour guides;
(5) Meeting other requirements set by laws and administrative regulations.

Article 29 Travel agencies may engage in the following businesses:

(1) Domestic tourism;
(2) Outbound tourism;
(3) Border tourism;
(4) Inbound tourism;
(5) Other tourism businesses.

To engage in items 2 and 3 above, a travel agency must obtain the required business license. Specific requirements shall be set by the State Council.

Article 30 Travel agencies are prohibited from leasing or lending their business licenses, or illegally transferring their business licenses in other forms.
Article 31 Travel agencies shall pay quality deposits for the tourism services they provide in accordance with the regulations before using it to compensate for the damages to the rights and interests of tourists and to pay the fees for first aid when the personal safety of tourists is in danger.

Article 32 Information issued by travel agencies for the purpose of attracting and organizing tourists must be true and accurate, and must not be false or misleading.

Article 33 When organizing and receiving tourists, travel agencies and their employees are prohibited from arranging visits or taking part in any program or activity in violation of the laws, regulations and social ethics of China.

Article 34 Travel agencies organizing tourism activities shall order products and services from qualified suppliers.

Article 35 Travel agencies are prohibited from organizing tourism activities and luring tourists with unreasonably low prices, or getting illegitimate gains such as rebates by arranging shopping or providing tourism services that requires additional payment. When organizing and receiving tourists, travel agencies shall not designate specific shopping places, or provide tourism services that require additional payment. However, it does not include circumstances where both sides have agreed or the tourists have requested for such arrangements and no influence is caused on the itinerary of other tourists.

In case of any violation to the above two paragraphs, tourists shall have the right to, within thirty (30) days from the end of the travel, require the travel agency to return their purchases and pay the price of the returned purchases on behalf in advance, or refund the payment made for tourism services that require additional payment.

Article 36 Travel agencies, when organizing outbound tourism groups or organizing and receiving inbound tourism groups, shall send a tour lead or tour guide for the group.
Article 37 Those who have passed the tour guide qualification test and signed a labor contract with the travel agency or registered in relevant tourism organizations may apply for a tour guide certificate.

Article 38 Travel agencies shall sign labor contracts with the tour guides they employ, pay remuneration to them, and pay social insurance premiums for them. In case a travel agency temporarily hires a tour guide to provide services for tourists, the travel agency shall pay the tour guide in full amount the tour guide service fee as provided in paragraph three of Article 60 of this law. Where the travel agency sends a tour guide to provide services for a tourist group, it shall not require the tour guide to make any payment in advance or collect any charges from the tour guide.

Article 39 Those who have obtained a tour guide certificate, got the required academic degrees, language ability and experience in the tourism industry, and signed a labor contract with a travel agency may apply for a tour lead certificate.

Article 40 Tour guides and tour leads must provide services under the designation of a travel agency, and must not provide services as a tour guide or tour lead as individuals.

Article 41 When providing services, tour guides/tour leads shall wear their tour guide certificate/tour lead certificate, observe professional ethics, respect the custom and religious beliefs of tourists, tell and explain to the tourists norms of civilized tourist behaviors, guide the tourists to travel in a healthy and civilized way, and stop behaviors which violate social morality. Tour guides and tour leads shall strictly follow the itinerary, shall not alter it or stop the services they are providing without permission or to ask for tips from tourists or
lure, cheat, compel or force tourists in a disguised form to make purchases or participate in tourism activities that require additional payment.

**Article 42** To open to the public, a scenic spot shall follow the opinions of the tourism authority and meet the following requirements:

1. Having necessary tourism supporting services and auxiliary facilities;
2. Having necessary safety facilities and systems; having passed the safety risk assessment and meeting safety requirements;
3. Having necessary environmental protection facilities and ecological protection measures;
4. Meeting other requirements set by laws and administrative regulations.

**Article 43** Tickets of the scenic spots that are built with public resources, as well as services that are charged separately within the scenic spot, including specific sightseeing sites and transport, shall be charged at a price mandated by the government or based on the guiding price set by the government. Price rises must be placed under strict control. In case of any intention to charge or raise prices, a hearing shall be held to solicit opinions from tourists, tourism operators and related organizations and to demonstrate its necessity and feasibility. Scenic spots which are built with public resources shall not raise prices by adding services that are charged separately or in any other form; services with the investment in them fully recovered shall be charged at low prices or provided for free. City parks, museums, monuments, etc. for public welfare, except key cultural relics protection units and units holding precious cultural relics, shall be gradually opened to the public for free.

**Article 44** Scenic spots shall make public their ticket prices, prices for services that are charged separately and the price of packages. Scenic spots shall make public their intention to raise ticket prices six months in advance.
In case the tickets of several scenic spots or those of different sightseeing sites within one scenic spot are sold in a package, the price of the package shall not exceed the sum of all tickets it contains, and tourists shall have the right to choose from the tickets contained.

In case the core tourism services in a scenic spot are temporarily not opened to the public or stopped for some reason, a public announcement shall be made for it along with a corresponding reduction in the charges.

**Article 45** A scenic spot shall not receive more tourists than its maximum capacity as approved by the tourism authority. It shall make public its maximum capacity as approved by the tourism authority, develop and implement a tourist flow control plan, and control the number of tourists in ways such as ticket reservation. When the number of tourists is likely to reach the maximum capacity, the scenic spot shall make an announcement in advance and report the situation to the local people’s government, and the scenic spot and the local people’s government shall take timely measures to guide and divert the tourists.

**Article 46** For urban and rural residents who are engaged in tourism operation by making use of their own residences or other conditions in accordance with the law, the relevant management measures shall be developed by governments of the respective provinces, autonomous regions and municipalities.

**Article 47** In order to engage in the operation of high-risk tourism projects like those conducted high up in the sky, at a high speed, or on the water, diving, adventure, etc., one shall first obtain a business license in accordance with relevant regulations of the State.
Article 48 Those who are running travel agency businesses through the Internet shall obtain a business license for travel agency, and clearly display the information of its business license at a prominent place on the homepage their websites. Websites releasing information on tourism operation shall ensure the authenticity and accuracy of such information.

Article 49 Tourism operators providing transport, accommodation, catering and entertainment services for tourists shall act in line with the requirements set by laws and regulations and fulfill their obligations set forth in the relevant contract.

Article 50 Tourism operators shall ensure that the commodities and services they provide conform to the requirements on personal and property safety. Tourism operators having obtained relevant quality standard ratings shall have facilities and services up to the same standard; those having not obtained such quality standard ratings shall not use the titles and signs indicating such ratings.

Article 51 Tourism operators shall not offer or take bribes when selling/buying commodities or services.

Article 52 Tourism operators shall keep confidential the personal information of tourists that they obtain in the process of tourism operation.

Article 53 Operators engaged in road transport of tourists shall abide by the regulations on road passenger transport safety management, show the dedicated sign for road transport of tourists at a prominent place in the vehicle, and make public at a prominent place in the vehicle information of the operator, the driver, supervision hotline for road transport administration, etc.
Article 54 Operators of scenic spots and accommodation, when transferring part of their services or spaces to others to provide services such as accommodation, catering, shopping, sightseeing, entertainment, tourism and transport, shall assume joint liability for the losses caused by the operational behaviors of the actual operators.

Article 55 When organizing and receiving inbound and outbound tourists, tourism operators shall timely report any illegal activity or circumstance that violates Article 16 of this law by the tourists to the public security organ, the tourism authority or Chinese institutions functioning abroad.

Article 56 The State adopts a liability insurance system for tourism operators such as travel agencies, accommodation service providers, tourism transport service providers and the operators of high-risk tourism activities mentioned in Article 47 of this law in accordance with the level of risks of the tourism activities.

Chapter V Tourism Service Contract

Article 57 Travel agencies shall sign a contract with tourists when organizing and arranging tourism activities.

Article 58 Tourism package contracts shall be made and entered into in writing, and shall contain the following items:
(1) Basic information of the travel agency and the tourists;
(2) Travel itinerary;
(3) The minimum number of tourists to form a group;
(4) Arrangements and standards of such tourism services as transport, accommodation and catering;
(5) Specific times and contents of sightseeing, entertainment activities;
(6) Arrangements of free time;
(7) Travel expenses, and the time limit for and the way of paying such travel expenses;

(8) Responsibility for breach of contract and the method of dispute settlement;

(9) Other matters provided by laws and regulations or agreed by and between the two sides.

When signing the package tourism contract, the travel agency shall explain in detail the content listed in paragraphs 2-8 above to the tourists.

**Article 59** The travel agency shall provide the tourists with the travel itinerary before the tour. Travel itinerary is part of the contract.

**Article 60** In case the travel agency entrusts another travel agency with the duty to sell tourism packages and sign package tourism contracts with tourists, it shall clearly indicate the basic information of the entrusting travel agency and the entrusted travel agency in the contract.

In case the travel agency entrusts a local travel agency with the duty of reception set in the package tourism contract, it shall clearly indicate the basic information of the local travel agency in the contract.

In case a tour guide is provided for the tourists, the fees of the tour guide service shall be clearly indicated in the package tourism contract.

**Article 61** The travel agency shall remind the tourists in a tourism group of purchasing insurance against accidental death or any unexpected injury.

**Article 62** When signing the contract for the tourism package, the travel agency shall inform the tourists of the matters below:

(1) The circumstances under which tourists shall not participate in tourism activities;

(2) Safety precautions for tourism activities;
(3) Information on possible exemption of the travel agency from responsibilities;
(4) Relevant laws, regulations, folk customs and religious taboos at the destination to which the tourists shall pay attention, activities in which the tourists are better not to get involved in accordance with the Chinese law, etc.;
(5) Matters that tourists shall be informed of in accordance with laws and regulations.

In case any matter mentioned above is involved in the process of fulfilling the contract, the travel agency shall also inform the tourists.

**Article 63** When attracting tourists to form a tourism group yet unable to reach the agreed number of tourists, the organizing travel agency may terminate the contract. However, tourists shall be informed of the termination at least seven days in advance if it is a domestic tour in China, and at least thirty days in advance if it is an outbound tour.

In case the agreed number of tourists to make a tourism group is not reached, the organizing travel agency may entrust another travel agency with the duty to fulfill the contract. The organizing travel agency shall be responsible for the tourists, and the entrusted travel agency shall be responsible for the organizing travel agency. Where the tourists disagree with this, they may terminate the contract.

In case the contract terminates for the reason that the agreed number of tourists to make a group is not reached, the organizing travel agency shall fully refund the tourists.

**Article 64** Before the tour begins, a tourist may transfer his/her rights and obligations set in the package tourism contract to a third person, and the travel agency shall not refuse it without justification. Fees hence incurred shall be borne jointly by the tourist and the third person.
**Article 65** In case the tourist terminates the contract before the end of the tour, the organizing travel agency shall deduct necessary fees and return the rest of the payment to the tourist.

**Article 66** The travel agency may terminate the contract it has signed with the tourist under any of the following circumstances:

1. The tourist suffers from infectious diseases which may endanger the health and safety of other tourists;
2. The tourist carries articles that may endanger public security and does not agree to turn them over to competent authority for disposal;
3. The tourist is engaged in illegal activities or activities that violate social morality;
4. The tourist is engaged in activities which seriously affect rights and interests of other tourists, and would not yield to persuasion and cannot be stopped;
5. Other circumstances provided by law.

In case the contract is terminated for any of the circumstances mentioned above, the organizing travel agency shall deduct necessary fees and return the rest of the payment to the tourist concerned. In case some loss has been caused to the travel agency, the tourist concerned shall bear the liability for compensation in accordance with the law.

**Article 67** Events caused by force majeure or events unavoidable even if the travel agency or its performance assistant has reasonably fulfilled their duties, which then affect the itinerary, shall be settled in the following manners:

1. If the contract cannot be fulfilled any longer, both the travel agency and the tourists may terminate the contract; in case the contract cannot be fully and completely fulfilled, the travel agency may revise it within a reasonable scope after making an explanation to the tourists; in case the tourists disagree with any revision of the contract, they may terminate the contract.
(2) If the contract is to be terminated, the organizing travel agency shall deduct the fees which have been paid to the local travel agency or the performance assistant and cannot be refunded and return the rest to the tourists; in case the contract is to be revised, additional fees hence incurred shall be borne by the tourists, and the reduced fees, if any, shall be returned to the tourists.

(3) In the event that the tourists’ personal and property safety is endangered, the travel agency shall take appropriate safety measures, and fees hence arising shall be borne jointly by the travel agency and the tourists.

(4) In case tourists are retained, the travel agency shall take proper measures to settle them down. Fees for accommodation hence arising shall be borne by the tourists; additional fees incurred on the way back shall be borne jointly by the travel agency and the tourists.

Article 68 In case the contract is terminated in the travelling process, the travel agency shall assist the tourists in returning to where they depart or to reasonable locations designated by the tourists. In case the contract is terminated because of the travel agency or the performance assistant, the fees incurred on the way back shall be borne by the travel agency.

Article 69 The travel agency shall fulfill its contracted obligations according to the package tourism contract, and must not alter the travel itinerary and arrangements without the tourists’ consent.

In the event that the travel agency entrusts the reception business in the package tourism contract to another local travel agency with corresponding qualifications, it shall sign a written authorization contract with the local travel agency to specify the rights and obligations of each side, provide the local travel agency with a duplicate of the package tourism contract it has signed with the tourists, and pay the local travel agency an amount that is no less than the reception and service costs. The local travel
agency shall provide services according to the package tourism contract and the authorization contract.

**Article 70** If the travel agency fails to perform its obligations agreed in the package tourism contract or perform its contracted obligations in a way that does not conform to the agreement, it shall take the responsibility for breach of contract like continuing to fulfill the contract, adopting remedy measures, making compensation, etc.; in case it causes personal damage or property loss to the tourists, the travel agency shall honor its liability. In the event that the travel agency is competent to fulfill its contracted obligations, yet refuses to do so even upon the request of the tourists, which then causes such serious consequences like harming the tourists’ personal health or retaining the tourists, the tourists may also request the travel agency to pay a sum of compensation between one time and three times the amount of the travel costs.

In case the package tourism contract cannot be performed or be performed as contracted for the reason of the tourists, which then causes personal damage or property loss to the tourists, the travel agency shall not be held liable. The travel agency shall bear corresponding responsibility for any personal damage or property loss caused to the tourists in free time because of the travel agency’s failure to fully fulfill its obligation of giving safety warnings or offering assistance.

**Article 71** In case of any breach of contract for the reason of the local travel agency or the performance assistant, the organizing travel agency shall be held liable, and may, after bearing due liability, claim compensation from the local travel agency and the performance assistant.

In case of any personal or property damage to the tourists caused by the local travel agency or the performance assistant, the tourists concerned may require the local travel agency or the performance assistant to honor its liability, or require the
organizing travel agency to honor its liability; after honoring its liability, the organizing travel agency may claim compensation from the local travel agency or the performance assistant. However, in case the personal or property damage to the tourists is caused by the public transport operator, the public transport operator shall honor its liability, and the travel agency shall assist the tourists in claiming compensation from the public transport operator.

**Article 72** Should any tourist harm the legitimate rights and interests of the travel agency, the performance assistance, tourism practitioners or other tourists in tourism activities or when settling disputes, the same shall bear the compensation responsibility in accordance with the law.

**Article 73** The travel agency shall make travel arrangements following specific requirements of the tourists; in case the travel agency has signed a package tourism contract, yet the tourists request changing the travel arrangements, which then incurs additional fees, such fees shall be borne by the tourists, and the reduced fees shall be returned to the tourists.

**Article 74** In the event that the travel agency accepts tourists’ commission, books such tourism services as transport, accommodation, catering, sightseeing and entertainment, and collects commission fees, it shall handle the entrusted affairs by itself. In case of any loss caused to the tourists due to the faults of the travel agency, the travel agency shall bear the compensation responsibility. In case the travel agency is commissioned by the tourists to provide such services as designing the travel itinerary, providing tourism information, etc., it shall ensure reasonable and feasible design, as well as timely and accurate information.

**Article 75** Accommodation operators shall provide accommodation services for group tourists as agreed in the tourism service contract. If the accommodation operators fail
to provide services according to the tourism service contract, they shall provide accommodation services not lower than the contracted standards, and bear additional fees hence arisen; in the event that the accommodation operators cannot provide services due to force majeure, government measures taken for the sake of public interests, the accommodation operators shall assist in arranging accommodation for the tourists.

Chapter VI Tourism Safety

Article 76 People’s governments above the county level are responsible for tourism safety. Relevant departments of the people’s governments above the county level shall perform the tourism safety regulatory responsibilities in accordance with the laws and regulations.

Article 77 The State builds a risk warning system for the safety of tourism destinations. The levels and implementation procedures of risk warnings on the safety of tourism destinations shall be developed by the department in charge of tourism under the State Council along with other relevant departments. People’s governments above the county level and relevant departments under them shall take tourism safety as an important part of emergency monitoring and evaluation.

Article 78 People’s governments above the county level shall incorporate tourism emergency management into their emergency management system, develop emergency plans, and establish a tourism emergency response mechanism. In case of an emergency, local people’s government and relevant departments and institutions under it shall take measures to do the rescue, and help the tourists return to where they departure or any reasonable location designated by the tourists.
**Article 79** Tourism operators shall strictly abide by the laws, regulations, national and industrial standards on safety production and fire safety management, meet corresponding safety production requirements, and develop tourist safety protection systems and emergency plans.

Tourism operators shall hold regular trainings on emergency rescue skills for practitioners who provide services directly to the tourists, carry out safety inspection, monitoring and evaluation over the products and services, and take necessary measures to prevent any harm.

When organizing or receiving elderly, minor and disabled tourists, tourism operators shall take corresponding safety measures.

**Article 80** Tourism operators shall expressly explain to the tourists or warn the tourists of the following in tourism activities in advance:

(1) Instructions on how to use relevant facilities and equipment properly;

(2) Necessary safety precautions and emergency measures;

(3) Management and service establishments, facilities and equipment which are not open to the tourists;

(4) Groups who are suggested not to participate in relevant activities;

(5) Other circumstances that may endanger the tourists' personal and property safety.

**Article 81** Immediately after an emergency or tourism safety incident, tourism operators shall take necessary assistance and settlement measures, perform the reporting obligation, and properly settle the tourists.
Article 82 In case their personal safety or property is endangered, tourists have the right to ask the tourism operator, local people’s government and relevant institution for timely assistance. When stuck in a plight overseas, outbound Chinese tourists have the right to ask the local Chinese official institution for assistance and protection within its scope of responsibilities. After receiving assistance from relevant organization(s) or institution(s), tourists shall pay the part of the fees that shall be borne individually.

Chapter VII Tourism Supervision and Management

Article 83 The department in charge of tourism in local people’s governments above the county level and relevant departments shall follow this law and relevant laws and regulations to supervise and regulate the tourism market within their respective scopes of responsibilities. Local people’s governments above the county level shall organize the department in charge of tourism, relevant competent departments and law enforcement departments in the administration for industry and commerce, product quality supervision and transport to carry out supervision/inspection over relevant behaviors of the tourism operators.

Article 84 When performing its supervision and management responsibilities, the department in charge of tourism must not violate relevant laws and administrative regulations to charge the objects of supervision and management. The department in charge of tourism and its staff shall not take part in tourism operations in any form.

Article 85 The department in charge of tourism in people’s governments above the county level shall have the right to supervise and check the following:
(1) Whether the business license has been obtained for running travel agencies or providing tour guide and tour lead services;
(2) The travel agency’s operational behaviors;
(3) The service behaviors of tour guides, tour leads and other tourism practitioners;
(4) Other matters provided in laws and regulations.

The department in charge of tourism shall carry out supervision/inspection in accordance with the provisions in the foregoing paragraphs, and may check and duplicate the contracts, bills, books and other materials that are suspected to be unlawful.

Article 86 When carrying out supervision/inspection in accordance with the law, the department in charge of tourism and relevant departments shall designate no fewer than 2 people and shall show their lawful certificates. Should there be only one supervision or inspection personnel or the supervision or examination personnel fail to show their lawful certificates, the supervised and inspected units or individuals shall have the right to refuse the supervision/inspection.

The supervision/inspection personnel shall, in accordance with the law, keep confidential the business secrets and personal information they acquire about the supervised units/individuals in the supervision/inspection.

Article 87 Units and individuals shall be cooperative in the supervision/inspection which is carried out in accordance with the law, truthfully explain the situation, and provide files and materials instead of being uncooperative, hindering the supervision/inspection or concealing any information.

Article 88 When performing the supervision/inspection responsibility or settling complaints or reports, the department in charge of tourism in people’s governments above the county level and relevant departments shall timely punish the behaviors
that violate this law, if any, according to the law, or timely notify, in writing, before transferring it to relevant departments for investigation if the circumstance goes beyond their scope of responsibilities.

Article 89 Local people’s governments above the county level shall build a system to share the information on the penalty for tourism offenses, and urge the settlement of the offenses that require the cooperation of different departments and regions. The department in charge of tourism and relevant departments shall timely make public the supervision/inspection results according to their respective responsibilities.

Article 90 Tourism industry organizations established in accordance with laws, administrative regulations and articles of association develop operational and service standards of the industry, conduct self-discipline management over its members’ operational behaviors and service quality, hold professional ethics education and trainings, and improve the quality of employees.

Chapter VIII Settlement of Tourism Disputes

Article 91 Local people’s governments above the county level shall designate or establish a unified authority to accept tourism complaints. Upon acceptance of a complaint, the same shall timely settle it or transfer it to the competent department for settlement, and shall inform the complainant of it.

Article 92 Any dispute arising between the tourists and the tourism operators shall be settled by
(1) Mutual agreement;
(2) Applying for mediation by the consumers’ association, the tourist complaint acceptance authority or relevant mediation organizations;
(3) Applying to arbitration bodies for arbitration proceedings pursuant to relevant agreements reached with the tourism operators;
(4) Filing a lawsuit with a people’s court;

Article 93 On a consensual basis, the consumers’ association, tourist complaint acceptance authority and relevant mediation organization shall mediate between the tourists and the tourism operators over the dispute between them in accordance with the law.

Article 94 In case a dispute arises between the tourists and the tourism operators and the tourists are numerous and have the same claims, the tourists may elect representatives to take part in the negotiation, mediation, arbitration and litigation processes.

Chapter IX Legal Responsibilities

Article 95 For those who violate the provisions herein and run travel agencies without authorization, the tourism authority or the administrative department for industry and commerce shall order such to remedy the situation, confiscate their illegal gains, impose on them a fine of RMB10,000-RMB100,000, or a fine one to five times the illegal gains if such gains reach over RMB100,000; as for the people responsible, a fine of RMB2,000-RMB20,000 may be imposed on them.

Those who violate the provisions herein and run the businesses included in subparagraphs 2 and 3, paragraph one of Article 29 in this law without authorization, or rent or lend the travel agency business license to another party, or illegally transfer the travel agency business license in other forms shall, apart from being fined as provided above, be ordered to suspend operation for rectification; their travel agency business license shall be revoked when the circumstances are serious; and a fine of RMB2,000-RMB20,000 shall be imposed on the directly responsible person in charge.
Article 96 In case the travel agency violates this law and has one of the behaviors below, the department in charge of tourism shall order it to remedy the situation, confiscate its illegal gains, and impose a fine of RMB5,000-RMB50,000 on it; when the circumstances are serious, the travel agency concerned shall be ordered to suspend operation for rectification or its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, a fine of RMB2,000-RMB20,000 shall be imposed.

(1) Failing to designate a tour guide or tour lead to accompany the outbound and inbound tourist groups in accordance with regulations;
(2) Designating personnel who have not obtained the tour guide certificate or the tour lead certificate to provide services as tour guide or tour lead;
(3) Failing to pay the temporarily employed tour guides the service fees;
(4) Requesting the tour guide to make payment in advance or charging the tour guide.

Article 97 In case the travel agency violates this law and has one of the behaviors below, the department in charge of tourism or relevant departments shall order it to remedy the situation, confiscate its illegal gains, and impose a fine of RMB5,000-RMB50,000 on it; when the circumstances are serious, the travel agency concerned shall be ordered to suspend operation for rectification or its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, a fine of RMB2,000-RMB20,000 may be imposed.

(1) Making false publicity which misleads the tourists;
(2) Ordering products/services from unqualified suppliers;
(3) Failing to effect insurance in respect of the social responsibilities of the travel agency in accordance with the regulations.
Article 98 In case the travel agency violates Article 35 of this law, the department in charge of tourism shall order it to take remedy measures and suspend operation for rectification, confiscate its illegal gains, and impose a fine of RMB30,000-RMB300,000 on it; when the illegal gains reach over RMB300,000, a fine one time to five times the amount of the illegal gains shall be imposed; when the circumstances are serious, its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, their illegal gains shall be confiscated and a fine of RMB2,000-RMB20,000 shall be imposed on them or their tour guide certificate and tour lead certificate may be provisionally suspended or revoked.

Article 99 In case the travel agency fails to fulfill its reporting obligation provided in Article 55 of this law, the department in charge of tourism may impose a fine of RMB5,000-RMB50,000 on it; when the circumstances are serious, it may be ordered to suspend operation for rectification or its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, a fine of RMB2,000-RMB20,000 shall be imposed on them or their tour guide certificate and tour lead certificate may be provisionally suspended or revoked.

Article 100 If the travel agency violates this law and has one of the behaviors below, the department in charge of tourism shall order it to remedy the situation, impose a fine of RMB30,000-RMB300,000 on it, and order it to suspend operation for rectification; when serious consequences like stranding the tourists are caused, its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, a fine of RMB2,000-RMB20,000 shall be imposed, and their tour guide certificate and tour lead certificate may be provisionally suspended or revoked.

(1) Altering travel arrangements without permission during the tour, which seriously harms the tourists’ rights and interests;
(2) Refusing to fulfill the contract;
(3) Entrusting another travel agency with the duty to perform the package tourism contract without getting the tourists’ written permission.

**Article 101** If the travel agency violates this law, arranges the tourists to visit or take part in projects or activities that violate the Chinese laws, legal provisions and social morals, the department in charge of tourism shall order it to remedy the situation and suspend operation for rectification, confiscate its illegal gains, and impose a fine of RMB20,000-RMB200,000; when the circumstances are serious, its travel agency business license may be revoked; as for the directly liable person in charge and other directly liable people, a fine of RMB2,000-RMB20,000 shall be imposed, and the tour guide certificate and tour lead certificate may be provisionally suspended or revoked.

**Article 102** The department in charge of tourism shall order anyone who provides tour guide or tour lead services without the tour guide certificate or the tour lead certificate to take remedy measures, confiscate his/her illegal gains, and impose a fine of RMB1,000-RMB10,000 on the same before making a public announcement of it.

The department in charge of tourism shall order any tour guide or tour lead who violates the provisions in this law, contracts business privately to take remedy measures, confiscate his/her illegal gains, impose a fine of RMB1,000-RMB10,000 on the same, and provisionally suspend or revoke the tour guide certificate and tour lead certificate.

The department in charge of tourism shall order any tour guide or tour lead who violates the provisions in this law and asks for tips from the tourists to return the money to the tourists, and impose a fine of RMB1,000-RMB10,000 on the same; when the circumstances are serious, the tour guide certificate and tour lead certificate may be provisionally suspended or revoked.
Article 103 Any tour guide/tour lead whose tour guide certificate/tour lead certificate has been revoked in accordance with the provisions in this law or relevant managerial staff of a travel agency whose travel agency business license has been revoked and which has been fined is not allowed to re-apply for the tour guide/tour lead certificate or engage in travel agency businesses within three years from the date of the punishment.

Article 104 The administration for industry and commerce shall impose a fine on tourism operators who violate the provisions here and give/take bribes in accordance with relevant laws and regulations; when the circumstances are serious, the department in charge of tourism shall revoke the travel agency business license.

Article 105 For scenic spots which do not meet the requirements for receiving tourists set in this law, yet receive tourists, the authorities of the scenic spots shall order the same to suspend operation for rectification till they meet the due requirements, and shall impose a fine of RMB20,000-RMB200,000 on them.

If the scenic spot fails to report the situation to the local people’s government or make a public announcement in accordance with this law or take measures to guide and divert the tourists when the number of tourists is likely to reach its maximum capacity, or if the number of tourists in the scenic spot have exceeded the maximum capacity, the authority of the scenic spot shall order it to remedy the situation. When the circumstance is serious, the scenic spot concerned may be ordered to suspend operation for one to six months for rectification.

Article 106 In case a scenic spot violates the provisions in this law to raise the ticket price or prices for separately-charged service items without authorization, or conducts other illegal activities relating to price, it shall be punished by competent authorities in accordance with relevant laws and regulations.
Article 107 In case a tourism operator violates the laws, regulations or national and industrial standards on the management of safety production and fire safety, it shall be punished by competent authorities in accordance with relevant laws and regulations.

Article 108 For tourism operators and practitioners under it who violate the provisions in this law, tourism authorities or relevant departments shall record such violations in their credit records and make public such violations.

Article 109 Staff of tourism authorities or relevant departments who abuse their powers, neglect their duties and play favoritism, yet not to the level of committing a crime in the performance of their supervision and management responsibilities shall be punished in accordance with the law.

Article 110 In case the provisions in this law are violated, which then constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

Chapter X Supplementary Provisions

Article 111 Terms used in this law are defined as follows:

(1) Tourism operator refers to a travel agency, scenic spot and an operator who provides transport, accommodation, catering, shopping and entertainment services for tourists.

(2) Scenic spot refers to a site or area which is used to provide sightseeing services and has clearly defined administrative boundaries.

(3) Package tourism contract refers to a contract where the travel agency arranges the tour in advance, provides by itself or through its performance assistant two or more tourism services including transport, accommodation, catering, sightseeing, tour guide or tour lead and tourists make a lump-sum payment of the travel expenses.
(4) Organizing travel agency refers to a travel agency which signs the package tourism contract with the tourists.

(5) Local travel agency refers to the travel agency which accepts the commission of the organizing travel agency to receive the tourists at the destination.

(6) Performance assistant refers to the legal or natural person who has signed a contract with a travel agency, assists the travel agency in fulfilling the obligations set in a package tourism contract, and actually provides relevant services.

**Article 112** This law shall come into effect on October 1, 2013.
APPENDIX D
REGULATIONS ON ADMINISTRATION OF TOUR GUIDES

Promulgated by Decree No. 263 of the State Council of the People's Republic of China on May 14, 1999, and effective as of October 1, 1999


Article 1 These Regulations are formulated in order to standardize tour-guiding activities, to protect the lawful rights and interests of tourists and tour guides, and to promote the healthy development of tourism.

Article 2 Tour guides mentioned in these Regulations refer to those who have obtained a Tour Guide Certificate according to these Regulations, and accept appointment of a travel agency to provide tourists with guiding, introducing and other related tourism services.

Article 3 The State exercises a system of nationwide uniform examination of qualification for tour guides.

Any citizen of the People's Republic of China, who has an academic degree conferred by a high school, a secondary specialized school or higher, is in good health, and possesses basic knowledge and language skills catering to the needs of tour-guiding, may take part in the examination for tour guide qualification; those who have passed the examination shall be issued a Tour Guide Qualification Certificate by the tourism administration department of the State Council or the tourism administration departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government delegated by the tourism administration department of the State Council.
**Article 4** A Tour Guide Certificate shall be obtained in order to conduct tour-guiding activities within the territory of the People’s Republic of China.

Only after concluding a labor contract with a travel agency or registering with a tour guide service company, may those with a Tour Guide Qualification Certificate apply to the tourism administration departments of the people’s governments of provinces, autonomous regions or municipalities directly under the Central Government for obtaining a Tour Guide Certificate on the strength of the labor contract and documents certifying the registration.

For anyone who possesses the language skills of a special language but has not obtained a Tour Guide Certification Certificate, if a travel agency needs to employ him to temporarily conduct tour-guiding activities, the travel agency shall apply to the tourism administration departments of the people’s governments of provinces, autonomous regions or municipalities directly under the Central Government for obtaining a Temporary Tour Guide Certificate for him.

The design and format of Tour Guide Certificate and Temporary Tour Guide Certificate are laid down by the tourism administrative departments of the State Council.

**Article 5** Anyone falling under any of the following circumstances shall not be issued with a Tour Guide Certificate:

1. having no capacity for civil conduct or having a limited capacity for civil conduct;
2. suffering from contagious diseases;
3. having received criminal punishment, except for involuntary crimes;
4. having ever been has Tour Guide Certificate revoked.

**Article 6** The tourism administration department of the people’s government of a province, autonomous region or municipality directly under the Central Government shall issue Tour Guide Certificate within 15 days from the date of receiving application for obtaining a Tour Guide Certificate; if it is found that any circumstance stipulated in
Article 5 of these Regulations exists, therefore no Tour Guide Certificate shall be issued, a written notice shall be send to the applicant.

**Article 7** Tour guides shall continuously improve their professional skills and ethics. The State exercises a system of grade testing system for tour guides. The standards and measures for grade testing for tour guides are to be worked out by the tourism administration department of the State Council.

**Article 8** When conducting tour-guiding activities, tour guides shall bear their Tour Guide Certificate. The Tour Guide Certificate has a term of validity of 3 years. If the holder of a Tour Guide Certificate intends to continue to conduct tour-guiding activities after the expiration of the term of validity, he shall, before 3 months of the expiration of the term of validity, apply to the tourism administration department of a province, autonomous region or municipality directly under the Central Government to undergo the procedures for reissue of a Tour Guide Certificate. The term of validity of a Temporary Tour Guide Certificate shall not be more than 3 months, and shall not be renewed.

**Article 9** A tour guide must be appointed by a travel agency in order to conduct tour-guiding activities. A tour guide shall not privately contract to, or directly contract to in any other form, engage in tour business and conduct tour-guiding activities.

**Article 10** When conducting tour-guiding activities, tour guides' personal dignity shall be respected, and their personal safety shall not be endangered. Tour guides are entitled to refuse any unreasonable request that affronts their dignity or infringes their professional ethics.
Article 11 When conducting tour-guiding activities, tour guides shall conscientiously protect the interests of the State and national dignity; any words and behaviors impairing the interests of the State or national dignity shall be avoided.

Article 12 When conducting tour-guiding activities, tour guides shall obey professional ethics, dress decently, behave politely, respect tourists' religious belief, ethical customs and living habits.
When conducting tour-guiding activities, tour guides shall give explanation to human and natural conditions of the touring place, and make introduction into social customs and habits; however, they shall not mix any vulgar and indecent elements into their explanation and introduction for catering to vulgar interests of some tourists.

Article 13 Tour guides shall strictly follow the travel agency's hosting plan to arrange tourists' travel and sightseeing activities, shall not arbitrarily add or reduce any tour items or cease his tour-guiding activities.
In the cause of leading tourists to travel and sightsee, if encountering any emergent situations that possibly endanger the tourists' personal safety, the tour guide may, upon consent of the majority of tourists, adjust or modify the hosting plan, but a prompt report shall be made to the travel agency.

Article 14 In the cause of leading tourists to travel and sightsee, the tour guide shall truthfully state the situations that possibly endanger the tourists' personal or property safety and give clear warnings to the tourists, and shall adopt measures to prevent the occurrence of the danger according to the travel agency's instructions.

Article 15 When conducting tour-guiding activities, tour guides shall not sell any goods to or buy any goods from tourists, nor seek tips for tourists in explicit or implied ways.
Article 16  When conducting tour-guiding activities, tour guides shall not deceive or force tourists to consume or collude with proprietors to deceive or force tourists to consume.

Article 17  For an act of a tour guide violating the provisions of these Regulations, tourists are entitled to file a complaint towards the tourism administration departments.

Article 18  For anyone who conducts tour-guiding activities without a Tour Guide Certificate, the tourism administration department shall order him to make corrections and make the matter public, and impose a fine of not less than 1,000 yuan nor more than 30,000 yuan; if there are illegal earnings, such illegal earnings shall be confiscated.

Article 19  If, without appointment of the travel agency, a tour guide conduct tour-guiding activities by privately contracting to, or directly contracting to in any other form, engage in tour business, the tourism administration department shall order him to make corrections, and impose a fine of not less than 1,000 yuan nor more than 30,000 yuan; if there are illegal earnings, such illegal earnings shall be confiscated; if the circumstances are serious, the Tourism administration department of the people’s government of a province, autonomous region or municipality directly under the Central Government shall revoke his Tour Guide Certificate and make the matter public.

Article 20  If, when conducting tour-guiding activities, a tour guide has any words and behaviors impairing the interests of the State or national dignity, the tourism administration department shall order him to make corrections; if the circumstances are serious, the Tourism administration department of the people’s government of a province, autonomous region or municipality directly under the Central Government shall revoke his Tour Guide Certificate and make the matter public; the travel agency
to which the tour guide in question belongs to shall be given a warning, and even have its business suspended for rectification.

Article 21 If, when conducting tour-guiding activities, a tour guide does not carry out his Tour Guide Certificate, the tourism administration department shall order him to make corrections; if the making of correction is refused, a fine of not more than 500 yuan shall be imposed.

Article 22 If a tour guide falls under any of the following circumstances, the tourism administration department shall order him to make corrections and temporarily revoke his Tour Guide Certificate for from 3 to 6 months; if the circumstances are serious, the Tourism administration department of the people’s government of a province, autonomous region or municipality directly under the Central Government shall revoke his Tour Guide Certificate and make the matter public:

(1) arbitrarily adding or reducing any tour items;
(2) arbitrarily changing the hosting program;
(3) arbitrarily ceasing his tour-guiding activities.

Article 23 If, when conducting tour-guiding activities, a tour guide sells any goods to or buys any goods from tourists, or seek tips for tourists in explicit or implied ways, the tourism administration department shall order him to make corrections and impose a fine of not less than 1000 yuan nor more than 30,000 yuan; if there are illegal earnings, such illegal earnings shall be confiscated; if the circumstances are serious, the Tourism administration department of the people’s government of a province, autonomous region or municipality directly under the Central Government shall revoke his Tour Guide Certificate and make the matter public; the travel agency appointing the tour guide in question shall be given a warning, and even have its business suspended for rectification.
Article 24 If, when conducting tour-guiding activities, a tour guide deceives or forces tourists to consume or colludes with proprietors to deceive or force tourists to consume, the tourism administration department shall order him to make corrections and impose a fine of not less than 1000 yuan nor more than 30,000 yuan; if there are illegal earnings, such illegal earnings shall be confiscated; if the circumstances are serious, the Tourism administration department of the people's government of a province, autonomous region or municipality directly under the Central Government shall revoke his Tour Guide Certificate and make the matter public; the travel agency appointing the tour guide in question shall be given a warning, and even have its business suspended for rectification; if a crime is constituted, criminal liability shall be investigated according to Law.

Article 25 Any staff members of tourism administration departments who neglect their duties, abuse their powers, practice favoritism for personal interests shall be investigated for criminal liabilities if crimes are constituted, or given administrative sanctions if no crimes are constituted.

Article 26 Measures for administration of tour guides in scenery sites or scenery zones are to be formulated by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government by reference to these Regulations.

Article 27 These Regulations take effect as of October 1, 1999. The Interim Measures for Administration of Tour Guides approved by the State Council on November 14, 1987 and promulgated by the State Tourism Bureau on December 1, 1987 shall be repealed simultaneously.
APPENDIX E
TOURISM PROMOTION ACT

Chapter I General Provisions

Article 1 (Purpose)
The purposes of this Act are to contribute to the promotion of tourism by creating an environment favorable to tourism, developing resources for tourism, and fostering the tourism industry.

Article 2 (Definitions)
The terms used in this Act shall be defined as follows:
1. The term "tourism business" means the business of providing tourists with transportation, lodging, meals, sports, amusement, recreation, or other services, or making any facility available to tourists in connection with tourism;
2. The term "tourism business operator" means a person who has completed registration, has obtained permission or designation (hereinafter referred to as "registration, etc."), or has filed a report to run a tourism business;
3. The term "package tour" means a trip for which a person who runs a travel business prepares a program for prospective travelers who desire to travel overseas, including the destinations and itinerary of the trip, and the details of and fares for transportation, accommodation, and other services provided to such travelers, and operates such program by inviting prospective travelers to participate in the program;
4. The term "member" means a person who has made an agreement with a tourism business operator (including any person who has obtained approval of his/her business plan under Article 15 (1) and (2)) to use any tourism facility preferentially or under more favorable conditions than those for ordinary users;

Source: http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=28355&type=sogan&key=8
5. The term "co-owner" means a person who holds title of a tourism facility of a tourism business operator (including those who have obtained approval of his/her business plan under Article 14 (1) and (2)) by lot in sole or joint ownership;

6. The term "tourist destination" means a place designated under this Act where natural or cultural resources for tourism are available and basic conveniences for tourists have also been made available;

7. The term "tourism complex" means an area designated as a base for tourism pursuant to this Act, in which diverse tourist facilities are or shall be developed comprehensively for various types of tourism and relaxation of tourists;

8. The term "private developer" means a private individual or a legal entity established under the Commercial Act or the Civil Act, who intends to develop a tourism complex;

9. The term "development plan" means a plan for development and management of tourist facilities necessary for enhancing the protection and use of a tourist destination or tourism complex;

10. The term "support facilities" means facilities installed inside and outside a tourist destination or tourism complex necessary for operating, or maintaining the tourist destination or tourism complex and for facilitating the functions of such tourist destination or tourism complex;

11. The term "special tourist zone" means an area designated pursuant to this Act as one exempted or granted leniency from regulations under any statute related to tourism activities and in which it is required to apply endeavors to develop an environment for tourism, such as services, information systems, and public relations, relating to tourism activities in order to facilitate the attraction of foreign tourists;

11-2. The term “tour voucher” means a certificate which states the value or quantity thereon (including recording by electronic or magnetic means; hereinafter the same shall apply) so that people excluded from tourism may engage in tourism activities using it;

12. The term “culture and tour guide” means a person who provides expert explanations about tourism resources, such as history, culture, arts, and nature, to
allow tourists better opportunities to understand, appreciate, and experience such tourism resources.

Chapter II Tourism Business

Article 3 (Categories of Tourism Businesses)

(1) Tourism businesses shall be divided into the following categories:

1. Travel business: The business of acting as an agent for travellers or business operators of means of transportation, accommodation, or other facilities incidentally required in travelling to provide them with services of arranging the use of such facilities, vicariously signing contracts, or furnishing them with travel information and other convenience for travel;

2. Tourist accommodation business: Any of the following businesses:
   (a) Hotel business: The business of operating facilities suitable for the accommodation of tourists to provide tourists with such facilities, or operating facilities for meals, sports, recreation, relaxation, performances, or training programs to provide tourists with such facilities along with accommodation;
   (b) Resort condominium business: The business of operating facilities suitable for accommodation and cooking for tourists to provide its members, co-owners, or other tourists with such facilities, or operating facilities for meals, sports, recreation, relaxation, performances, or training programs to provide them with such facilities along with accommodation;

3. Tourist-use facility business: Any of the following businesses:
   (a) The business of operating facilities suitable for meals, sports, recreation, relaxation, cultural activities or arts, leisure activities, etc. for use by tourists;
   (b) The business of operating at least two different types of facilities as specified by Presidential Decree, along with facilities for tourist accommodation, etc. (hereinafter referred to as “tourist accommodation”) for use by members or other tourists;
   (c) Campground business: The business of enabling tourists to use campgrounds that offer camping facilities (excluding a youth campground prescribed in subparagraph
1 (e) of Article 10 of the Juvenile Activity Promotion Act) with facilities, amenities, etc. suitable for camping.

4. International conference business: The business of operating facilities installed properly for holding international conventions (including seminars, forums, and exhibitions; hereinafter the same shall apply) with a capacity to create demand for large-scale tourism, or acting as an agent for vicariously executing commissioned business affairs related to planning, preparing, proceeding with international conventions;

5. Casino business: The business of operating an exclusive business facility in which certain players make a profit while other players sustain a loss as a consequence of probabilities, playing with specific instruments, such as dice, cards, and slot machines;

6. Amusement facility business: The business of operating facilities or machines installed for amusement or games for use by tourists (including a business of operating facilities or machines installed for amusement or games for the purpose of attracting tourists or running advertisements, etc., while conducting other businesses);

7. Tourist convenience facility business: The business of implementing any project, or operating any facility, deemed capable of contributing to the promotion of tourism, except the tourism businesses defined under subparagraphs 1 through 6.

(2) The tourism businesses defined under paragraph (1) 1 through 4, and 6 and 7 may be subdivided, as prescribed by Presidential Decree.

Article 4 (Registration)

(1) A person who intends to conduct a travel business, tourist accommodation business, tourist facilities business and international conference business under the provisions of Article 3 (1) 1 through 4 shall register such business with a Special Self-Governing Province Governor or the head of a Si/Gun/Gu (referring to the head of an autonomous Gu; hereinafter the same shall apply).

(2) Deleted. <by Act No. 9527, Mar. 25, 2009>
(3) A person who intends to register a business in accordance with paragraph (1) shall prepare the capital, facilities, equipment, etc., as prescribed by Presidential Decree.

(4) A person who intends to change any description registered in accordance with paragraph (1) and specified as a material fact by Presidential Decree shall make a revised registration.

(5) Matters necessary for procedures for the registration or revised registration under paragraphs (1) and (4) shall be prescribed by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 7 (Disqualifications)

(1) Neither of the following persons shall be qualified for registration as a tourism business or for filing a report thereon, nor may he/she obtain approval for a business plan prescribed in Article 15 (1) and (2). The foregoing shall also apply to a legal entity, if one of its executives falls under any of the following subparagraphs:

1. A person under adult guardianship or a person under limited guardianship;
2. A person who has been declared bankrupt, and has not yet been reinstated;
3. A person in whose case two years have not elapsed since the registration or approval for a business plan has been revoked or cancelled pursuant to this Act or his/her business facility was closed down pursuant to Article 36 (1);
4. A person in whose case two years have not yet elapsed since a sentence of imprisonment with prison labor or heavier punishment imposed upon him/her has been completely executed or finally and conclusively exempted, or a person who is still under the suspension period.

(2) If a person who has completed the registration for a tourism business or filed a report thereon or a person who has obtained approval for a business plan falls under any of subparagraphs of paragraph (1), the Minister of Culture, Sports and Tourism, the Mayor/Do Governor, or the head of a Si/Gun/Gu (hereinafter referred to as the “head of the competent registration authority”) shall either revoke registration or approval on
the business plan or close down his/her business facility within three months: Provided, That the foregoing shall not apply in cases where a legal entity has appointed a new executive within three months in replacement of an executive who falls under any subparagraph of paragraph (1).

**Article 9 (Insurance)**

Every tourism business operator shall carry an insurance policy or membership in a mutual aid fund, which shall contain a provision that it shall pay the insurance proceeds to a tourist for any damage or loss sustained by him/her due to an accident or any other event arising in connection with the relevant business, or shall deposit the business guarantee instead.

**Article 12 (Operation of Package Tour)**

A person who has completed the registration of a travel business in accordance with Article 4 (1) (hereinafter referred to as a "travel agency") shall meet the requirements prescribed by Ordinance of the Ministry of Culture, Sports and Tourism to operate package tours, as specified by Ordinance of the Ministry of Culture, Sports and Tourism.

**Article 14 (Travel Contracts, etc.)**

(1) To protect a traveler, every travel agency shall provide him/her with safety information on the relevant destination in writing, as prescribed by Ordinance of the Ministry of Culture, Sports, and Tourism, when entering into a contract with the traveler. The foregoing shall also apply where the safety information on the relevant destination is revised.

(2) When entering into a contract with a traveler, every travel agency shall deliver a travel contract (including the itinerary and terms and conditions of the contract; hereinafter the same shall apply) which states the details of the services and a document that may certify the purchase of insurance, etc. to the traveler.
When each travel agency intends to change the itinerary (including an optional tour itinerary), it shall obtain a traveler’s prior consent, as prescribed by Ordinance of the Ministry of Culture, Sports, and Tourism.

SECTION 7 Tourism Workers

Article 38 (Qualifications, etc. for Tourism Workers)
(1) The head of the competent registration authority may recommend the relevant tourism business operator to employ persons qualified as tourism workers for the tourism services prescribed by Presidential Decree: Provided, That a travel agency intended for foreign tourists shall let a person who has qualifications for interpretation and guide of tourists be engaged in guiding tourists.

(2) A person who intends to acquire qualifications for a tourism worker prescribed in paragraph (1) shall pass an examination administered by the Minister of Culture, Sports and Tourism, as prescribed by Ordinance of the Ministry of Culture, Sports and Tourism, and register his/her qualifications with the Minister of Culture, Sports and Tourism: Provided, That those separately specified by Ordinance of the Ministry of Culture, Sports and Tourism may be exempted from the examination fully or partially.

(3) The Minister of Culture, Sports and Tourism shall issue a qualification certificate for a tourism worker to a person who has completed registration made under paragraph (2).

(4) A person may, if his/her qualification certificate for a tourism worker has been lost or destroyed, file an application for reissuing such certificate to the Minister of Culture, Sports and Tourism.

(5) A person who falls under any of the subparagraphs (excluding subparagraph 3) of Article 7 (1) shall be disqualified for tourism workers referred to in paragraph (1).

(6) No person without qualifications for interpretation and guide of tourists shall engage in tour guide for foreign tourists (limited to cases of guiding tourists while engaging in
travel business for foreign tourists pursuant to the proviso to paragraph (1); hereinafter the same shall apply in this Article).

(7) A person with qualifications for interpretation and guide of tourists shall carry a qualification certificate referred to in paragraph (3) when guiding tourists.

(8) No tourism worker shall lend his/her qualification certificate referred to in paragraph (3) to any other person.

(9) Where a person falls under any of the following subparagraphs with respect to an examination under paragraph (2), the Minister of Culture, Sports and Tourism shall stop or invalidate his/her examination or cancel the determination of his/her examination success, and suspend his/her qualification for taking the examination for three years from the date when such examination is stopped or invalidated or the determination of examination success is cancelled:

1. A person who takes the examination in an unjustifiable manner;
2. A person who cheats on the examination.

Article 39 (Training)
The Ministry of Culture, Sports and Tourism or Mayors/Do Governors may provide support necessary for conducting training for tourism workers and other employees in the tourism sector to improve their job performance.

Article 40 (Revocation, etc. of Qualifications)
The Minister of Culture, Sports and Tourism (or the Mayor/Do Governor for any tourism worker specified by Presidential Decree) may revoke qualifications of a tourism worker or issue an order suspending his/her qualification for a period not exceeding six months, as prescribed by Ordinance of the Ministry of Culture, Sports and Tourism, if the tourism worker who holds qualifications prescribed in Article 38 (1) falls under any of the following subparagraphs: Provided, That qualifications must be revoked, if the tourism worker falls under subparagraphs 1 and 5:

1. If he/she has acquired qualifications by fraudulent or other illegal means;
2. If he/she falls under any subparagraph of Article 7 (1) (excluding subparagraph 3);
3. If he/she has engaged in fraudulent or wrongful conduct in the course of performing his/her duties as a tourism worker;
4. Deleted;
5. If he/she lent his/her qualification certificate for a tourism worker to any other person, in violation of Article 38 (8).
### BIOGRAPHY

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<thead>
<tr>
<th>Name</th>
<th>Ms. Sureeporn Huengwattana</th>
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<tbody>
<tr>
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<td>May 22, 1991</td>
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<tr>
<td>Educational Attainment</td>
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