

## Abstract

Package tour, a kind of travelling with arrangements for the details of the tour, includes more than two tour services into the details of the tour and then is presented to tourists. This kind of travelling has been increasingly popular. Tourists will enter into a contract with a tour operator or travel agent in order to receive a package tour. Tourist industry operators such as a hotel operator, transporter, etc will be service providers to tourists. The package tour contract is involved with many people and its characteristic requires a tourist to pay in advance. Therefore when there is a breach of the contract or when the tour is cancelled or changed, the tourist faces problems regarding rights, obligations, liabilities, exoneration and restriction of liabilities of the tour operator.

With regard to Thailand, even though there is the Travel Agency Business and Guide Act B.E. 2551 (2008), an act with an objective to regulating tour operators, this Act neither directly nor fully protects tourists on the issue concerning package tour contract.

From the comparative study with foreign laws, this thesis finds that the United Kingdom has a specific law directly governing the package tour contract. It has applied an implied term to the package tour contract which was later prescribed into the Package Travel, Package Holidays and Package Tours Regulations 1992. As a result, it can monitor content of the package tour contract efficiently. In relation to Australia, while there is only a law regulating an operation of travel business, it does not have a special law on the content of package tour contract. Nevertheless, the court applies general law to govern the content of the package tour operator as well as creates rulings in judgments which can be applied to the package tour contract in order to protect tourists effectively.

This thesis analyzes various legal issues relating package tour contract and finds a suitable measure to protect tourists. The study finds that it should amend the following legal provisions.

1. The first issue is about character of contract and legal relation between the parties because tourists have to pay the price of the package in advance. The tourists are in an inferior position if there is a breach of contract. Moreover, the package tour contract has a characteristic of third party beneficiary contract. In some cases, if the tour operator makes a contract with the tourist industry operator with a lower service than the one specified in the contract with the tourist, the tourists, unfortunately, cannot ask tourist industry operator to make a performance under the contract between them. Hence, this author proposes that the package tour contract has to be made in writing, with information or text as mentioned by law, and handed to tourists. In addition, the law should place a burden of proof to the tour operator by prescribing liability of the tour operator in law.

2. The next issue concerns with tourist protection. The principles relating tourist protection in the Travel Agency Business and Guide Act B.E. 2551 (2008), namely, advertisement, details of the tour, cancellation of the tour, and change of the detail of the tour, cannot adequately protect tourists. This author, thus, suggests amending laws in various points so the law can cope with the existing package tour contract.

3. Problem on remedy to tourists is another interesting point. Owing to the fact that an objective of the package tour contract is for entertainment, this author recommends that compensation should not be limited only to monetary damage but extended to non-monetary one. The court should consider damages for the mental distress as common damage from breach of package tour contract and award compensation for distress and disappointment for tourists even though there is not physical damage.

4. Lastly, issue on regulating package tour is a subject of study because the law does not allow relevant authorities to administrate package tour contract. Accordingly, an unfair contract is provided to tourists. In this author's opinion, it should issue a ministerial regulation, regulation or notification governing package tour contract. It should make an analogy with the consumer protection principle in Section 35 bis of

the Consumer Protection Act (No. 2) B.E. 2541 (1998) because it permits relevant public authorities to control the package tour contract made between the tour operator and tourist. This will lead to fairer package tour contract of which content benefits the tourists.

Once the specific law to protect tourists who enter into the package tour contract is amended, it will promote and improve the image of tourism including boosting confidence of Thai and foreign tourist for travelling in Thailand.