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Law on conditions for travel services business in the con text of globalization in Vietnam

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ABSTRACT

Travel service business is a conditional business, regulated by the Law on Tourism; products are travel programs and tours. In particular, travel companies are the bridge between tourists and other services to serve tourists. Based on the Law on Tourism 2017, there are regulations related to travel service business conditions; however, these provisions are still not unified, and there are still overlaps that need to be removed. From there, the article analyzes tourism legal regulations on travel service business conditions, shows the need to improve regulations on this issue in the context of globalization and proposes perfect solutions.

TÓM TẮT

Kinh doanh dịch vụ du lịch lữ hành là một ngành kinh doanh có điều kiện, do Luật Du lịch điều chỉnh; sản phẩm là các chương trình du lịch, tour du lịch. Trong đó, công ty lữ hành là cầu nối giữa khách du lịch với các dịch vụ khác để phục vụ du khách. Trên cơ sở Luật Du lịch năm 2017 đã có những quy định liên quan đến điều kiện kinh doanh dịch vụ lữ hành, tuy nhiên các điều khoản này vẫn chưa có sự thống nhất, còn tồn tại những chồng chéo cần được tháo gỡ. Từ đó, bài viết phân tích quy định pháp luật du lịch về điều kiện kinh doanh dịch vụ lữ hành, cho thấy nhu cầu hoàn thiện quy định về vấn đề này trong bối cảnh toàn cầu hóa và đề ra giải pháp hoàn thiện.

1. INTRODUCTION

The world is transforming strongly from a tourism economy, In the same region as Vietnam, Thailand, Singapore, Malaysia,... are countries

that have large annual revenues from the tourism industry, and want to make changes. Along with changes in the country's economic structure, the Party has issued important and timely policies to promote tourism development. According to the

Central Resolution VIII on tourism development strategy until 2030, tourism becomes a key economic sector of the country, The Tourism Law has come to life (Nguyen Thi Thanh Nga & Phan Thi Ngan, 2023) [1]. The Tourism Master Plan, Tourism Development Strategy, National Tourism Action Program, National Tourism Promotion Program, Tourism Infrastructure Development Support Program and tourism development projects have brought encouraging growth results. Specifically, after only the first 3 quarters of the year, Vietnam has welcomed 8.9 million international visitors, the tourism industry has exceeded the target of welcoming 8 million international visitors for the whole year 2023, the number of international visitors to Vietnam reached more than 1 million people, down 13.4% over the previous month but 2.4 times over the same period last year. Of the total of nearly 8.9 million international visitors to Vietnam in the first 9 months of this year, visitors arriving by air reached nearly 7.8 million, accounting for 87.5% of the number of international visitors to Vietnam and 4 times the number of international visitors to Vietnam, 7 times the same period last year; by road reached more than 1 million people, accounting for 11.8% and 4.9 times higher; by sea reached 64 thousand people, accounting for 0.7% and 129.6 times higher. Statistical reports show that tourism revenue in the first 9 months of 2023 is estimated to reach 26.5 trillion VND, an increase of 47.7% over the same period last year (Huynh Bien, 2023) [2]. It can be seen that the role and position of the tourism industry is increasingly asserting its importance in the country's economy, contributing to transforming the economic structure and labor structure in society, creating

momentum for the economic development and enhanced international integration. The introduction of the Tourism Law promptly created a transparent legal environment, creating an open mechanism for related activities in the field of tourism, helping Vietnam's tourism industry have a competitive advantage with other countries in the area. Travel service business is an activity of the tourism industry, regulated by tourism law, with an approach of conditional business, because the industry has many potential risks to customers. Regulating conditions for business activities is necessary, especially in the context of the country's economic integration and the impact of many different international legal frameworks. The purpose of the business conditions is to set out legal frameworks to ensure the rights of organizations and individuals when participating in the tourism market. However, actual application shows that the law still has "gaps" in regulating travel service business activities, which affects the rights and obligations of the parties. From there, the content of the article focuses on analyzing and clarifying these inadequacies, while also proposing some perfect solutions in the future.

2. RESEARCH METHODS

The article is based on the theoretical basis of tourism law. At the same time, secondary data is collected mainly from documents, resolutions, plans and reports related to travel service business; comments and assessments of experts on the potential, current situation, orientation and solutions to improve the law in this field; Domestic and foreign research related to the topic of travel service business law in the world and in Vietnam for practical application. On that basis, analytical methods are conducted to meet the

research requirements of developing a project to perfect tourism law in Vietnam (Quang Dai Tuyen, 2023) [3].

The article also applies the SWOT method to analyze the problem in 4 aspects: strengths, weaknesses, opportunities and challenges. This method is used with potential, current status and opportunities and challenges in developing the travel and tourism service industry in Vietnam. From there, we propose some strategic directions and solutions to develop this type effectively and sustainably (Rodríguez-Antón & del Mar Alonso-Almeida, 2020) [4].

3. RESULTS AND DISCUSSION

Conditions for travel service business are expressed through conditions for establishing a business, rights and obligations of the enterprise, business, person in charge of the business and conditions on practice as a tour guide.

Article 31 of the Law on Tourism 2017 stipulates three main conditions for travel and tourism service business: Establishing a travel enterprise; Conditions for operators of travel businesses; Conditions for depositing business deposits for travel businesses. Accordingly, it is necessary to clarify a number of related issues as follows:

3.1 Conditions for establishing a business

According to Point a, Clause 1 and Clause 2, Article 31 of the Law on Tourism 2017, a travel service enterprise must be an “Enterprise established in accordance with the law on enterprises” in which “an enterprise is an organization”. has its own name, assets, transaction office, and is registered for establishment according to the provisions of law. Regulations for business establishment registration according to the provisions of law are

set for both international travel businesses and domestic travel businesses. According to the provisions of the Law on Tourism 2017, business licensing procedures for international travel service businesses are simplified, just submit a request to the provincial tourism management agency where the business is located. head office, the time to evaluate documents and issue a business license is 10 working days from the date of submitting the application for a business license. The Law on Tourism 2017 also divides international travel business into two types: International travel service business welcoming visitors to Vietnam and international travel service business taking visitors from Vietnam abroad. Enterprises doing business in international travel services are allowed to do business in domestic travel services, and are not allowed to do business in international travel services. Foreign-invested travel service enterprises are allowed to conduct international travel services to welcome visitors to Vietnam. Established travel service businesses have basic rights and obligations as prescribed in Article 37 of the Law on Tourism 2017, notably that travel businesses have the following rights: “Construction, advertise, sell and organize travel services and travel programs for tourists according to the scope of business specified in the license”; Provide information about programs, services, and tourist destinations for tourists; Buy insurance for tourists during the tour program, unless the tourist already has insurance for the entire tour program. Travel businesses are free to do business and legally protected by the State when the travel business is legally registered with a competent state agency on business management, in addition to that is the obligation

of travel businesses, especially domestic travel businesses.

Thus, first, to operate a travel service business, entities must establish an enterprise according to the provisions of enterprise law. Individuals and organizations can choose any type of business according to the provisions of enterprise law to establish depending on factors such as ownership structure orientation, business goals, and how to establish a business corporate governance, capital sources, number of members, financial obligations... This condition also shows that the entity conducting business service activities does not include individuals as a person. independent subject. Not only that, other forms such as business households, cooperatives, cooperative unions..., are also not identified as types that are entitled to operate travel services. This regulation is different from a number of other tourism business sectors and professions in the overall tourism services such as tourist transportation, tourist accommodation, travel agency... Accordingly, the mentioned tourism service business does not set any limits and is "wide open" for individuals or organizations to do business (Nguyen Thi Anh Huyen, 2021) [5].

3.2 Deposit conditions

Travel service business is a conditional business, so during the business registration process, it is necessary to meet certain requirements on business conditions, including deposit conditions. It can be understood that a deposit is a mandatory condition for travel service businesses to ensure the fulfillment of civil obligations and responsibilities towards tourists, and create a mechanism to protect tourists. Deposit conditions are specified in Point c, Clause 1 and Clause 2, Article 31 of the Law

on Tourism 2017, detailed in Decree 168/2017/ND-CP dated December 31, 2017. Accordingly, the deposit level for domestic travel service businesses is 100 million VND, for international travel service businesses is 250 million VND, and for international travel service businesses taking guests abroad is 250 million VND. 500 million VND, Inbound and outbound international travel business, maximum deposit is 500 million VND. In principle, the deposit amount is a fund that does not generate interest, exists at credit institutions, so how to use this fund effectively, to "ensure the interests of customers and travel companies" exactly as set out in the criteria. Currently, the deposit is to ensure the responsibility of the business towards tourists, but how to use the fund to ensure the rights of customers and travel businesses according to the set criteria is issues that need attention in the current period. In general, the Law on Tourism 2017 does not specifically stipulate what emergency conditions can use deposit money, as well as which entities have the right to decide which entities have the right to request disbursement of this money. The goal of deposit for travel businesses is to resolve problems that arise in cases where the business cannot fulfill or does not fully fulfill its responsibilities to tourists. However, in reality, the relationship between tourists and travel businesses is carried out by the terms stipulated in the contract. To ensure the rights of the parties, they will rely on the Civil Law to resolve the issue solve the problem. The highest deposit level is 500 million VND, however, in reality, international travel businesses often carry out many programs at the same time, assuming when risks occur, whether the deposit amount is

Whether the existence of about 500 million VND is enough to solve related problems that arise is a matter of concern.

In addition, regulations on conditions for businesses to have the right to withdraw deposits from banks also create more or less difficulties for businesses. Currently, according to the provisions of the Law on Tourism 2017, the “reasons” for businesses to have the right to withdraw deposits from banks are really very limited. Accordingly, travel service businesses are only entitled to withdraw deposits from banks in one single case: A tourist dies, has an accident, is at risk, or has his or her life harmed. must be taken back to the place of residence or have emergency treatment that the business cannot allocate funds to resolve promptly. Thus, the deposit money of a travel service business is not outside the sole goal of solving the problems of tourists when encountering risks. From a practical perspective, especially in the context of the current economic crisis, this is really a huge obstacle. Because, it is not uncommon for businesses providing travel services to need a large financial source to be able to cover operating costs, personnel... to overcome certain difficult periods. in both short and long term. In addition, the fact that an enterprise needs to expand its market, expand its business... but does not have enough funding or finances is not a reason to disburse the deposit amount according to regulations. For that reason, the authors believe that, instead of regulating only one case in which businesses can temporarily use deposits as mentioned above, tourism law should also aim at regulating Open plan, “lifesaver” to support businesses when facing certain difficulties. Specifically, a number of additional cases can be

added such as: Travel service businesses encounter temporary difficulties and are unable to pay for issues related to:

(i) Wages, subsidies, insurance. Social insurance, health insurance, unemployment insurance, labor accident insurance, occupational disease insurance for employees according to the provisions of law after 30 days from the time of payment until the due date; (ii) Costs to partners and third parties stemming from tour cancellations or service cancellations from customers that do not stem from subjective reasons of the business; (iii) The costs of corporate income tax, space rental costs... do not come from subjective reasons of the enterprise or the enterprise needs to expand its market or business. When opening additional reasons to temporarily release deposit drilling, travel service businesses will be more flexible and proactive in their financial resources. This not only enhances the ability of businesses to “resist” in the face of difficulties and challenges, but also helps businesses promptly grasp market needs and the continuous change in consumer tastes customers to quickly innovate and improve services based on abundant financial resources (Pham Quoc Dat, 2023) [6].

3.3 Conditions for the person in charge of business

The travel service business is specific and complex, requiring a person in charge of the travel service business with appropriate professional expertise to ensure and control the quality of the industry. For that reason, the law sets out regulations for domestic travel service business, requiring that the person in charge of the travel service business must have graduated from a secondary school or higher related to a

major in travel. In case of graduating from intermediate school or higher in another major, a certificate of domestic tourism operations must be obtained. For international travel service business, the person in charge of travel service business must have graduated from college or higher with a major in travel; If you graduate from college or higher in another major, you must have a professional certificate in international tourism operations (Aryal, 2020) [7].

However, Vietnam's training system is not consistent in its names, leading to many cases where learners complete training programs related to travel majors but still have to supplement their knowledge through short-term training classes, professional skills, and certificates to match professional qualifications requirements. Circular 06/2017/TT-BVHTTDL dated December 15, 2017 guiding on "travel expertise" has been changed, by Circular 13/2019/TT-BVHTTDL dated November 25, 2019 to re-guide about "travel expertise". In that spirit, in Clause 1, Article 1 of Circular 13/2019/TT-BVHTTDL, "Travel majors specified in Point c Clause 1 and Point c Clause 2 Article 31 of the Law on Tourism are shown on the diploma" of one of the following industries, professions, and majors: Travel and tourism service management; Travel management; Manage the tour; Tourism marketing; Tourism; Travel and tourism; Tourism management and business; MICE tourism management; Travel agency; Tourguide; Industry, profession, or major that includes one of the phrases "tourism", "travel", "travel guide" trained and awarded diplomas by educational institutions in Vietnam before the Circular This takes effect; Industry, profession, or specialty that represents one of the

phrases "tourism", "travel", "tour guide" trained and awarded diplomas by foreign training institutions. In case the diploma does not show the majors, occupations, or majors specified in Points l and m of this Clause, add a graduation transcript or diploma appendix showing the majors, occupations, and majors, including one in these phrases: "tourism", "travel", "travel guide". (Bleischwitz et al, 2022) [8]. In addition, to enhance the specialization, operational ability as well as responsibility in travel activities of businesses, Article 3 of Circular No. 06/2017/TT-BVHTTDL regulates the person in charge of travel business. Travel agent is a person holding one of the following positions: Chairman of the board of directors; Chairman of the Board of Members; company president; private business owners; general manager; director or deputy director; Head of travel services business. From a practical perspective, this regulation creates unnecessary "ambiguity" in understanding related to the regulations on appointment and assignment of people in charge of travel service business, leading to confusion only for businesses, but also for licensing agencies in the process of implementing the law. Specifically, two understandings are formed as follows:

(i) When a travel service business recruits a person with travel expertise to become the person in charge of the travel service business, then Enterprises must appoint and assign them to one of the positions listed above. This appointment is mandatory; (ii) A travel service business when recruiting a person with travel expertise to become the person in charge of the travel service business, in case they want to assign them to positions in certain businesses, appointments are made to the positions listed, the appointment is

discretionary. According to the first understanding, the content of Circular 06/2017/TT-BVHTT does not seem to be compatible with the spirit of the Law on Tourism 2017, because the provisions of this law do not raise the issue of mandatory appointment, assignment. According to the second interpretation, the above regulations appear to be more consistent with the provisions of the Law on Tourism 2017. Placed in the competitive context of the tourism market as well as from an economic perspective, it is assumed that businesses allow that the person in charge of the travel service business must be appointed and assigned to the positions set by the Ministry of Culture, Sports and Tourism, which will require a higher monthly salary, gradually increasing, additional operating costs, as these positions mostly have better salaries than regular employees. Meanwhile, from the perspective of the business, the appointment and assignment of personnel to a certain position in the company is the business's own needs, and the business will know how to eliminate and select them. Personnel capable of taking charge of work without necessarily having to undertake or be appointed to any position. Furthermore, it cannot be ruled out that the competent authority issuing travel service business licenses forces businesses to present decisions on the assignment/appointment of personnel in charge of travel service business to positions. The above position is sufficient to provide a complete application for a business service license because it is applied according to the first understanding. Of course, this will make administrative procedures more cumbersome, costing businesses time and material, and seems to erect

additional barriers, hindering businesses from entering the travel service market (Dao Ngoc Canh, 2023) [9].

It can be seen that the State and law should only play a coordinating and directional role rather than imposing will on business activities for enterprises operating according to market mechanisms. Placed in the context of the current economic crisis, the regulations on mandatory appointment, although not large, unintentionally place an additional burden on the shoulders of travel service businesses related to the issue of financial issues for personnel in the company. It is thought that to overcome the above limitations, the tourism law needs to be adjusted soon to have consistency between the provisions in Clause 1, Article 3 of Circular 06/2017/TT-BVHTTDL with the provisions in Article 31 of the Law on Tourism 2017 of people in charge of travel services business (Nguyen Thanh Phuong & Nguyen Mong Cam, 2023) [10].

In summary, stemming from the above inadequacies of tourism law on travel service business conditions under the impact of the global economic recession, it is thought that in addition to short-term and temporary solutions, Meanwhile, in the long term, there needs to be adjustments as we mentioned in the regulations on travel service business conditions to create fundamental changes, solving core problems in the long run. This not only ensures the compatibility of the law with reality but also demonstrates the role of the law in supporting businesses to cope with the worst situations that can occur during an economic recession. The global economy is a typical example.

4. CONCLUSION

In Vietnam as well as other countries around the world, travel services have occupied an important position in the economy in general as well as in the tourism sector in particular. In order for travel and tourism service business activities to take place in a certain order, as well as towards the goal of sustainable tourism development, the State has issued many regulations related to this issue. These include: the Law on Tourism 2017, Decree 168/2017/NĐ CP of the Government dated December 31, 2017 on guiding the Law on Tourism 2017, Decree No. 45/2019/ND-CP of the Government on handling Penalties for administrative violations in the field of tourism, Consolidated Document 363/VBHN-BVHTTDL 2022 consolidates the Decree regulating penalties for administrative violations in the field of tourism issued by the Ministry of Culture, Sports and Tourism. Tourism was issued with the expectation that it will create a solid legal framework, aiming for sustainable growth of the economy. Through the analyzed content, it is found that the law has made certain progress when regulating issues related to tourism in general; rights and obligations of parties in the travel and tourism service business in particular. However, there still exist certain shortcomings that need to be changed and supplemented to suit the actual situation as presented in the content section. From the suggestions and recommendations, it is a premise towards the goal of sustainable development of travel tourism in the future.

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