



# International tour operators' responsibility guarantees in developing legislation in the Russian Federation



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## ABSTRACT

The authors analyze the features of the existing legal guarantees of the international tour operators, such as financial provision and a compensation fund for urgent tourist support. Legal practice shows that these guarantees may not be sufficient in the event of large-scale suspensions of tour operators' activities, and the problems with the return of tourists to their home countries may arise as a result. Because of these facts, the legislator amended the fundamentals of the legislation on tourism to increase responsibility of tourist market participants and to improve legal protection of tourists going abroad from the Russian Federation. The authors analyze the amendments and conclude that the excessive increase of tour operators' responsibility may considerably decrease the number of tour operators in the tourist services market.

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## 1. Introduction

In current Russian economic conditions, close attention is paid to tourism and to the features of legal regulation here. Tourism is recognized as a significant component of innovative social and economic development. Demand for tourist products on the one hand and the lack of due quality among the touristic services contribute to an increase of judicial disputes between the travel companies and tourist service consumers. These disputes are often caused by tourist product sale contracts and the travel companies' non-execution or improper execution of contractual obligations. Recently, an increasing amount of anxiety has been caused by the suspension of operations by the large tour vendors; consequently, an urgent need has arisen for support provisions to return tourists abroad to their residence country.

## 2. Methodology

During the study, the authors relied upon general and private methods of research: legal, formal-legal, comparative legal and others. The main method utilized in this research was the system-structural, which helped reveal the features of existing legal guarantees of international tour operators, in connection with other phenomena, as well as the existing problems in this area.

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The formal-legal method made it possible to analyze legal rules governing tourism activity by describing features of legal guarantees of the international tour operators.

Systemic-structural method provided the authors with the opportunity to review the new mechanisms of tourist rights protection.

## 3. Results and discussion

Scholarly articles and other works of the following authors were focused at the named topic: Pisarevsky (2012); Tikhomirova (2014); Dedikov (2007); Kaurova, Kryukova, Maloletko, Deryabina, and Yumanova (2014); Kuzakhmetova and Zolotareva (2014); Sitdikova (2011), etc. Some aspects of the problem were analyzed in articles by Sitdikova, Shilovskaya, Starodumova, and Volkova (2015) and Volkova, Sitdikova, Starodumova, and Shilovskaya (2015).

In works of Tikhomirova the following problematic issues are discussed: the legal position of the Russian tour operator; the system of the financial responsibilities of the tourist organization to the tourists-consumers; the form of the responsibility insurance contract or the bank guarantee; the issues of the tour operators' membership in the Association of Tour Operators of Outbound Tourism, and the payment to the Compensation fund of the Association of tour operators of the outbound tourism. The author's basic suggestions relate to the development of self-regulation of tour operators (Tikhomirova, 2014).

On the other hand, in the dissertation of Mutaliev the conclusion about the need for strengthening public legal measures in the sphere

of tourist activity control in Russian Federation was grounded, and the author considers self-regulation untimely (Mutaliev, 2012).

In the dissertation of Zavyalova the hypothesis is proposed and substantiated about the possibility of improving the mechanism for protecting the rights of tourists by expanding the responsibilities of the tour operator. Travel agents must carry compulsory personal insurance of tourists (see paragraph 1 of article 935 of the Civil Code) in the event that the legislation of the country of temporary residence does not require tourists to guarantee payment for medical assistance (Zavyalova, 2014).

Sharueva suggests the introduction of obligatory medical insurance for tourists going abroad. This measure should provide timely provision of medical aid for the tourists abroad (Sharueva, 2010).

Batischev E.A. suggests the obligatory membership of tour operators (regardless the type of tourism) and tour agents in the self-regulating organizations (Batischev, 2013).

Responsibility measures of equal scope are traditionally applied to civil-law relations participants in equal conditions, based on the principle of the parties' legal equality. At the same time, we shall consider the fact that in some cases stipulated by law, the law-maker, following rules of protecting the interests of a weaker party in civil-law relations, provides various options of solving responsibility matters, depending on which party of the contract faces the problem (Sitdikova et al., 2015).

When Deputy Head of the Federal Agency for Tourism Pisarevsky discussed the action or inaction of the tourist company regarding the impossibility of obtaining tourist visas and traveling, he found that usually the violation is associated with the actions of travel companies, particularly the failure to provide tourists with the necessary information on registration of visas. He notes, for example, the failure to provide information about the required list of the documents provided to the Consulate, resulting in the violation of the legislative provisions. He also considers self-regulation as the effective mechanism in tourism.

Legal questions related to the provision of services in the area of citizens' travel arrangements arise out of the contracts on the implementation of the touristic product (see the Federal Law of 24.11.1996 No. 132, "On the bases of touristic operations in Russian Federation," hereinafter – the Law).

The analysis of Law allows us to note that the contract on the realization of the touristic product shall be understood as a contract of paid provision for a complex of services connected with the transportation and accommodation of tourists. The contract is sold for a total price, which may also include other so-called touristic services, such as guided tours.

A touristic product customer and a tour operator, or a travel agent acting by order of a tour operator, are the parties of this contract. The tour operator and the travel agent act as the professional participants of the tourist services market. In some cases the tour operator may be only a legal entity that complies with the requirements of Clause 4.1 of the Law. According to this Clause in the current edition, a tour operator should have financial provision, and in case of activity in the outbound sphere, it should also be a member of the Association of Outbound Tourism. Unlike the tour operator's activity (i.e., the formation of the touristic product, its promotion, and realization), the tour agent's activity includes touristic product promotion and sale. These activities may be performed by both legal entities and individual entrepreneurs. The Law contains no special requirements for travel agents.

The implementation of the tour operator activity is connected with concluding and executing contracts between the tour operator and the immediate providers of travel services (hotels, carriers, guides etc.) for the purposes of touristic product formation. Its additional activities include promotion by advertising, presentations at touristic exhibitions, and publishing of catalogues, and finally, making contracts with tourists and providing services according to these contracts.

To provide services and to take risky and legally important orders, the tour operator (travel agent) needs financial guarantees against the possibility of adverse developments or incorrect harmful actions.

Otherwise, the tour operator risks the loss of professional status, reputation or image (Sitdikova, 2011).

Financial provision was introduced by the legislator in 2007 to protect rights and legal interests of individuals and legal entities after cancelation of this type of activity licensing. Currently the financial provision is available in the form of tour operator responsibility insurance and bank guarantee of obligations performance in contracts with tourists. This duty of having financial provision is also stipulated for the entrepreneurs, i.e., the agents of foreign touristic operators, who sell touristic products.

Legal regulation of matters related to bank guarantees are further defined by provisions of paragraph 6 of Chapter 23 of the Russian Civil Code (in the current edition of 8 March 2015, it is called "independent guarantee"). According to the bank guarantee, a "Warranter", whether bank or other credit institution or insurance company, shall, in the case of non-execution or improper execution of their contractual obligations by a tour operator or a travel agent acting upon an order from a tour operator (Principal), pay money to a tourist (Beneficiary) who made the contract directly with the Principal or, by his order, with the travel agent, after the Beneficiary has notified the Warranter that the Principal has not executed, or executed improperly, his obligations according to the Contract (Guarantee) and submitted a written claim for money payment.

The insurance contract is currently considered a viable mechanism for protecting property interests of persons providing various services. Such services include touristic services because their provision has sometimes been connected with various risks, including those caused by executor's (tour operator) mistakes. The tour operator's property interests related to the risks arising from his duty to compensate the actual damage to the tourists are conditions of the tour operator responsibility insurance contract. The establishment of the tour operator's contractual duty to compensate the tourist for real damage that arose during the time the tour operator's responsibility insurance contract was in effect is an insured event. Financial provision should be issued for the term of at least one year, and its amount should meet the requirements of Article 17.2 of the Law. If the tour operator has a duty to compensate a tourist and/or any other client for real damage caused by non-execution or by improper execution of contractual obligations, and if this violation of such contract has been significant, the financial provision should guarantee:

- I. money return for the services paid but not provided;
- II. payment for real damage compensation, including money for compensation of the expenses connected with the unexpected departure from the visited country.

According to Article 17.2. of the Law, the required financial provision amount for the foreign tour operators is 30 million rubles if the money inflow from touristic products sold by them in this sphere does not exceed 250 million rubles, according to accounting by the end of the reporting year, as well as for the tour operators using the simplified taxation system. If the collected sum of money exceeds 250 million rubles, then financial provision will be 12% of the named sum.

As mentioned above, one of the requirements for foreign tour operators is an obligatory membership in a foreign tour operators association. This mechanism of citizens' rights protection was been established in 2012 for providing urgent assistance to tourists. For the purpose of implementing requirements of the Federal Law dated 24 August 2012, tour operators signed a deed of establishment of an Association of Tour Operators of Outbound Tourism. "TOURPOMOSHCH" obtained the status of association of the outbound tourism tour operators association by Government Decree. According to Article 11.2. of the Federal Law, the main function of this Association is to provide assistance for tourists in case of the impossibility of a tour operator to perform his contractual obligation, as well as in cases of actual non-execution or improper execution.

According to the Law, emergency assistance involves tourist evacuation from the temporary stay country, including payment for

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