

**International Economy**

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**LICENSING OF THE TOURIST ACTIVITY
IN UKRAINE WITHIN THE CONTEXT
OF THE INTERNATIONAL PRACTICE****Abstract**

The place and the role of licensing of the tourist activity in the system of Governmental tourist management are considered. Modern approaches to the protection of the rights and legitimate interests of the participants of tourism market in different countries in the world and in Ukraine are analyzed. Particular arrangements, aimed to improve the tourism policy in Ukraine are suggested.

Key words:

Licensing, tourist activity, tour operators, Travel Agents, international practice of licensing.

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Licensing as the means of governmental management in the tourism field is used by many countries worldwide. The necessity of a prompt cooperation of the subjects of tourist activity and governmental authorities is due to the high consumer risks in the tourism field, which request the usage of special defense-mechanisms of both tourists' rights and interests and enterprises-business partners. The way of obtaining the optional document and instituting the tourist activity differs in different countries and depends on a certain group of factors, such as: governmental tourism management model, development of the general basis of legislative acts, maturity and structuredness of the tourism market, availability of the Associations for Tourism business, etc. The search for the rational licensing system in the tourism field based on researches of the international experiences is also of current concern for Ukraine, which, willing to develop tourism actively, is in condition of constant administrative reforms. Questions, related to the licensing in the tourism field were covered by leading Ukrainian and foreign scientists, who dedicated certain parts of their scientific works to the present research. Thus, V. Kyfiak in his book «Organization of tourist activity in Ukraine» analyses the main points of legislative documents in licensing in tourism field for several years [1, p. 113–118]. Composite authors (Y. Rudiak, V. Kuznetsov, A. Klimenko) of the book «All things about accounting and organization of the tourist activity» systematize the main points of valid legislative acts, that should be used in practical activity in the tourism field [2, p. 26–46]. International experience in licensing as a form of governmental management in tourism field is examined by Ukrainian scientists M. Malska, N. Antoniuk, N. Hanytch in the textbook «International tourism and service industries» [3, p. 525-529], and also by the group of Russian scientists in the textbook «Economy and tourism management» [4, p. 291–295]. Meanwhile, a set of questions is still open respecting the search of rational system of cooperation between government body and tourism business representatives regarding the creation of favorable conditions for their activity in behalf of tourist services' consumers.

In the process of writing of the article the thoughts of skilled practitioners in tourism field [5] are taken into consideration, and valid legislative acts in tourism management licensing in Ukraine and some foreign countries, printed in business papers or posed to official websites, are used.

The aim of the article consists in making contrastive analysis of foreign and national licensing practice in tourism field in order to elaborate practical recommendations regarding the improvement of defense-mechanisms of both rights and interests of all participants of Ukrainian tourism market.

Tourist activity licensing in our country was launched since 1990s and outlasted great changes. For the first time, tourist activity licensing was included into the licensed activities based on the Act of Ukraine «On entrepreneurship»,

granted any activity related to tourism service supply liable for licensing; whereas not only intermediary-firms but also accommodation facilities, catering facilities, transportation utilities, etc. were considered as licensees. Within next several years either separate kinds of tourism (international, outband, domestic tourism, sightseeing) or certain forms of activity (tour operator activities and travel agency activities) were licensed, which process was accompanied with necessary legal documents' ratification. Yet, in October 2010 legislative licensing framework in the tourism field was set up-to-date as a consequence of implementation of the Act of Ukraine «On implementation of certain legislative changes regarding limitation of governmental management in economic activities» [6], according to which tourist activity licensing was invalidated. Thus, currently the only tourist activity which is tour operator activity is subject to licensing in Ukraine. Nevertheless, it should be noted that in 2009–2010 considerable changes were implemented into the legislative base of economic activity's licensing regarding the simplification of conditions of business conduct in Ukraine. For example, package of documents was cut, essential for inducement of activity in tourism field. The unlimited period of duration of tour operators' and Travel Agents' license was set, and a single paid amount for licensure was determined [7]. That's why, from our point of view, tourist activity licensing in Ukraine doesn't have any direct connection with deceleration of small and medium business development.

It is notable that professionals in tourist activity express contradictory opinions regarding the abolition of tourist activity licensing in our country. Upholders of the abolition note that the licensing procedure is formal; it doesn't guarantee the diligent Travel Agents' work and doesn't exclude fly-by-night companies' appearance.

Representatives of the opposite viewpoint insist that the abolition of tourist activity licensing can lead to disorderliness in tourism market, caused by Travel Agent' expansion in the number, non-professional conduct of business, acts of dishonesty.

Furthermore, despite different points of view, all the practitioners are of the same idea: both tour operators and Travel Agents will have difficulties with activity implementation. Tour operators have the full responsibility for tour product creation and its realization, that is why they are supposed to conduct regulations with only reliable partners, after verifying their work experience in tourism market, their employees' qualification, sales volume, etc. Travel Agents have the special demands advanced from every tour operator regarding the sales volume enhancement, lower purse fixation and its payout time postponement, passing of certification procedure, admitted by certain alliances for tour operators [5].

In such a case it seems necessary to fix our attention on researching questions, related to different sorts of tourist activity under licensure; executive authorities in tourism field, tools for financial assurance of Travel Agents' respon-

sibility; practices of creation of Associations for tourism companies in Ukraine within the context of international practice.

International practice shows that countries leading in the tourism field use different approaches to the tourism licensing: from establishment of strict command-administrative methods of state control of concessionaires' activity in tourism field to limitations in implementation of the only type of tourism. Thus, in Malaysia, which lies in the 9th place in top rank regarding the foreign tourist arrivals among 28 tourism markets of the world, the state tourism policy is determined by specially created Department of Tourism, under the jurisdiction of which the Department of Licensing is. It is capable of wide credentials even to the determination of the tourism companies' optimum quantity. According to the Tourism Act of Malaysia, the activity, performed by tour operators, travel agents, by means of accommodation, catering facilities, transportation utilities, staff training institutions for tourism field, activity of experts in tourist escort, etc., is under licensure. In this way, licensing in this country includes the state control not only of agency business in the tourism field, but also of counteractants' work, which are basic producers of tourism services [8].

In Turkey, which lies in the 7th place in top rank regarding the foreign tourist arrivals, the tourism industry is under the jurisdiction of Department of Culture and Tourism, which determines the main directions of tourism economy development. It is responsible for marketing activities execution and realization of incentive measures for tourism popularization. In Turkey, Tourist companies' activity is under licensure, and the license is given by subject ministry after compulsory registration of the company in the social agency of Turkey tourism companies «TURSAB».

According to the Act of Turkey «On tourism Agents and tourism Agents' Association» there exist three kinds of licenses depending on services, performed by tourism companies:

- type A licence is given to tourism companies, performing the tour organization services package (tourist transportation and accommodation, recreation and organization of sports activities) and designing tours;
- type B licence is given to tourism companies arranging sales of tickets for international overland transportations, shipping services and air services, and saling excursion;
- type C licence is given to tourism companies arranging in-house tours for native citizens.

Furthermore, all Turkish license holders are given an advance licence permitting the activity within the space of two years, which can become valid one, on the assumption that a tourism company gets a certain sum of money in foreign currency [9].

Governmental regulation of tourist activity in France (1st place in top rank of the foreign tourists' arrival) is determined by Department of Economy, Industry and Employment, within the frames of which the Travel Agency for Development «Atout France» was created. It was entrusted with licensing responsibilities in the tourism field and introducing of the Unified register of tourism companies. According to legal system of France the activity of legal entities and private entrepreneurs is put under licensure, who: complete and implement group and individual tours, accomplish the mediation in selling of certain services within the tour (accommodation, transportation, nourishment); furnish services related to the tourist reception (including visiting museums and items of interest), furnish services in caring of fairs, exhibitions, conferences and other similar events related to the activity implementation in the tourism field.

Unlike licensing conditions adopted in Malaysia, according to legal system in France, legal persons and individual entrepreneurs can't be subject to licensing in the tourism sector, who furnish services produced by these persons; persons, selling tickets for certain modes of transport for the account of one or several shippers; persons, effecting sales of services at the price paid (i. e. not having any financial gain from the executed operation) [10].

Another requirements for licensing in tourism sector are in operation in Great Britain (6th place in top rank of the foreign tourists' arrival), where the central body of executive power in tourism sector is the Department of Cultural Affairs, Mass Media and Sports, within the frame of which the «VisitBritain» acts. It is notable that this national tourism administration (NTA) has mixed financing: about two thirds of its budget come from means received from the State, another third comes from commercial activity, e. g. booking of tourist services on the corporate sites, as well as maps, travel guides, souvenirs selling. It should be emphasized that the present state-private structure organizes a long-term strategic partnership with British tourism industry, whose most influential representatives are included into the board of directors of «VisitBritain».

The majority of tourism companies of Great Britain have the «ATOL» license (Air Travel Organisers' Licensing) – a document, given by the Civil Aviation Authority (CAA) for tour organizing. The «ATOL» corresponds to a financial scheme of air travelers' protection, including the tourism company bankruptcy remoteness. It helps to pay back the tourists for short-received services and helps them to get back with minimum delay. Within this scheme the license owners enter a certain amount of money for each customer in order to create a guarantee fund, located in the CAA Trust Ministry, furnishing the needed compensations in case of financial inability of the tourism company, owing the license. Member's subscription for tourism companies is, as follows, 10 % of their annual turnover. Moreover, companies should set up an account and hold for the account not less than 5 % of working capital.

It should be noted that licensing practice existing in Great Britain differs in many matters of detail from practices in other countries:

- the Civil Aviation Authority, not the central body of executive authority in the tourism sector, operates as the licensing body;
- the licensing activity is put under licensure of tour operators, creating international tours using the air services (to organize tours with domestic air travels and international travels with ocean shipping and surface transport there is no need in getting license);
- for Travel Agents furnishing tours of licensed tour operators, the «ATOL» license is not necessary, still, while cooperating with foreign Supply organizations who don't submit to the British laws, dealers should have the similar document;
- the validity of the «ATOL» license doesn't apply tourists, who buy air tickets exactly in the air company, i.e. without tourism company assistance. This is a great detriment of the present system of customer protection [11].

With regard to the protection of customers of tourism services, many countries worldwide, including those who don't implement licensing in the tourism field at all, set certain rules of financial responsibilities of tourism companies to the customers. In Ukraine, as is well known, an obligation to effect the financial assurance (in terms of BG or some other credit establishment) is extended both to the tour operators and travel agents. An array of two reasons is considered to be a warranty case: uprise of financial insolvency of tour operator (Tour Agent) or breach of the company's bankruptcy process, as well as default of its obligations to the tourists. The low-limit of financial assurance should consist of the amount equivalent to € 2000 minimum for tour operators, Travel Agents and € 10000 for tour operators, furnishing services in domestic and inband tourism exceptionally. Nevertheless, the present amounts of financial guarantees do not correspond to the certain tour operators' range activity, especially if they are large. In addition, according to the Ukrainian Law, tour operators, in case of their financial insolvency, or, as a consequence of nonfulfillment of treaty commitments to the tourists, related to the failure to provide services, have right to settle accounts only within the frame of financial guarantee; in case of overrun of the sums of tourists' requirements over the financial guarantee, a satisfaction of tourists' requirements is effected pro rata basis – i. e. Travel agencies may not compensate for customers' losses in full [12]. Thus, in our country, a financial guarantee amount does not depend on volume of sales of their services and products, and this prevents considerably an actual protection of tourists' rights and interests in Ukraine.

While making a research of the world experience of the assurance of the tourism companies financial responsibilities, certain particularities were elicited of the mechanism implementation in some countries. Thus, for example, every Ma-

laysian tourism company should have a document about the financial guarantee, whose sum depends on two attributes – office location (in big cities or suburbs) and type of activity (organization of home tourism, outband tourism or tickets sells for all types of transport) [8]. As well as in Malaysia, Turkish tourism companies are expected to have the financial guarantee of their responsibility owed to the tourists, nevertheless the way of its sum determination depends only on the license type: 7000 TRY for «A» license, 6000 TRY for «B» license, 5000 TRY for «C» license [9].

Unlike license provisions in Malaysia and Turkey, the financial guarantee amount set for tourism companies in France depends on the year sales volume. In case of substantial modification in service industries during the year (e. g. in connection with opening of a branch office, range of services spread, etc.), the licence holder is expected to inform his warrantor about it in order to review the financial guarantee amount [10].

Among countries, where there is no tourism services licensing, but the mechanism of the financial guarantee of tourism companies' responsibility is applied, the experience of Austria is remarkable, whose tourism industry is under the jurisdiction of the Department of Economy, Family and Youth. The Statute concerning insurance of tourism companies is in force in the country, which regulates indemnity to the customer and his repatriation in case of bankruptcy or insolvency of the tour operator. Risk coverage can be effected by two ways – either by making terms about insurance with Insurance Agencies, or execution of an agreement about bank guarantee with credit companies.

According to legislation in Austria, financial guarantee amount of the tour operator depends on the sells volume of tourism services realization of previous year and is counted on such a scale: in the setting of revenue of € 110 000 the financial guarantee amount is € 10 000, less € 220 000 – € 20 000, less € 330 000 – € 30 000, in the setting of revenue more than € 330 000 – the financial guarantee amount is 8 % of the tour operator sells turnover, but not more than € 72 600. If a tour is organized with the use of charter flights, the financial guarantee amount of Austrian tour operator comes to 10% of sells volume, but not more than € 363 000, i. e. certain limits exist in this country regarding maximum amount of financial guarantee of the tourism company's responsibility [13].

For instance, the State which countermanded the tourist activity licensure is the Russian Federation, where the central government executive authority in tourism field is the Ministry of Sport, Tourism and Youth policy, and the national tourist authority's duties are carried by the Federal Tourism Agency. It should be noted that, at the present time, Travel Agents' activity is not subject to inspection of «Russian Tourism». At the same time, to carry on the Travel Agents' activity, an entering of the contents of certain company into the Unified Federal Register is required. However, tour operator is absolutely responsible before tourists for

his own actions, as well as for his partners' actions, including Travel Agents, carrying the tourism products marketing.

In order to intensify the state supervision of tourism activity organizing in the Russian Federation, the Decree of the Cabinet of the Ministers of RF «Concerning approval of the rules for provision of tourism services' was adopted. The principal provisions of the actual regulatory legal act are related to the requirements for companies of the tourism industry, rules for feeding information about the tour product and also procedure for making and terminating contracts about tourism services sales, procedure for reclamation and definition of liability of the parties, which signed the contract.

To add a tour operator to EDF the responsibility capital evidence is requested, which can be provided either as a bank guarantee or as an agreement for possible risks insurance. At this, the financial guarantee amount depends on types of tour operator activity: for those tour operators, who accomplish their activity in the field of international and domestic tourism, this amount consists of 10 million rubles, for those tour operators, who accomplish their activity in the field of domestic tourism only, this amount consists of 500 000 rubles. To list a tour operator on EDF, the provision of application in written and a package of documents are needed. Basic documents are: State Registration Certificate of legal entity, constitutive documents, registration certificate from a tax authority, a taxpayer identification number, financial provision reference of the tour operator's responsibilities, assignment order of tour operator managing director, information on tour operator's and its structural subdivisions' location [14]. Thus, though the tourism activity licensure in the Russian Federation is abolished, this State has got certain controls for tour operators' activity management, whose financial guarantee amount is ten times above the standards, existing in Ukraine. Besides, an international practice proves that countries, leading in the tourism field, don't limit their responsibility guarantee granting within the frames of legislated norms, but, on the contrary, create field-oriented social organizations in order to support the tourism business development. Thus, in Austria, tourism companies have right to create tour operator insurance Alliances. Whereas the minimum amount of their general financial guarantee should come to € 3600000, on condition that the financial guarantee amount of each member of the Alliance decreases to 3 % of the legal norm [13].

In Great Britain, the most influent non-governmental tourism organization is the «Travel Association», which incorporates on a voluntary basis more than 5000 Travel Agents and at about 900 tour operators. With a view to strict requirements, suggested by the Association for tours safety, bailout package, and financial safety of tourists, the membership in the present structure becomes a guarantee of high quality service, reliability and stability. Alongside with numerous advantages, gained by «Travel Association» members, they are imposed serious obligations on, regarding conformity to certain financial and professional standards. A customer protection system, suggested by the Association, in case

of the bankruptcy of a company- member of «Travel Association» was accounted to be the best in the world. At the meantime all the members of the Association are expected to deposit a pledge to the Social fund, with means of which the remuneration is paid to tourists in case of company's bankruptcy. A pledge can be issued in three ways:

- a tourism company deposits a certain sum to the trust account of the Association; nonetheless the tourism company is not allowed to make use of these money, but is allowed to collect interests (as a rule, this method has mainly in view powerful companies);
- a tourism company takes out an insurance policy for the sum required and pays up an insurance contribution yearly;
- a tourism company draws upon a credit in order to pledge a certain sum to the trust account – whether with asset-based lending or with managing board personal guarantee; in which case a yearly contribution is well below than with an insurance policy, but in case of a company's bankruptcy the managing board is absolutely responsible.

As an additional guarantee, the «Travel Association» developed the own compensation insurance system, allowing to increase funds in case when the household demand deposits' sum would be inadequate to repay a debt of the bankrupt company [11].

It should be noted that among tourism business-professionals in Ukraine questions are brought up about furnishing additional financial guarantees by tourism companies, in particular by Travel Agents, whose license was cancelled, for instance, by depositing a certain amount to the special tour operator's account. Managing directors of a number of tourism companies agree that all the market participants should reach an understanding and develop foundations of the uniform self-regulation system in the tourism field, which is not conform to applicable legislation in Ukraine [5]. In our country, several tourism industry entities operate nowadays, among whom the most powerful are: «Tourist Association of Ukraine» («TAU»), «Association of Leaders of Tourist Business of Ukraine» («ALTU»), «All-Ukrainian Association of Tour Operators», «Alliance for Tourism Industry Professionals». The «TAU», operating in Ukraine since 1998, incorporates more than 350 leading tourism companies, among which are counted the tourism companies, hotel complexes, air companies, educational institutions, specialized mass media, health resort institutions, social agencies, representing almost all the regions of our country, and also certain foreign tourism companies from Russia, Poland, and the USA. The «TAU» Association deploys an All-Ukraine tourism professional program «Crystal Stork», under the terms of which «the best companies of the tourism industry, their employees, and those who creates a tourism-development strategy, provide information about tourism industry in Ukraine and promote the domestic tourism, are rewarded according to the results of yearly contests» [15].

The «ALTU» Association, created by leading Ukrainian tour operators in 2007 as a professional Association of tourism entities, developed its own system «Mark of Quality of ALTU», which foresees setting requirements for travel agencies regarding the tourist rights security and is directed to the improvement of the quality of the tourism industry's services.

«Alliance for Tourism Industry Professionals», which since 2010 unites about 80 Travel Agents, in conditions of market deregulation, suggests an implementation of the system of competency assessment of travel agencies' employees, which should be administered by independent establishments.

Beside specialized associations in Ukraine, a chain of travel agencies and tour operators expands widely. Thus, in 2009, the company «TUI-Ukraine» entered the Ukrainian tourism market. This company is included into the system «TUI» (Touristic Union International), the leading tour operator not only in Germany, but also all over Europe. It should be emphasized that, unlike in our country, where the exclusivity of tour operators' activity is applied, the mode of operation of all German large concerns of the tourism industry consists in existence of the own air company, system of accommodation means and transport means. All this makes them capable to centralize their activity and furnish their clients a full service package. Thuswise, the «TUI» tour operator effects its activity in more than 180 countries worldwide, providing services for more than 30 million clients yearly, holds 261 hotels with 170 000 rooms, owns 143 planes and about 3500 retail stores all over Europe. The «TUI» arranges the labor for 49 000 employees in all the continents, including Ukraine [17].

But, despite the appearance of specialized associations in Ukraine, their influence on the tourism market members is still marginal, and the standards for their activity implementation are not regulated completely. According to the data from former State tourism and resort service, in 2010 in our country 7887 travel agencies were functioning, only a minor part of which became a part to specialized associations.

According to experts' estimates, the tourist activity licensure cancellation led to considerable increase of these very companies; nevertheless, official data, conforming this conclusion, do not exist for lack of statistical observation, that should be made by central regulatory agency in tourism field. We should note that during last several years in Ukraine the constant reorganization of institutions, entrusted with tourism field management was made. Thus, the tourism field in our country during the period from 1991 to 2011 underwent eight main changes of bodies, responsible for its development, – starting with the fourth paradigm, characterized by absence of central executive body in the tourism industry, and the third paradigm (National Tourism Organization affiliated to the government). As a result of the administrative reform which lasts in Ukraine since December of 2010 the tourism industry is subordinated to the Ministry of Infrastructure, within the frame of which the Ukraine's State Agency for Tourism and Resorts operates [18], but the information posted to the official web site of central

executive body doesn't allow to make conclusions on the tourism development in the State.

In conclusion it stands to mention that the divergences in the legislative framework of licensing activity of travel catering in the countries worldwide mainly depends on the level of State management of the tourism industry. Thus, if the country pays great attention to the very development of tourism industry, the licensure body of law comprises a great part of subjects to licensing and licencees, including travel services not only of the travel agencies, but also accommodation means, catering facilities, transport organizations and entertainment facilities. From another viewpoint, if the State doesn't manage the tourism development, the licensing as a form of tourism industry control is not used. Nevertheless, in such cases other methods are involved by legal bodies regarding the consumer protection system, tourism service and product industries, e. g. inducement of the arrangements for financial guarantees of tourism companies' responsibility. Besides, in countries, where the legal system is at a high level, the minimization of the influence of central executive authorities is observed on the economic entities. It gives them an opportunity to associate in public organizations in order to set their own service standards and protection systems for consumers and tourism business-partners.

Consequently, based on the examination and generalization of the international practice in tourism activity licensing, it seems appropriate to take following measures, aimed to improve the tourism policy in Ukraine:

- implement at the level of legislation the alternative methods of protection for consumers and tourism business-partners, – for example, by means of maintenance of a State register of tourism entities with a view to fill in information about travel agencies;
- stimulate creation of social organizations, consolidating tour operators and Travel Agents, capable to influence the tourism industry development;
- change approaches to tour operators' guaranteeing of their public liability to tourists by setting financial guarantees, amount of which should depend not only on type of tourism activity, but also on tourism services volume;
- revoke the legislative regulation as for exclusivity of tour operators' activity, in accordance with which tour operators don't have a right to furnish accommodation services, catering facilities, transportation services, etc., that influences considerably a deterioration of the service quality for tourists' satisfaction;
- perform a constant experience interchange with other countries regarding questions in the field of tourism industry licensing, financial

guaranteeing of tourism companies' responsibility, implementation of standardization and certification procedures in tourism industry, improvement of mechanism of government regulation.

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