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主 論 文 の 要 旨

論文題目

THE IMPACT OF THE ADOPTION OF THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION IN LAOS BY FOCUSING ON ITS INTERPRETATION
 (UNCITRAL国際商事仲裁モデル法採択のラオスへの影響：その解釈を中心に)

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論 文 内 容 の 要 旨

This dissertation argues for the need to narrow the gap between *the Law on the Resolution of Economic Disputes* (hereinafter referred to as the “LRED”) and *the UNCITRAL Model Law on International Commercial Arbitration* with its amendments as adopted in 2006 (hereinafter called the “Model Law”). The suggested reforms of the LRED demand a radical change in judicial interpretation from the current Lao rules on international commercial arbitration.

This research explores the impacts of the adoption of the *Model Law* and the best interpretation for Laotian contexts. The dissertation focused on two provisions of the *Model Law*, the conditions for the setting aside of arbitral award (Article 34) and the competence of arbitral tribunals to rule on their own jurisdictions (Article 16). These two provisions are vital for international arbitration and some experts believe that they embody fundamental principles of the full adoption of this uniform law. The countries that adopted the *Model Law* have interpreted it in various ways, which is against the desirability of the UNCITRAL to provide a uniform arbitration procedure and specific needs for international commercial arbitration practices.

Based on a close examination of the *Model Law*, this dissertation establishes that the adoption of the *Model Law* would change the content and implementation of the LRED in two ways such as the impact to its content and the interpretation change. The latter is the focus of this research. The empirical and theoretical analysis of international scholars and practitioners suggest that there exist two competing approaches to the interpretation of the *Model Law*, a national and an international approach. The international approach illustrates a preference toward the UNCITRAL Secretary-General’s resolution that the *Model Law* should be interpreted with regard to the terms in the context of the law and the object and purpose of the *Model Law*, that is, to pay attention to the international origin and the need to promote uniformity in its application. Before the inclusion of Article 2A, the *Model Law* was silent about the methods of interpretation, and it seemed to have left the matters for judicial discretion. The incorporation of Article 2A, however, gave rise to the international interpretation.

After an extensive analysis of the LRED and the *Model Law*, international scholarly writings and practices, the worldwide consensus, the international conventions, treaties, and the *travaux préparatoires*, this dissertation presents a conclusion and recommendation for the LRED and the Lao courts. In summary, the research extends favorable views toward the international approach in line with the desirability for the uniform application of the *Model Law*. The international approach would persuade Lao judges to interpret and apply the *Model*

Law expansively and broadly by taking into consideration Article 2A, international interpretation practices, and the principle of comity. This interpretation is close to the blended approach of the common law modern rule of interpretation, and the teleological approach found in civil law.