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主 論 文 の 要 旨

論文題目 Regulatory Framework for the International Choice of Court Agreements in Thailand: Revisiting the Validity and Jurisdictional Protection of Weak Parties

(タイにおける国際裁判管轄合意法制の整備—有効性と弱者保護の再検討)

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論 文 内 容 の 要 旨

Nowadays, Thailand is deeply connected with international trade and cross-border activities. Simultaneously, the risk of international litigation has been increasingly exposed to individuals and businesses in Thailand, as a result of the internationalization of economic activities. At the international level, the choice of court agreements has been widely used to increase legal certainty, as well as reduce litigation and enforcement risks often associated with international litigation, such as undesirable fora, parallel proceedings, and jurisdictional challenges. However, Thailand still lacks an explicit statutory provision and a clear legal framework for the international choice of court agreements, thus leading to confusion and uncertainty as to the validity, effects, formality, and other requirements of such agreements in the country. One of the main reasons for the hesitancy in recognizing the choice of court agreements is the concern over weak parties.

This dissertation aims to propose a new regulatory framework and a statutory model for international choice of court agreements in civil and commercial matters in Thailand, which would balance the benefits of party autonomy in choice of court and the need to protect weak parties in international litigation. To achieve this objective, the dissertation investigates the existing jurisdictional rules, related legislation, case law, and regulatory policies to address crucial problems concerning the recognition of the international choice of court agreements in Thailand. It also examines the theoretical foundations and justifications for the choice of court agreements. Key developments in international civil procedures and arbitration laws in major jurisdictions, such as Japan, the European Union, the United States, and the Hague Convention on the Choice of Court Agreements, are considered to suggest a legislative framework for the international choice of court agreements. The validity of the asymmetric choice of court agreements is also discussed. Furthermore, this dissertation utilizes behavioral economics and comparative legal methodology to scrutinize the need for providing jurisdictional protection to weak parties and to design regulatory tools that would provide optimal protection for weak parties in the context of the choice of court agreements.

Based on the results of the studies, this dissertation argues that Thailand should establish a new legislative framework for the international choice of court agreements in the form of statutory provisions. It also proposes a statutory model consisting of the amendments to the Civil Procedure Code, the Consumer Case Procedure Act, B.E. 2551 (2008), and the Act for the Establishment of and Procedure for Labor Court, B.E. 2522 (1979). In particular, the Civil Procedure Code should be amended to provide clear rules on the obligations of the Thai courts regarding the choice of court agreements, formal and substantive validity requirements, the specificity requirement, the presumption in favor of exclusivity, and the public policy exception. Moreover, protective jurisdictional rules in

favor of consumers and employees should be established in the Consumer Case Procedure Act, B.E. 2551 (2008) and the Act for the Establishment of and Procedure for Labor Court, B.E. 2522 (1979), respectively.