

Independent Study Title	Problems on Trial Procedures in Commercial Cases in Thailand
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ABSTRACT

This study aims to find out the patterns of procedures which are appropriate and in conformity with the trade traditions and practices in commercial trade. In this regard, it also aims to enable Thailand to clearly provide the procedure system of commercial cases to be different from the procedure system of general civil cases. Since Thailand, at present, applies the civil law system, without separating the commercial law system as well as the principles of commercial case procedures from the civil law system and the principle of civil case procedures, the philosophy or concepts in the commercial law cannot be developed and the philosophy and principles in general civil law are always applied to enforce with juristic relation in the commercial trade. Consequently, the judgments for commercial cases which are included in civil law system in certain cases are absolutely unfair and contrary to the concepts of dispute resolution in commercial trade, in which the convenience and speediness are required. Moreover, the judgments must be made by the knowledgeable persons in the tradition, practices and principles which are applied among commercial traders. This is weak point which is always overlooked and it has been overlooked since the commencement of the law codifications in Thailand. It's extremely against the sense of just among people in the commercial trade. As a result of this, the legal system and judicial system in Thailand were not accepted and respected by the alien traders as they should be and they brought about the consecutive affect to the trade agreements entered into by and between Thai and alien traders; they were always requested to be subject to the

foreign laws, in which the arbitrations of foreigner countries were applied and the litigation and case proceedings were requested to be under the courts of foreign countries. Consequently, Thai traders were disadvantageous and wasted a lot of money as expenses.

Therefore, the improvement of commercial law system is absolutely necessary and beneficial for the promotion of Thailand's commercial trade activities and it is also another way to help increase the recognition and creditability in the legal system and Thai courts as well.

With regard to the separation of the commercial law system from the civil law system in Thailand, there may be several ways to do so. The important problem does not rely on the questions whether or not the Commercial Code should be separated from the Civil Code, but the important thing is that the commercial law should help promote and spread the trade activities as well as protect the honest trade operators adequately and effectively. From the feasibility study in the initial stage of separation of the commercial law system, the principles of commercial case procedure should be firstly developed separately from the general civil case procedure. In this regard, the special court system should be separated for commercial case procedure as the center to create knowledge and expertise particularly in the commercial law and the Intellectual Property and International Trade Court should be developed to be the Intellectual Property and Commercial Court because the disputes in the intellectual property and commercial trade are connected relatively and indistinguishably. In the trial, it is necessary to consider attentively the convenience, speediness and just. The associated judges who are knowledgeable in commercial trade should be provided to jointly adjudicate together with the professional judges within the explicit timeframe of the trials. In addition, if there is the appeal of the court's judgment or the court's order in the Courts of First Instance, the appeal should be submitted directly to the Supreme Court without the judgments of the Appeal Court. These are the designs for the systems and rules in the commercial cases which are appropriate and in conformity with the conditions, nature and objectives of commercial trade. This is also another way to enable Thailand to encourage and promote its commercial trade to be in the international standard and in the better position to compete with the global market.