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The Research on China-Thailand High Speed Rail Cooperation Mode and Related Issues

中泰高铁合作模式及相关法律问题研究

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The purpose of research

- This paper aims to explore the possibility of the Thai high speed railway cooperation pattern and pays attention to the analysis on the legal issues of cooperation and risk prevention, thus, looking forward to contributing to the Thai high speed railway's success of cooperation.
- 本文旨在探索中泰高铁合作模式的可能性并针对将来合作中涉及的主要法律问题进行分析，期望能够为中泰高铁合作的成功贡献一份力量。



The contents of the paper

- **1. The cooperation mode of China high-speed rail “going global” strategy(中国高铁“走出去”战略合作模式)**
- **2. The possibility research on Sino-Thailand high speed rail cooperation mode(中泰高铁合作模式可能性探究)**
- **3. Main legal problems and suggestion of Sino-Thailand high speed rail construction(中泰高铁建设中主要法律问题及建议)**
- **4. The settlement of Sino-Thailand high speed rail construction dispute(中泰高铁建设纠纷的争议解决)**

1.The cooperation mode of China high-speed rail “going global” strategy

- **1.1 EPC mode(工程总承包模式):** EPC is a mode which refers to engineering、 procurement and construction comprehensively.
- - Turkey, Ankara - Istanbul high-speed rail phase ii project is China's first overseas EPC project.
- - which makes China high-speed rail technology、 equipment and European standard butt joint.

1.The cooperation mode of China high-speed rail “going global” strategy

- **1.2 BOT(建设—经营—移交模式)**:BOT refers to a state or a local government department grants the parties of investment enterprises to undertake the infrastructure projects' investment and financing、 design、 construction、 operation as well as maintenance through the licensing agreement; During the concession period according to the agreement, the specially built project company is allowed to charge a fee to users of the infrastructure as reasonable return; when the concession has expired, the company will transfer the facilities to the parties of government departments for free.
- - The construction of China and Russia Moscow - Kazan high-speed rail section is a successful case of BOT mode.

1. The cooperation mode of China high-speed rail “going global” strategy

- **1.3 G2G+B2B mode:** G2G+B2B refers to a mode which is dominated by two governments and two enterprises in different countries will co-construct.
- - Jakarta-Bandung high speed rail is a successful use of the G2G+B2B mode between China and Indonesia.
- - The main feature of this mode promotes the effective cooperation between enterprises under the guidance of the two governments, besides, the state will give a lot of money and technical support in the investment and financing aspects as well as the technology research. In addition to this, this mode can effectively promote political mutual trust and economic exchanges between two countries.



2. The possibility research on Sino-Thailand high speed rail cooperation mode

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- The G2G+B2B mode could be used in the project, which is dominated by governments, besides, two enterprises in different countries will form a company consortium to carry out Sino-Thailand high speed rail's planning and design、 construction operation.



2. The possibility research on Sino-Thailand high speed rail cooperation mode

- The reasons as follows:
 - 1) Thailand and Indonesia are important parts of ASEAN countries and trans-Asian railway net, besides, these two countries have many similar places in geological、 climatic condition and political、 economic development, thus, the cooperation of Sino-Thailand high speed rail can draw a lesson from Sino-Indonesia's successful practices and experience.

- The reasons as follows:
- 2) Sino-Thailand high speed rail is a huge project, which dominated by two governments avoiding conflicts effectively in the process of construction, especially political disputes. In addition to this, rail construction's investment environment, technical standards and funding sources can be guaranteed.
- 3) This model has a lot of flexibility and keep the market rules for enterprises is the main body of market economy.
- 4) reducing the economic risk and political risk.



suggestions

- **Under the support of two governments, two enterprises in different countries should form a company consortium to carry out the investment and management of Sino-Thailand high speed rail and their respective shareholding can be negotiated. Regarding as investment funds, Chinese government can provide financing support to Thailand based on a reasonable loan interest. In the process of the construction, China should be mainly responsible for technical support、 engineering design、 construction management、 signal system and track. Thailand enterprises can undertake the portion of the project which they are capable to finish it.**



3. Main legal problems and suggestion of Sino-Thailand high speed rail construction

- **3.1 The issues of contracts types in Sino-Thailand high speed rail construction**
- Under G2G+B2B mode: shareholder investment agreement is the most important contract in the project.
- The contract types will be different if other cooperation mode is used in the project.



- In March this year, Thailand government proposed that it will invest high speed rail on its own. Thailand enterprises will be responsible for high-speed rail franchise, Chinese enterprises can buy shares. International technology trade contracts、 international trade in goods contracts、 international loan contracts will be involved in this mode, and these contracts can be drafted in accordance with the rules of international law and the rule of contract.

- **3.2 Contract subject problem and protection of Sino-Thailand high-speed rail construction**
- - Suggesting that a new mode should be used in the Sino-Thailand high speed rail construction contract: a mode which regards companies from two countries as the subjects of signing contracts and governments as guarantor. On one hand this mode can give full play to market flexibility, on the other hand, legal risks of performing contracts can be reduced to the minimum because of the role of government guarantees.

- **3.3 Patent protection problem**

- First of all, the following legals should be taken into consideration in the process of signing the contracts: a bilateral or multilateral treaty concluded by two parties; the intellectual property rights protection law; the property rights laws of our two countries.
- Secondly, the disputes of intellectual property rights, especially patent infringement should be solved peacefully, with alerting the intellectual property litigation initiated by our competitors.
- China should take the following measures: 1) strengthen patent application and layout in overseas markets; 2) strengthen the use of patent information of high speed railway technology; 3) paying attention to the review of intellectual property rights contract in the process of technology output; 4) strengthen the early warning mechanism of overseas intellectual property.

- **3.4 Problems of labor protection laws**

- The contracts should include the rules of protection, procedure, disputes resolved ways and applicable law of two countries' labors
- The following principles of application should be followed: 1) the law which chosen by the party. 2) relevant international conventions; 3) the principle of the most closely connection.
- In the process of signing the labor contract, it is better to apply our laws when it is related to Chinese labor.

- **3.5 The problem of company legal system**
- Within the framework of Thailand law, we should learn to make specific and detailed provisions about companies operating system, articles of association and rules, which meet interests of both sides.
- Chinese companies should make a dutiful survey before investment, avoiding blind investment.



4. The settlement of Sino-Thailand high speed rail construction dispute

- 4.1 The application of applicable law on Sino-Thailand high speed rail construction disputes**
- 4.2 The selection of dispute settlement mode in Sino-Thailand high speed rail construction**
- 4.3 The selection of dispute settlement mechanism in Sino-Thailand high speed rail construction**



4.1 The application of applicable law

- It is better to apply the applicable law in contracts. If there are international rules, they can be regarded as applicable law; If there are not, Thailand law or China law may be treated as applicable law according to the principle of closing connection.



4.2 The selection of dispute settlement mode

- 1) both sides try to resolve disputes in the way of reconciliation and mediation, if it does not work, application for arbitration or litigation to the international arbitration tribunal or the International Court of arbitration can be taken into consideration.
- 2) a new institution should be established which specifically resolve the Sino-Thailand high speed rail construction disputes.



4.3 The selection of dispute settlement mechanism

- If being need of international arbitral organization for help, there are two kinds of mechanisms: International Center for Settlement of Investment Disputes(ICSID) and WTO dispute Settlement Mechanism.
- International Court of Justice mainly includes Hague TriBunal、 International Tribunal for the Law of the Sea、 International Criminal Court and Permanent Court of arbitration.



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Thank you!