As a popular choice of law doctrine, party autonomy allows
the parties in international contracts (or foreign contracts)
to choose governing law of particular jurisdiction they
prefer. Premised on freedom of contract, this doctrine has
evolved in many ways since it was introduced in the 1600’s
and has become an internationally accepted principle
governing choice of law in contracts. In international
community, the doctrine of party autonomy has been adopted
and applied through the rule-based framework or mechanism.
But the acceptance of party autonomy in the United States is
intertwined with interest or policy analysis so closely that
it is often quite difficult for the parties to predict the
ultimate outcome of the choice of law they have made. In
addition, the interest and policy analysis based American
choice of law approaches and the choice of law rules so
developed in the US hardly have any general application
internationally. Also, the connection requirement has
rendered the US contractual choice of law in discordance with
international common practice. In fact, both interest
analysis and connection requirement are not necessarily
needed with regard to the choice of law by the parties.
Choice of law should be ruled based and the rules should be
intended to maximize the individual or private welfare rather
than the state interest.
Download the article.