

บทความวิชาการ (Academic Article)

การส่งเสริมการตัดสินใจด้วยตนเอง: บทเรียนจากกฎหมายสนับสนุน การตัดสินใจแบบมีผู้ช่วยเหลือและกฎหมายทรัสต์ของญี่ปุ่นสำหรับสังคม ผู้สูงอายุของไทย*

Empowering Autonomy: Lessons from Japan's Supported Decision-Making and
Trust Law Frameworks for Thailand's Aging Society

โชคชัย เนตรงามสว่าง **

นักศึกษาปริญญาโท

คณะนิติศาสตร์ มหาวิทยาลัยคิวชู

251, อิโตะ เคียวโซคัน ฮาร์มอนี่ เฮาส์, 522, คูwabara, นิชิกุ, จังหวัดฟูกูโอกะ, ประเทศญี่ปุ่น 819-0382

อีเมล: netngamsawang.chokchai.269@s.kyushu-u.ac.jp และ chokchai.ne@gmail.com

Chokchai Netngamsawang

Master of Laws Student

Faculty of Law, Kyushu University

251, Ito Kyosokan-Harmony House, 522, Kuwabara, Nishi-ku, Fukuoka, Japan 819-0382

Email: netngamsawang.chokchai.269@s.kyushu-u.ac.jp and chokchai.ne@gmail.com

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** Public Prosecutor attached to the Office of the Attorney General, Department of Public Prosecutor Commission, Office of the Attorney General, Bachelor of Laws (LL.B. with Second Class Honours) Thammasat University; Barrister-at-law, Thai Bar Association; Master of Laws (LL.M.) Thammasat University

อิทธพร คณะเจริญ***

เลขาธิการ

แพทยสภา

88/19, ซอยสาธารณสุข 8, กระทรวงสาธารณสุข, ตำบลตลาดขวัญ, อำเภอเมือง, จังหวัดนนทบุรี, ประเทศไทย 11000

อีเมล: ittaporn@gmail.com

Ittaporn Kanacharoen

Secretary-General

The Medical Council of Thailand

88/19 Soi Satharana Suk 8, Ministry of Public Health, Talat Khwan, Mueang
Nonthaburi, Nonthaburi, Thailand 11000

Email: ittaporn@gmail.com

วันที่รับบทความ 22 กรกฎาคม 2568; วันที่แก้ไขบทความ 12 กันยายน 2568; วันที่ตอบรับบทความ 16 กันยายน 2568

*** Doctor of Medicine (M.D.) Chulalongkorn University

บทคัดย่อ

ประเทศไทยได้เข้าสู่สังคมผู้สูงอายุและการเพิ่มขึ้นของผู้ที่มีภาวะสมองเสื่อมทำให้เห็นถึงช่องว่างในระบบกฎหมายไทยในการคุ้มครองสิทธิในการตัดสินใจด้วยตนเองและความมั่นคงทางการเงินของผู้สูงอายุ ระบบของไทยพึ่งพาเพียงกลไกการตั้งผู้พิทักษ์โดยคำสั่งศาล ซึ่งนำไปสู่ปัญหาการล่วงละเมิดผู้สูงอายุ การทอดทิ้ง และการแสวงหาประโยชน์ทางการเงิน การขาดกลไกการทบทวนอย่างครอบคลุม กฎหมายทรัสต์ และการตัดสินใจแบบมีผู้ช่วยเหลือ (SDM) ส่งผลให้ผู้สูงอายุไม่สามารถตัดสินใจได้อย่างมีประสิทธิภาพ ซึ่งถือเป็นการลดทอนความสามารถตามกฎหมายของบุคคล

ประเทศญี่ปุ่นซึ่งเข้าสู่สังคมผู้สูงอายุก่อนและได้แสดงแนวทางผ่านการปฏิรูปกฎหมาย ญี่ปุ่นได้พัฒนาหลักการ SDM ควบคู่กับระบบผู้พิทักษ์โดยสมัครใจและกลไกการทบทวนการแต่งตั้งผู้พิทักษ์ ซึ่งล้วนส่งเสริมสิทธิในการตัดสินใจด้วยตนเองพร้อมกับการคุ้มครองที่เหมาะสม อีกทั้ง พ.ร.บ.ทรัสต์ของญี่ปุ่น (พ.ศ. 2549) ยังเปิดโอกาสให้ผู้สูงอายุสามารถจัดตั้งทรัสต์เพื่อจัดการทรัพย์สินโดยไม่ต้องพึ่งพาผู้พิทักษ์เพื่อความมั่นคงทางการเงิน

บทความนี้ได้วิเคราะห์เชิงกฎหมายเปรียบเทียบเกี่ยวกับกรอบกฎหมาย ความท้าทายในทางปฏิบัติ และการปฏิรูปสำหรับประเทศไทย นอกจากนี้ยังกล่าวถึงประเด็นกฎหมายระหว่างประเทศแผนกคดีบุคคล เกี่ยวกับการรับรองสิทธิผู้พิทักษ์ข้ามพรมแดนและทรัสต์

จากการศึกษาพบว่า ประเทศไทยควรดำเนินการปฏิรูปสำคัญในการให้มีผู้พิทักษ์โดยสมัครใจ การทบทวนคำสั่งผู้พิทักษ์เป็นระยะ การจัดทำกฎหมายทรัสต์ และการสร้างกรอบกฎหมายระดับชาติว่าด้วยการสนับสนุนการตัดสินใจ ซึ่งมาตรการเหล่านี้จะทำให้ระบบกฎหมายไทยสอดคล้องกับมาตรฐานสิทธิมนุษยชนระหว่างประเทศ เพื่อรักษาศักดิ์ศรี ความสามารถในการตัดสินใจ และความมั่นคงของผู้สูงอายุในระยะยาว

คำสำคัญ: สิทธิในการตัดสินใจด้วยตนเอง; สังคมผู้สูงอายุ; การสนับสนุนการตัดสินใจ (SDM); ความสามารถตามกฎหมาย; กฎหมายทรัสต์

Abstract

Thailand has an aging population and a rise in dementia-related disabilities, exposing gaps in its legal system to protect autonomy and financial security. Thailand's reliance only on court-appointed guardianship is the cause of elder abuse, neglect, and financial exploitation. Without comprehensive reviews mechanisms, trust law mechanisms, and Supported Decision-Making (SDM) alternatives, the ability of older adults to act autonomously is quashed, which undermines the person's legal capacity.

Japan entered an aging society earlier and showed a way forward through legal reform. Japan has developed SDM principles alongside voluntary guardianship and review mechanism of guardianship arrangements which promote autonomy while providing necessary safeguards. Japan's Trust Act (2006) also allows elderly individuals to establish trusts to manage assets without being dependent on guardianship for financial security.

This article uses comparative legal analysis regarding statutory frameworks, practical challenges, and potential reforms for Thailand. It also touches on matters of private international law on cross-border recognitions of guardianship, and trusts.

These findings suggest the key reforms for Thailand in relating to voluntary guardianship, periodic compulsory reviews, the introduction of a trust law system, and national SDM frameworks. These measures would bring Thailand's legal architecture in line with international human rights standards to secure its aging population's dignity, autonomy, and financial security.

Keywords: Autonomy; Aging Society; Supported Decision-Making; Legal Capacity; Trust Law

1. Introduction

Thailand is undergoing a rapid demographic shift, with over 20% of its population aged 60 or older as of 2024.¹ With longer life expectancy,² age-related illnesses such as dementia are becoming a significant concern, severely impacting the ability of older adults to make independent decisions. Among those aged 65 and above, between 5% and 20% are projected to develop dementia,³ making it one of the most pressing public health issues for Thailand's aging society. In 2022, approximately 777,000 elderly Thai individuals, or 6% of the total elderly population, were diagnosed with dementia, with this number expected to increase by 100,000 new cases annually.⁴ As the number of elderly individuals grows, Thailand's legal framework still lacks sufficient mechanisms to address cognitive decline. Relying only on court-appointed guardianship has led to increased cases of elder abuse, neglect, and financial exploitation.⁵

Thailand's legal system is rooted in the Civil and Commercial Code (CCC), which authorizes courts to appoint guardians to manage the affairs of individuals deemed incompetent. However, this substitute decision-making model does not offer alternatives such

¹ Kanokwan Lueangmongkhonlet, **When Thailand Enters a Complete Aging Society, What Welfare Will the Thai Elderly Receive?** [Online], 23 February 2025. Source: <https://thaipublica.org/2024/02/thailand-becomes-aged-society/>

² World Health Organization, **Life Expectancy, Thailand** [Online], 23 February 2025. Source: <https://data.who.int/countries/764>; Worsak Kanok-Nukulchai, **In Thailand, 70 is the New 51** [Online], 23 February 2025. Source: <https://www.bangkokpost.com/opinion/opinion/2473977/in-thailand-70-is-the-new-51>

³ Faculty of Medicine, Ramathibodi Hospital, Mahidol University, **Dementia** [Online], 23 February 2025. Source: <https://www.rama.mahidol.ac.th/ramamental/generalknowledge/07072014-1302#:~:text=%E0%B8%9B%E0%B8%B1%E0%B8%88%E0%B8%88%E0%B8%B8%E0%B8%9A%E0%B8%B1%E0%B8%99%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B8%8A%E0%B8%B2%E0%B8%81%E0%B8%A3%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%AA%E0%B8%B9%E0%B8%87%E0%B8%AD%E0%B8%B2%E0%B8%A2%E0%B8%B8%E0%B9%83%E0%B8%99,%E0%B8%A5%E0%B8%B0%2020%20%E0%B8%AB%E0%B8%A3%E0%B8%B7%E0%B8%AD%201%20%E0%B9%83%E0%B8%99>

⁴ Amporn Benjapolpitak, **Department of Medical Services is Concerned About the “Aging Society”. Found that the Number of Elderly People with Dementia is Increasing Every Year** [Online], 28 February 2025. Source: <https://www.hfocus.org/content/2023/12/29302>

⁵ Paul S. Appelbaum, **Preventing Abuses in Guardianship Cases**, *Psychiatric Services*, Volume 74 Issue 2 (February 2023), p. 123.

as voluntary guardianship or Supported Decision-Making (SDM), which would allow older adults to retain partial control over their affairs with appropriate assistance. Moreover, Thailand lacks comprehensive periodic guardianship reviews to reassess their condition, reevaluate the necessity of guardianship, or prevent abuse.

By comparison, Japan has implemented legal innovations to protect and empower older adults. With nearly 30% of its population aged 65 or older,⁶ Japan has faced similar demographic challenges but has responded through comprehensive legal reforms. After ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2014, Japan strengthened its SDM framework,⁷ enabling individuals with cognitive impairments to receive assistance rather than have their decision-making rights removed entirely. Japan also established a voluntary guardianship system, allowing individuals to appoint a guardian in advance and ensuring their affairs are managed according to their wishes. Additionally, Japan integrated a comprehensive review mechanism into the guardianship system, preventing indefinite restrictions on autonomy and reducing the risk of abuse. Beyond guardianship, the Trust Act of 2006 allows individuals to create family trusts, enabling the management of assets without relying on guardianship. Individuals can secure their financial affairs even after a cognitive decline by appointing a trusted family member or professional trustee.

Thailand is expected to age faster than Japan,⁸ and proactive legal reforms are essential to prevent a national crisis in elder care and legal protection. This article examines Thailand's legal framework and its shortcomings in protecting elderly autonomy and financial security. Through comparative legal analysis, Japan's legal framework has inspired Thailand's CCC.⁹ While Japan faced similar demographic challenges, it explores how Japan's legal innovations—Supported Decision-Making, voluntary guardianship, periodic guardianship reviews, and trust law—could serve as a model for reform in Thailand. Additionally, it

⁶ Hiroki Nakatani, **Population Aging in Japan: Policy Transformation, Sustainable Development Goals, Universal Health Coverage, and Social Determinants of Health**, *Global Health & Medicine*, Volume 1 Issue 1 (January 2019), p. 3.

⁷ Toshihiko Mizushima, **Enabling Supported Self-Directed Living: Supported Decision-Making and Safeguarding Mechanism Japan Network of Supported Decision-Making (SDM-Japan)**, presented at EAP Summer School, 10 August 2023.

⁸ Kikuo Nishizawa, **Guardianship Systems and Aging Populations: A Comparison of Thailand and Japan**, *Thai Legal Studies*, Volume 2 Issue 1 (January 2022), p. 1.

⁹ Ibid.

considers cross-border legal issues, including the recognition of guardianship and trusts in international law, and the potential role of the Hague Convention on the International Protection of Adults (2000) and the Hague Trusts Convention (1985) in shaping Thailand's legal reforms.

2. Understanding Dementia and the Need for Legal Protections

2.1 Dementia and Legal Capacity

Dementia is a progressive condition that affects millions of people worldwide, becoming more common with age.¹⁰ Dementia is not a single disease but a syndrome with multiple causes, leading to cognitive decline, memory loss, and impaired decision-making abilities. The most prevalent form is Alzheimer's disease, responsible for 60–70% of dementia cases.¹¹ Individuals with Alzheimer's experience gradual memory loss, confusion, and difficulties with reasoning, making it increasingly difficult to manage daily tasks and personal affairs.

Vascular dementia, the second most common form,¹² often due to strokes or vascular conditions. Unlike Alzheimer's, vascular dementia primarily affects problem-solving, concentration, and cognitive processing speed, with symptoms that progress in sudden declines following vascular events. Lewy body dementia, affecting approximately 10% of cases,¹³ involves abnormal protein deposits in the brain, leading to visual hallucinations, fluctuating cognitive abilities, movement difficulties, and mood changes.¹⁴

¹⁰ National Institutes of Health (NIH), **What Is Dementia? Symptoms, Types, and Diagnosis** [Online], 23 February 2025. Source: <https://www.nia.nih.gov/health/alzheimers-and-dementia/what-dementia-symptoms-types-and-diagnosis>

¹¹ World Health Organization, **Dementia** [Online], 23 February 2025. Source: <https://www.who.int/news-room/fact-sheets/detail/dementia>

¹² Johns Hopkins Medicine, **Vascular Dementia** [Online], 23 February 2025. Source: <https://www.hopkinsmedicine.org/health/conditions-and-diseases/dementia/vascular-dementia#:~:text=Vascular%20dementia%20is%20the%20second,location%20of%20the%20area%20affected>

¹³ Ibid.

¹⁴ Alzheimer's Disease International, **Dementia with Lewy Bodies** [Online], 23 February 2025. Source: <https://www.alzint.org/about/dementia-facts-figures/types-of-dementia/dementia-with-lewy-bodies/#:~:text=Accounting%20for%20roughly%2010%20%E2%80%93%2015,that%20their%20risk%20is%20greater>

As dementia progresses, individuals lose the ability to make informed decisions about their finances, healthcare, and personal affairs, making them vulnerable to financial exploitation, elder abuse, and neglect.¹⁵ In Japan, dementia is the leading cause for guardianship appointments, accounting for 64.1% of cases in 2020.¹⁶ Typically, petitions for guardianship are triggered by critical incidents, such as the inability to manage financial transactions, consent to medical treatment, or secure care home admission.¹⁷

Decision-making capacity is a crucial legal concept. However, many individuals with early-stage dementia retain partial decision-making capacity and may only require support rather than full guardianship.¹⁸ Under the CCC, individuals have legal capacity except that they have been declared incompetent or quasi-incompetent and a guardian or curator has been assigned.¹⁹ While in Japan, the elderly retain full legal capacity unless their mental capacity to make decisions has been diminished; in such cases, they may be appointed a guardian or enter into a voluntary guardianship contract.²⁰ However, Legal frameworks that automatically remove autonomy upon diagnosis fail to acknowledge this nuance, undermining personal dignity and rights.²¹

Moreover, without appropriate legal protections, individuals with dementia face increased risks of financial fraud and abuse, including unauthorized withdrawals, coerced will

¹⁵ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

¹⁶ Home Affairs Bureau of Japan's Supreme Court, **Overview of Adult Guardianship-related Cases (2000-2020)** [Online], 23 February 2025. Source: https://www.courts.go.jp/toukei_siryou/siryo/kouken/index.html; Jiyuan Zhang and Zi Yan, **Helping the Elderly Live Better with Dementia: Recent Developments in Japan's Adult Guardianship System and Its Role in Geriatric Social Work Practice**, *Journal of Disability Policy Studies*, Volume 34 Issue 1 (January 2024).

¹⁷ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

¹⁸ Emily A. Largent, Andrew Peterson and Jason Karlawish, **Supported Decision Making: Facilitating the Self-Determination of Persons Living with Alzheimer's and Related Diseases**, *Journal of the American Geriatrics Society*, Volume 71 Issue 3 (March 2023), p. 456.

¹⁹ Civil and Commercial Code of Thailand, Section 2 Capacity

²⁰ Civil Code of Japan, Section 3 Capacity to Act

²¹ Julia Duffy, **Mental Capacity, Dignity and the Power of International Human Rights**, *Journal of Human Rights Law*, Volume 15 Issue 2 (June 2023), p. 200.

changes, and property mismanagement.²² Additionally, dementia can impair an individual's ability to advocate for healthcare and living arrangements, leading to dependency on others who may not always act in their best interests.²³ For example, the Supreme Court ruled 12 years imprisonment for the daughter who stole the money from the bank account while the elderly mother was in the hospital,²⁴ or the statistics from the Royal Thai Police showed that criminal cases with elderly victims have increased over the years.²⁵

To balance protection and autonomy, legal systems can adopt flexible legal models, such as SDM, voluntary guardianship, and trust law mechanisms, to provide alternatives for elderly individuals to make their own decisions, avoid unknown court guardianship appointments, and manage their financial arrangements. However, Thailand still relies solely on court-appointed guardianship.

2.2 Limitations in Thailand's Current Legal Framework

Thailand's legal framework for individuals with cognitive impairments primarily relies on court-appointed guardianship under the CCC. Once an individual is legally deemed "incompetent"²⁶ or "quasi-incompetent",²⁷ the court assigns a guardian or curator to manage their personal²⁸ and financial affairs.²⁹ Incompetent and quasi-incompetent are different in the degree of legal capacity; an incompetent person cannot make decisions completely,³⁰ while a quasi-incompetent person retains some degree of decision-making in trivial matters.³¹ While

²² Carolyn Dessin, **Financial Abuse of the Elderly: Is the Solution a Problem?**, McGeorge Law Review, Volume 34 Issue 2 (Winter 2003), p. 267.

²³ Megan S. Wright, **Dementia, Autonomy, and Supported Healthcare Decision Making**, Maryland Law Review, Volume 79 Issue 2 (Spring 2020), p. 257.

²⁴ Supreme Court Judgement No. Aor 942/2564

²⁵ ThaiHealth Official, **Revealing the results of research on the situation of elderly abuse** [Online], 10 September 2025. Source: <https://www.thaihealth.or.th/%E0%B9%80%E0%B8%9B%E0%B8%B4%E0%B8%94%E0%B8%9C%E0%B8%A5%E0%B8%A7%E0%B8%B4%E0%B8%88%E0%B8%B1%E0%B8%A2%E0%B8%AA%E0%B8%96%E0%B8%B2%E0%B8%99%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%93%E0%B9%8C%E0%B8%9C%E0%B8%B9/>

²⁶ Civil and Commercial Code of Thailand, art 28.

²⁷ Ibid., art 32.

²⁸ Ibid., arts 29, 45.

²⁹ Ibid., arts 29, 35.

³⁰ Ibid., art 29.

³¹ Ibid., art 34.

this system ensures protection, it lacks flexibility and autonomy, depriving elderly individuals of the ability to maintain some level of decision-making authority.

One of the major shortcomings is the absence of voluntary guardianship, preventing individuals from appointing a guardian in advance.³² Instead, guardianship is only imposed through a court order and follows a strict legal hierarchy, prioritizing spouses³³ and parents³⁴ except in special circumstances.³⁵ This rigid structure removes an individual's autonomy in choosing a trusted representative, increasing the risk of family disputes, unwanted guardianship appointments, and financial mismanagement.³⁶

Additionally, Thailand lacks a formal SDM framework. SDM allows individuals with cognitive impairments to receive assistance from trusted supporters while still maintaining their legal capacity. Without SDM, Thailand's legal system automatically treats all individuals with cognitive impairments as fully incapacitated, disregarding varying levels of decision-making ability and support needs.

Another critical weakness is the lack of comprehensive periodic reviews in Thailand's guardianship laws. While the law mandates annual financial reports³⁷ and initial asset inventories,³⁸ it does not require regular reassessment of the ward's status or the guardian's role, creating risks of elder abuse and financial exploitation.

Furthermore, Thailand does not recognize trusts as a legal mechanism for financial management. Article 1686 of the CCC explicitly invalidates trusts. Without a trust law, elderly individuals have limited options for long-term financial planning³⁹ as trusts are essential legal tools for managing, distributing, and protecting assets, particularly during periods of incapacity.

³² Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

³³ Civil and Commercial Code of Thailand, art 1463.

³⁴ Ibid., art 1569/1 Para 2.

³⁵ Ibid., art 1598/17.

³⁶ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

³⁷ Civil and Commercial Code of Thailand, art 1598/1.

³⁸ Ibid., arts 1592, 1593.

³⁹ Paisarn Limsatit, **Protection of the Rights of the Elderly and Patients Who Cannot Care for Themselves** [Online], 1 March 2025. Source: <https://cheevamitr.com/knowledge/rights-and-laws-for-the-elderly>

A lack of trust law would hinder the ability to control asset distribution and provide for beneficiaries with special needs, leaving only basic options, such as a guardian, to manage assets.

For patients with dementia, a letter of intent can be written under Section 12 of the National Health Act, B.E. 2550 (A.D. 2007), allowing them to document their healthcare preferences before cognitive decline progresses. However, this option is limited to medical decisions and does not extend to financial or legal affairs.⁴⁰

Moreover, Thailand's current guardianship system is not fully aligned with the UNCRPD. The Thai current substitute decision-making model is in contradiction to the UNCRPD Article 12 (Equal recognition before the law), which promotes SDM, allowing individuals with disabilities (including cognitive decline such as dementia) to make their own decisions with appropriate support.⁴¹

Thailand's guardianship supervision is also minimal, limited to financial reporting duties with no mandatory periodic review of the guardian's conduct or the necessity of continuing the guardianship. UNCRPD requires safeguards to prevent abuse, undue influence, and conflicts of interest.⁴² Without regular court reviews or oversight bodies, Thailand's model risks elder abuse and financial exploitation.

Thailand does not allow voluntary guardianship or advance directives to be legally binding. Thailand's legal system also prohibits the creation of private trusts under the CCC. Thailand fails to recognize legal capacity in planning through voluntary guardianship or a trust system, which conflicts with the UNCRPD's principles of autonomy and independence.⁴³

As Thailand's aging population grows, these legal limitations will become more problematic. The following sections will explore Japan's legal approach and why Thailand should consider similar reforms to enhance elder autonomy and financial security.

⁴⁰ Weena Limsakul, **Legal Knowledge in Caring for Patients with Dementia**, Thai Journal of Nursing, Volume 67 Issue 4 (October–December 2018), p. 62.

⁴¹ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (adopted 13 December 2006, entered into force 3 May 2008) UNGA Res 61/106, art 12(3).

⁴² Ibid, art 12(4).

⁴³ Ibid, art 3.

3. Japan's Legal Innovations for Elderly Autonomy

3.1 Voluntary Guardianship: Proactive Decision-Making

Japan has acknowledged the limitations of a rigid court-appointed guardianship system and has introduced voluntary guardianship as a proactive solution. This legal mechanism allows individuals to plan for their future care while they still have decision-making capacity,⁴⁴ ensuring personal preference and self-determination remain central.⁴⁵ By allowing individuals to establish voluntary guardianship contract in advance,⁴⁶ Japan's model promotes autonomy and flexibility,⁴⁷ reducing the risks associated with contested or unwanted guardianship appointments.

Under this system, individuals may delegate specific affairs, including daily life decisions, medical treatment, nursing care, and property management, to a mandatary.⁴⁸ The voluntarily appointed guardian is legally required to respect the ward's intent and consider their mental and physical condition.⁴⁹

One of the primary benefits of voluntary guardianship is its ability to reduce the risk of abuse and financial exploitation. By allowing individuals to choose their own guardian before cognitive decline occurs, this system prevents undue influence from untrustworthy individuals (Zhang and Yan 2024).⁵⁰ Additionally, Japan incorporates a strong supervisory mechanism to enhance transparency and accountability.

The family court plays an essential role by appointing a Supervisor of the Voluntarily Appointed Guardian,⁵¹ an independent figure who supervises the guardian's actions and

⁴⁴ Makoto Arai and Akira Homma, **Guardianship for Adults in Japan: Legal Reforms and Advances in Practice**, *Australasian Journal on Ageing*, Volume 24 Issue 1 (March 2005), p. 36.

⁴⁵ Zi Yan, **Helping Seniors Aging in Place: Adult Guardianship and Its Role in Geriatric Social Work Practice in China and Japan**, *Innovation in Aging*, Volume 7 Issue 1 (January 2023), p. 901.

⁴⁶ Act on the Voluntary Guardianship Contract, Act No. 150 of 8 December 1999, art 2.

⁴⁷ Zi Yan, **Helping Seniors Aging in Place: Adult Guardianship and Its Role in Geriatric Social Work Practice in China and Japan**.

⁴⁸ Act on the Voluntary Guardianship Contract, Act No. 150 of 8 December 1999, art 2.

⁴⁹ *Ibid.*, art 6.

⁵⁰ Jiyuan Zhang and Zi Yan, **Helping the Elderly Live Better with Dementia: Recent Developments in Japan's Adult Guardianship System and Its Role in Geriatric Social Work Practice**, p. 15.

⁵¹ Act on the Voluntary Guardianship Contract, Act No. 150 of 8 December 1999, art 4.

submit the regular reports to the family court.⁵² Importantly, the supervisor cannot be the spouse, a direct blood relative, or sibling of the mandatary,⁵³ ensuring impartial oversight. More than one supervisor may be appointed if necessary,⁵⁴ further strengthening accountability.

Japan's legal framework for voluntary guardianship aligns with modern legal principles that emphasize self-determination and dignity. By integrating strong oversight provisions, such as the power of the guardian supervisor or the family court to demand the guardian to submit a report on the guardianship administration or an inventory of property, and may investigate the guardianship administration or the financial status of the ward, or the family court may order any necessary disposition with respect to the management of the ward's property or other guardianship administration, at the request of the guardian supervisor, the ward, the relative thereof, or any other interested person, or sua sponte,⁵⁵ Japan has created a system that protects older adults while preserving their right to choose who manages their affairs.

3.2 Supported Decision-Making (SDM): A Shift from Substitute Decision-Making

Japan has increasingly recognised the limitations of traditional adult guardianship systems, including statutory and voluntary guardianship, as they pose risks such as embezzlement, financial mismanagement, and the absence of clear guidelines for respecting the principal's intent.⁵⁶ To address these challenges, Japan has transitioned toward SDM as a legal alternative.⁵⁷ Ratifying the UNCRPD⁵⁸ leads to the development of domestic laws that aim to strengthen the rights and autonomy of persons with disabilities. The Basic Law for Persons with Disabilities forms part of Japan's implementation of, or response to, its ratification of the UNCRPD. This law establishes fundamental principles for protecting individuals with

⁵² Ibid., art 7.

⁵³ Ibid., art 5.

⁵⁴ Ibid., art 4(5).

⁵⁵ Civil Code of Japan, art 863.

⁵⁶ Yukio Sakurai, **Risk Analysis of Principals and Adult Guardians: Japan's Adult Guardianship System and Its Practice**, Journal of Aging and Social Change, Volume 14 Issue 1 (March 2024), p. 31.

⁵⁷ Rebekah Diller and Leslie Salzman, **Stripped of Funds, Stripped of Rights: A Critique of Guardianship as a Remedy for Elder Financial Harm**, University of Pennsylvania Journal of Law and Social Change, Volume 24 Issue 2 (Summer 2021), p. 149.

⁵⁸ UNCRPD, art 12(4).

disabilities, defining the responsibilities of both national and local governments in implementing SDM.⁵⁹

The Act on Comprehensive Support for Persons with Disabilities further integrates SDM into welfare services.⁶⁰ Complementing these legislative efforts, the Yokohama Declaration of 2010 and subsequent legal initiatives, including the Act on the Promotion of the Use of the Adult Guardianship System (2016) and the Basic Plan to Promote the Use of the Adult Guardianship System (2017), aimed to raise awareness and improve accessibility to SDM programs (Oh 2020).⁶¹ Japan's Ministry of Health, Labour, and Welfare (MHLW) has issued several SDM-related guidelines, including those for welfare services (2017), dementia-related decision-making (2018), end-of-life healthcare decisions (2018), and decision-making for individuals without reliable relatives (2019). In 2020, the Guideline for Adult Guardians in Line with the Concept of SDM introduced seven principles, such as presumption of decision-making capacity, respect for unwise decisions, and least-restrictive intervention.⁶²

SDM for adult guardianship is based on the Civil Code, which respects for the wishes of the adult ward and personal consideration.⁶³ The law establishes a general obligation for adult guardians, curators, and assistants to consider the individual's intentions, physical and mental condition, and living circumstances when performing their duties.⁶⁴ Guardianship responsibilities are limited to juristic acts related to daily life, medical treatment, and property management. However, guardians do not have authority over medical decisions such as

⁵⁹ Basic Act for Persons with Disabilities, Act No. 84 of 21 May 1970, art 23.

⁶⁰ Act on Providing Comprehensive Support for the Daily Life and Life in Society of Persons with Disabilities, Act No. 123 of 7 November 2005, as amended on 10 December 2022, arts 42, 51-22.

⁶¹ Ho-Cheol Oh, **Review of “Acts on Promoting the Utilization of Japanese Adult Guardianship” and “General Plan for Promoting Utilization of Japanese Adult Guardianship”**, Legal Theory & Practice Review, Volume 8 Issue 3 (September 2020), p. 227.

⁶² Toshihiko Mizushima, **Enabling Supported Self-Directed Living: Supported Decision-Making and Safeguarding Mechanism Japan Network of Supported Decision-Making (SDM-Japan)**.

⁶³ The revised adult guardianship system, enacted in 1999, was introduced in response to the increasing number of elderly individuals with diminished decision-making capacity, particularly those with dementia. See Kikuo Nishizawa, **Guardianship Systems and Aging Populations: A Comparison of Thailand and Japan**.

⁶⁴ Civil Code of Japan, arts 858, 876-5.

surgical consent, hospitalization, compulsory treatments, organ transplants, sterilization, or end-of-life care.

In Japan, a guardian is appointed when a person has lost full decision-making capacity, while a curator is appointed when a person has limited decision-making ability, similar to Thailand. However, Japan introduced the concept of assistance to be used when a person has a mild cognitive decline. Assistance is provided for specific acts only and only with court approval,⁶⁵ preserving the individual's autonomy as much as possible. Moreover, Japan has strengthened its guardianship supervision system by expanding the role of guardian,⁶⁶ curator,⁶⁷ and assistance⁶⁸ supervisors, and the guardian registration system by the Ministry of Justice.⁶⁹ The family courts have the discretion to appoint a guardian supervisor to oversee the administration of guardianship affairs.⁷⁰ The law also requires family court approval before a guardian can dispose of the ward's residential property.⁷¹ This supervision mechanism functions similarly to Japan's voluntary guardianship system. Alongside with the legal mechanism, the policies, seminars, online resources, and legal aid centers has been set up to disseminate information ensuring practical execution.⁷²

To further enhance decision-making support, Japan introduced the Second Basic Plan to Promote the Use of the Adult Guardianship System (2022–2026), which focuses on expanding lasting power of attorney (LPA),⁷³ fostering supporter networks, and strengthening regional cooperation systems (JSRPD 2023).⁷⁴ However, despite these legal and policy

⁶⁵ Ibid., arts 876-6, 876-7.

⁶⁶ Ibid., art 849.

⁶⁷ Ibid., art 876-3.

⁶⁸ Ibid., art 876-8.

⁶⁹ Act on Guardianship Registration, etc., Act No. 152 of 8 December 1999.

⁷⁰ Civil Code of Japan, arts 851, 863.

⁷¹ Ibid., art 859-3.

⁷² Japan Adult Guardianship Law Association (JAGA), **The Association's Activities** [Online], 5 March 2025. Source: https://jaga.gr.jp/en/katudou_en/

⁷³ Yukio Sakurai, **Value of Legislation Providing Support and Protection to Vulnerable Adults: Consideration for a Core Agency and Supported Decision-Making**, *Journal of Aging Law & Policy*, Volume 14 (Fall 2023), p. 43.

⁷⁴ Japanese Society for Rehabilitation of Persons with Disabilities (JSRPD), **[MHLW] Cabinet Approves the Second Basic Plan to Promote the Use of the Adult Guardianship System** [Online], 24 February 2025. Source: <https://www.dinf.ne.jp/d/3/870.html>

advancements, Japan's SDM framework remains largely based on soft law. This has resulted in inconsistent practical implementation and unclear judicial norms for dispute resolution.⁷⁵ Consequently, Japan's adult support and protection legislation continues to evolve, integrating SDM, adult guardianship reforms, and elder abuse prevention measures into a comprehensive legal framework.⁷⁶

3.3 Japan's Trust Law as an Alternative to Guardianship

Beyond guardianship reforms, Japan has developed a trust law system that provides elderly individuals with a secure method of financial management without relying on court-appointed guardians. The Trust Act of 2006 introduced modernized trust mechanisms, allowing individuals to create family trusts⁷⁷ to safeguard their assets as they age. These trusts offer an alternative to guardianship, enabling individuals to appoint a trustee to manage their finances while ensuring long-term financial stability.⁷⁸

Under Japan's Trust Act, Articles 1–3 establish the legal framework for creating and enforcing trusts, ensuring clear recognition and legal enforceability.⁷⁹ The law allows individuals to designate a trustee—whether a family member, financial institution, or professional trust manager—to oversee their assets according to their wishes.⁸⁰ Importantly, once a trust is established, it remains legally valid even if the individual later experiences cognitive decline, providing a structured, legally protected means of asset management without requiring guardianship intervention.⁸¹

⁷⁵ Yukio Sakurai, **Supported Decision-Making in the Japanese Context: Developments and Challenges**, *Journal of Aging and Social Change*, Volume 13 Issue 1 (January 2023), p. 151.

⁷⁶ Yukio Sakurai, **The Idea of Adult Support and Protection Legislation in Japan: Multiple Options for Vulnerable Adults to Make Their Own Choices**, *Journal of Aging and Social Change*, Volume 12 Issue 1 (January 2021), p. 31.

⁷⁷ Masayuki Tamaruya, **The Transformation of Japanese Trust Law and Practice: Historical Contexts and Future Challenges**, (The University of Tokyo Business Law Working Paper Series, 2021), p. 1.

⁷⁸ Trust Act, Act No. 108 of 2006, ch III.

⁷⁹ *Ibid.*, arts 3, 4.

⁸⁰ *Ibid.*, art 7.

⁸¹ Masayuki Tamaruya, **Japanese Wealth Management and the Transformation of the Law of Trusts and Succession**, Social Science Research Network, 2020.

One of the greatest advantages of trust law is its ability to reduce financial exploitation,⁸² a common risk for elderly individuals with dementia. Trustees are bound by strict fiduciary duties,⁸³ ensuring that assets are managed responsibly and in compliance with legal obligations. This reduces the likelihood of financial mismanagement or fraud, which is more common in informal family arrangements lacking legal oversight.

Despite its strengths, Japan's trust law does not fully replace the guardianship system. Critics argue that while the trust system efficiently manages financial assets, it lacks adequate provisions for daily life support,⁸⁴ which remains a central concern in elder law. As trusts focus on wealth management, they offer tools for asset protection, tax minimization, and controlled distribution of assets upon a grantor's incapacitation, which is beneficial for elderly individuals with dementia. However, for day-to-day needs and specific support for vulnerable individuals, other legal arrangements are more appropriate. Some scholars suggest that combining trust mechanisms with adult guardianship or continuing power of attorney could create a more comprehensive support system, balancing financial management with autonomy and self-determination.⁸⁵

4. Comparative Analysis: Japan vs. Thailand

4.1 Key Legal Differences

Japan and Thailand adopt fundamentally different approaches to elder law, particularly in the areas of guardianship, decision-making autonomy, and financial management. Thailand's legal system, based on the CCC, relies solely on court-appointed guardianship. This substitute decision-making model offers no alternatives, such as voluntary guardianship or SDM. Additionally, Thailand lacks a comprehensive mechanism for periodic review to reassess guardianship arrangements. Furthermore, Thailand does not recognize trusts, forcing elderly individuals to rely entirely on guardians for financial management.

⁸² Carolyn Dessin, **Financial Abuse of the Elderly: Is the Solution a Problem?**.

⁸³ Masayuki Tamaruya, **The Transformation of Japanese Trust Law and Practice: Historical Contexts and Future Challenges**.

⁸⁴ Makoto Arai, **Japanese Adult Guardianship Laws: Developments and Reform Initiatives in Special Needs Financial Planning: A Comparative Perspective**, Edited by Lusina Ho and Rebecca Lee, (Cambridge: Cambridge University Press, 2019), p. 61.

⁸⁵ Ibid.

Japan, in contrast, has developed a more flexible and autonomy-focused legal framework. Japan incorporated SDM into its legal system, allowing individuals to receive decision-making support rather than losing autonomy entirely. Japan also introduced voluntary guardianship, enabling individuals to pre-appoint a guardian while still mentally competent, reducing the risk of contested appointments. Additionally, Japan enforces guardianship supervision mechanisms, including regular reports by the guardian supervisor to reassess guardianship arrangements and prevent long-term restrictions. Moreover, Japan's Trust Act (2006) provides a structured mechanism for financial planning, allowing individuals to establish trusts for asset management without relying on court-appointed guardians. These legal innovations make Japan's elder law system more adaptable and protective of individual rights compared to Thailand's rigid framework.

Japan's elder law reforms provide valuable policy lessons for Thailand in modernizing its guardianship and financial management framework. One of the most urgent reforms Thailand should introduce is voluntary guardianship, which would allow individuals to pre-appoint a guardian before experiencing cognitive decline. This would increase autonomy, reduce family disputes, and ensure continuity in decision-making while safeguarding personal preferences.⁸⁶

A key reform for Thailand's guardianship system is the implementation of comprehensive reviews for guardianship orders. Unlike Japan, where a supervisor oversees guardianship, Thailand lacks mechanisms for reevaluating guardianship status. Introducing mandatory comprehensive reviews annually⁸⁷ or establishing a guardian supervisor system would help ensure that guardianship remains necessary and appropriate while preventing abuse and financial exploitation. Japan's system, which includes a registration office⁸⁸ and requires guardianship supervisors to submit regular reports, provides an ideal model. Instead of mandating only asset reports, Thai law should also require periodic status reports on the ward's well-being, ensuring better oversight.

⁸⁶ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

⁸⁷ George H. Zimny and others, **Annual Reports by Guardians and Conservators to Probate Courts**, *Journal of Elder Abuse & Neglect*, Volume 3 Issue 2 (1991), p. 61.

⁸⁸ Act on Guardianship Registration, etc., Act No. 152 of 8 December 1999.

Thailand should also develop a national SDM framework in line with Article 12 of the UNCRPD. This reform would require clear legal recognition of support networks, structured appointment procedures, and accountability measures to prevent undue influence. Additionally, Thailand must establish a trust law framework to provide an alternative to guardianship for financial management. Enacting a Trust Act similar to Japan's would allow individuals to create legally recognized trusts, ensuring financial security without court intervention.⁸⁹

Thailand ratified the UNCRPD in 2008,⁹⁰ yet its laws still rely heavily on substitute decision-making models.⁹¹ The UN Committee on the Rights of Persons with Disabilities has urged Thailand to replace guardianship with SDM and adopt effective measures to prevent coercive actions against persons with disabilities.⁹² Addressing these issues would align Thailand's elder law with international human rights standards. While these reforms require legislative effort, Japan's experience demonstrates that modernizing elder law is feasible and beneficial. Thailand can transition toward a more balanced, autonomy-centered legal system by adopting voluntary guardianship, periodic reviews, SDM, and trust law.

4.2 Challenges in Implementation for Thailand

While Japan's elder law reforms serve as a valuable model, implementing similar legal changes in Thailand presents significant challenges due to legal, institutional, and societal factors. The CCC currently lacks provisions for voluntary guardianship and SDM, meaning substantial amendments would be required to introduce these concepts into Thai law.⁹³ Given

⁸⁹ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

⁹⁰ Donruedee Srisuppaphon and other, **Effective Implementation of the UNCRPD by Thailand State Party: Challenges and Potential Remedies**, BMC International Health and Human Rights, Volume 17 (December 2017), Article 21.

⁹¹ Kikuo Nishizawa, **Guardianship Systems and Aging Populations: A Comparison of Thailand and Japan**.

⁹² United Nations Committee on the Rights of Persons with Disabilities (CRPD), **Concluding Observations on the Initial Report of Thailand' (CRPD/C/THA/CO/1) (2016) para 25** [Online], 27 February 2025. Source: <https://digitallibrary.un.org/record/830768>

⁹³ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

Thailand's strong tradition of court-controlled guardianship, there may be resistance to change from the long-established legal mechanism.

Another challenge lies in judicial and administrative capacity. In Japan, family courts and municipal offices⁹⁴ play an active role in reviewing guardianship cases and overseeing SDM arrangements. Thailand's court system, however, lacks a structured process for guardianship reassessment, and introducing periodic reviews would require additional legal infrastructure and resources for monitoring compliance.⁹⁵ Without sufficient training and institutional capacity, courts may struggle to implement and enforce SDM and voluntary guardianship effectively.

Public awareness is also a major barrier. In Japan, public initiatives and campaigns have informed citizens about their legal rights under SDM and voluntary guardianship. Thailand, by contrast, has no structured awareness program, meaning that many individuals—including elderly persons and their families—remain unaware of alternative legal protections. Without efforts to increase legal literacy, voluntary guardianship and SDM may not see widespread adoption.

Another major hurdle is the absence of trust law in Thailand. While Japan's Trust Act (2006) provides a legally recognized financial planning tool, Thailand's CCC does not allow trusts, and introducing such a system would require extensive legal reforms. Additionally, financial institutions and estate planners would need training on trust administration.

Finally, cultural and social dynamics play a role. Many Thai families still rely on informal caregiving arrangements,⁹⁶ and there is hesitation toward formal legal structures for elder care. Overcoming deep-rooted social norms will require long-term engagement with policymakers, legal practitioners, and the public to encourage acceptance of modern elder law reforms.

⁹⁴ Act on Guardianship Registration, etc., Act No. 152 of 8 December 1999.

⁹⁵ Paul S. Appelbaum, **Preventing Abuses in Guardianship Cases**.

⁹⁶ Uthaikan Thanapet and Penchan Pradubmook-Sherer, **Subjectivities of Older Spousal Caregivers in Rural Northern Thailand: A Qualitative Study on Sociocultural Influences**, *Journal of Population and Social Studies*, Volume 33 (January 2024), p. 143.

5. Cross-Border Considerations & International Law

5.1 Private International Law and Recognition of Guardianship & Trusts

As globalization increases mobility, legal conflicts in guardianship and trust recognition have become critical concerns for aging individuals.⁹⁷ Many elderly individuals who spend part of their lives in multiple countries may face legal uncertainty regarding the enforcement of guardianship and trust arrangements when moving between jurisdictions.

A key challenge in cross-border guardianship recognition is the lack of legal uniformity. Guardianship laws vary significantly between jurisdictions, meaning a guardianship order issued in one country may not be recognized in another country without formal legal proceedings. For instance, a foreign retiree, such as a Japanese individual living in Thailand, may struggle to have their home country's guardianship order enforced in Thailand, which has a different guardianship system, and may be required to undergo a separate legal process to establish guardianship anew under Thai law.

Similarly, cross-border trust recognition poses challenges. Thailand does not recognize trusts, meaning a trust created abroad would not be legally enforceable in Thailand. This creates uncertainty for Thai expatriates and foreign retirees, whose assets under the trust law in recognizing countries would not be protected or managed as intended under Thai law.

As Thailand's aging population continues to grow, legal harmonization efforts will be crucial. The adoption of the Hague Convention on the International Protection of Adults (2000) and the Hague Trusts Convention (1985) could provide a legal framework to address these cross-border challenges.

5.2 Hague Convention on the International Protection of Adults (2000) and Hague Trusts Convention (1985)

The Adults Hague Convention provides a legal framework for the cross-border recognition of guardianship and protective measures for adults who cannot manage their personal or financial affairs due to cognitive impairment or other disabilities. This Convention

⁹⁷ Sharon Shakargy, **Capacitating Personal Capacity: Cross-Border Regulation of Guardianship Alternatives for Adults**, *Journal of Private International Law*, Volume 19 Issue 1 (March 2023), p. 1.

establishes jurisdictional rules,⁹⁸ applicable law,⁹⁹ and mechanisms for enforcement,¹⁰⁰ ensuring that protective measures taken in one country are respected in another.

The Hague Trusts Convention was established to ensure the cross-border recognition of trusts among member states. This Convention governs the validity,¹⁰¹ applicable law,¹⁰² and recognition of trusts,¹⁰³ allowing individuals who create trusts in one country to have them legally upheld in another.

Thailand joined the Hague Conference on Private International Law (HCCH) in 2021, signaling an interest in aligning with international legal standards.¹⁰⁴ However, Thailand has not yet ratified both conventions.¹⁰⁵ Adopting these Hague Conventions for Thailand would require significant legal reforms, including the introduction of a domestic Trust Act and administrative matters for recognizing the foreign guardianship system. Without such a law, ratifying these Conventions would have little practical effect. If Thailand were to adopt both a domestic law and these Conventions, it would strengthen cross-border guardianship arrangements and asset management.

6. Conclusion and Policy Recommendations for Thailand

Thailand's aging population and rising dementia rates pose urgent legal challenges, requiring reforms to safeguard autonomy, financial security, and human rights. The country's current court-appointed guardianship system under the CCC is outdated and overly restrictive,

⁹⁸ Hague Convention on the International Protection of Adults (2000), art 5.

⁹⁹ Ibid., arts 13-15.

¹⁰⁰ Ibid., arts 22-23.

¹⁰¹ Hague Trusts Convention (1985), ch I.

¹⁰² Ibid., ch II.

¹⁰³ Ibid., arts 12-13.

¹⁰⁴ **Cabinet Resolution on the Appointment of a National Committee for Operations after Thailand became a member of the Hague Conference on International Civil and Commercial Law** [Online], 5 March 2025. Source: https://resolution.soc.go.th/PDF_UPLOAD/2567/P_411155_3.pdf

¹⁰⁵ Hague Conference on Private International Law, **Status Table, 35: Convention of 13 January 2000 on the International Protection of Adults** [Online], 5 March 2025. Source: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=71>; Hague Conference on Private International Law, **Status Table, 30: Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition** [Online], 5 March 2025. Source: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=59>

offering no flexibility for voluntary guardianship, no recognition of SDM, no mandatory comprehensive periodic reviews, and no legal framework for trusts. Without significant reform, elder abuse, financial exploitation, and loss of autonomy will continue to rise.

Japan's legal framework provides a compelling model for reform. By ratifying the UNCRPD in 2014, Japan adopted SDM, allowing individuals with cognitive impairments to retain legal capacity while receiving assistance. Japan also established voluntary guardianship, allowing individuals to preemptively choose a guardian rather than being subjected to court-imposed arrangements. Additionally, Japan established a comprehensive review mechanism for guardianship orders. Furthermore, the Trust Act (2006) allows individuals to establish family trusts, ensuring financial security without relying on guardianship.

To modernize the elder law framework, Thailand should prioritize the following policy recommendations.

6.1 Short-term Measures

National SDM Framework & Awareness Campaigns: Public awareness and education are crucial in shifting societal perceptions of elder autonomy. Many elderly individuals and their families lack knowledge of voluntary guardianship, trusts, and SDM, limiting the effectiveness of legal transformation. Without proper education, even well-structured laws may not be widely utilized. To ensure the success of SDM and other legal mechanisms, Thailand should introduce a national SDM framework alongside public awareness campaigns that inform citizens about alternatives to traditional guardianship. The national SDM framework can begin with soft guidelines without legal reform, as Japan did in its early stages. These guidelines can be developed by the Department of Empowerment of Persons with Disabilities under the Ministry of Social Development and Human Security, together with the Ministry of Public Health or Medical organizations.

Government agencies, legal professionals, and civil society organizations should collaborate to disseminate information through seminars, online resources, and legal aid centers. Judges, lawyers, and healthcare professionals must also receive SDM training to ensure proper implementation and prevent misinterpretation of its intentions and legal provisions. A gradual approach is essential for integrating SDM into social norms and legal practice. Developing guidelines and legislation can help SDM coexist with adult guardianship,

ensuring that guardianship remains a last resort rather than a default solution.¹⁰⁶ To align with Article 12 of the UNCRPD, Thailand should establish a national SDM framework. By prioritizing autonomy, Thailand can transition toward a more supportive, rights-based legal system for older adults.

Guardianship Discharge: In the current CCC, the law allows an application for discharge of a guardian by the ward, a relative of the ward, or by the Public Prosecutor.¹⁰⁷ The court should evaluate strictly whether the guardian performs and is eligible to perform his duties responsibly and does not abuse his functions.¹⁰⁸ The Department of People's Rights Protection and Legal Aid, Office of the Attorney General, can be the center for applying for the discharge of a guardian, whether by the ward, a relative of the ward, or sua sponte.

6.2 Long-term Measures

Establishing a Voluntary Guardianship System: Thailand should introduce a voluntary guardianship system. This reform would enable older adults to maintain control over their personal and financial affairs in case of cognitive decline. To implement this system, Thailand must amend the CCC to recognize voluntary guardianship agreements as legally binding. The law should specify the selection criteria, legal formalities, and conditions for activation. Like Japan, voluntary guardianship should require notarization and court endorsement for legal validity and a smooth transition. In Thailand, registration with government agencies, such as the court, prosecutors, or administrative officers, is feasible.¹⁰⁹ However, the process must remain simple and accessible.

Voluntary guardianship should include clear terms defining the guardian's authority, responsibilities, and limitations. To prevent abuse or coercion, judicial oversight should be integrated, ensuring agreements are made freely. Courts must have the authority to validate and periodically reassess guardianship arrangements to monitor guardians' actions and prevent exploitation.

¹⁰⁶ Yukio Sakurai, **Supported Decision-Making in the Japanese Context: Developments and Challenges**.

¹⁰⁷ Civil and Commercial Code of Thailand, art 1598/9.

¹⁰⁸ Civil and Commercial Code of Thailand, art 1598/8.

¹⁰⁹ Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], 23 February 2025. Source: <https://cheevamitr.com/knowledge/proxy-in-law>

Further safeguards, such as independent legal counsel, government oversight¹¹⁰, and penalties for misconduct, would enhance protections. Additionally, registered voluntary guardianship should extend beyond property management to include medical decisions and living arrangements, allowing individuals to outline preferences, including end-of-life care.¹¹¹ Implementing these reforms would create a more autonomy-centered and legally secure guardianship system in Thailand.

Enacting a Trust Law to Support Financial Autonomy: To provide an alternative to court-imposed guardianship for financial management, Thailand should introduce a trust law similar to Japan's Trust Act (2006). A trust law would allow individuals to designate a trustee to oversee their assets, ensuring financial security while preserving autonomy over their financial future. A trust law should include family trusts to offer flexibility in structuring the financial arrangements. Clear fiduciary duties must be established for trustees, requiring them to act in the best interests of beneficiaries. Judicial oversight and accountability mechanisms would also be necessary to prevent financial mismanagement or abuse.

By enabling individuals to transfer assets into a trust and appoint a trusted manager, a trust-based financial system would reduce reliance on guardianship while safeguarding personal wealth. Additionally, trust law would enhance cross-border financial security, benefiting Thai citizens with international assets and foreign retirees in Thailand. Given that the Ministry of Finance and the Securities and Exchange Commission (SEC) have already drafted a trust law, enacting this reform would be a practical and timely step toward modernising Thailand's elder law framework.¹¹²

Implementing Comprehensive Reviews for Guardianship Orders: A critical reform for Thailand's guardianship system is the introduction of comprehensive guardianship reviews to mitigate the risk of financial exploitation, abuse of authority, and continued control even if the individual's condition improves. Thailand should implement an annual, comprehensive, and mandatory review system that evaluates not only financial matters but also whether guardianship is still necessary, whether the guardian is fulfilling their duties responsibly, and whether alternatives, such as SDM, are viable.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

Additionally, the guardianship supervisor and registration system should be established to ensure comprehensive review and relieve the burden from the court. The review process should include input from medical professionals, legal experts, and social workers to provide a thorough assessment. By introducing comprehensive reviews, Thailand would enhance judicial oversight, reduce risks of elder abuse, and create a more transparent and accountable guardianship system, aligning with international best practices and safeguarding the rights of elderly individuals.

Thailand's ratification of the UNCPRD in 2008 reflects its commitment to human rights. However, national policies and significant legal reforms are still required to align its guardianship and elder law system with international best practices. The UN Committee on the Rights of Persons with Disabilities has urged Thailand to replace substitute decision-making with SDM, emphasizing the urgency of legal change. By adopting voluntary guardianship, SDM, and trust law, Thailand can strengthen elder rights while preparing for future ratification of the Hague Convention on the International Protection of Adults (2000) and Hague Trusts Convention (1985). These reforms will enhance legal protections, prevent elder abuse, and bring Thailand into alignment with global human rights standards.

Reference

- Alzheimer's Disease International, **Dementia with Lewy Bodies** [Online], Source: <https://www.alzint.org/about/dementia-facts-figures/types-of-dementia/dementia-with-lewy-bodies/#:~:text=Accounting%20for%20roughly%2010%20%E2%80%93%2015,that%20their%20risk%20is%20greater>
- Amporn Benjapolpitak, **Department of Medical Services is Concerned About the “Aging Society”. Found that the Number of Elderly People with Dementia is Increasing Every Year** [Online], Source: <https://www.hfocus.org/content/2023/12/29302>
- **Cabinet Resolution on the Appointment of a National Committee for Operations after Thailand became a member of the Hague Conference on International Civil and Commercial Law** [Online], Source: https://resolution.soc.go.th/PDF_UPLOAD/2567/P_411155_3.pdf
- Carolyn Dessin, **Financial Abuse of the Elderly: Is the Solution a Problem?**, McGeorge Law Review, Volume 34 Issue 2 (Winter 2003).
- Donruedee Srisuppaphon and others, **Effective Implementation of the UNCRPD by Thailand State Party: Challenges and Potential Remedies**, BMC International Health and Human Rights, Volume 17 (December 2017).
- Emily A. Largent, Andrew Peterson and Jason Karlawish, **Supported Decision Making: Facilitating the Self-Determination of Persons Living with Alzheimer's and Related Diseases**, Journal of the American Geriatrics Society, Volume 71 Issue 3 (March 2023).
- Faculty of Medicine, Ramathibodi Hospital, Mahidol University, **Dementia** [Online], Source: <https://www.rama.mahidol.ac.th/ramamental/generalknowledge/07072014-1302#:~:text=%E0%B8%9B%E0%B8%B1%E0%B8%88%E0%B8%88%E0%B8%B8%E0%B8%9A%E0%B8%B1%E0%B8%99%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B8%8A%E0%B8%B2%E0%B8%81%E0%B8%A3%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%AA%E0%B8%B9%E0%B8%87%E0%B8%AD%E0%B8%B2%E0%B8%A2%E0%B8%B8%E0%B9%83%E0%B8%99,%E0%B8%A5%E0%B8%B0%20%20%E0%B8%AB%E0%B8%A3%E0%B8%B7%E0%B8%AD%201%20%E0%B9%83%E0%B8%99>
- George H. Zimny and others., **Annual Reports by Guardians and Conservators to Probate Courts**, Journal of Elder Abuse & Neglect, Volume 3 Issue 2 (1991).

- Hague Conference on Private International Law, **Status Table, 35: Convention of 13 January 2000 on the International Protection of Adults** [Online], Source: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=71>
- Hiroki Nakatani, **Population Aging in Japan: Policy Transformation, Sustainable Development Goals, Universal Health Coverage, and Social Determinants of Health**, Global Health & Medicine, Volume 1 Issue 1 (January 2019).
- Ho-Cheol Oh, **Review of “Acts on Promoting the Utilization of Japanese Adult Guardianship” and “General Plan for Promoting Utilization of Japanese Adult Guardianship”**, Legal Theory & Practice Review, Volume 8 Issue 3 (September 2020).
- Home Affairs Bureau of Japan’s Supreme Court, **Overview of Adult Guardianship-related Cases (2000-2020)** [Online], Source: https://www.courts.go.jp/toukei_siryou/siryo/kouken/index.html
- Japan Adult Guardianship Law Association (JAGA), **The Association’s Activities** [Online], 5 March 2025. Source: https://jaga.gr.jp/en/katudou_en/
- Japanese Society for Rehabilitation of Persons with Disabilities (JSRPD), **[MHLW] Cabinet Approves the Second Basic Plan to Promote the Use of the Adult Guardianship System** [Online], Source: <https://www.dinf.ne.jp/d/3/870.html>
- Jiyuan Zhang and Zi Yan, **Helping the Elderly Live Better with Dementia: Recent Developments in Japan’s Adult Guardianship System and Its Role in Geriatric Social Work Practice**, Journal of Disability Policy Studies, Volume 34 Issue 1 (January 2024).
- Johns Hopkins Medicine, **Vascular Dementia** [Online], Source: <https://www.hopkinsmedicine.org/health/conditions-and-diseases/dementia/vascular-dementia#:~:text=Vascular%20dementia%20is%20the%20second,location%20of%20the%20area%20affected>
- Julia Duffy, **Mental Capacity, Dignity and the Power of International Human Rights**, Journal of Human Rights Law, Volume 15 Issue 2 (June 2023).
- Kanokwan Lueangmongkhonlet, **When Thailand Enters a Complete Aging Society, What Welfare Will the Thai Elderly Receive?** [Online], 23 February 2025. Source: <https://thaipublica.org/2024/02/thailand-becomes-aged-society/>
- Kikuo Nishizawa, **Guardianship Systems and Aging Populations: A Comparison of Thailand and Japan**, Thai Legal Studies, Volume 2 Issue 1 (January 2022).

- Kitipong Urapeephattanaphong, **Advance Appointment of Guardians and Curator** [Online], Source: <https://cheevamitr.com/knowledge/proxy-in-law>
- Makoto Arai and Akira Homma, **Guardianship for Adults in Japan: Legal Reforms and Advances in Practice**, Australasian Journal on Ageing, Volume 24 Issue 1 (March 2005).
- Makoto Arai, **Japanese Adult Guardianship Laws: Developments and Reform Initiatives in Special Needs Financial Planning: A Comparative Perspective**, Edited by Lusina Ho and Rebecca Lee, (Cambridge: Cambridge University Press, 2019).
- Management Office for the International Programs, Faculty of Law, Kyushu University, **Program Details** [Online], Source: <https://law.kyushu-u.ac.jp/cspa/program/>
- Masayuki Tamaruya, **Japanese Wealth Management and the Transformation of the Law of Trusts and Succession**, Social Science Research Network, 2020.
- Masayuki Tamaruya, **The Transformation of Japanese Trust Law and Practice: Historical Contexts and Future Challenges**, The University of Tokyo Business Law Working Paper Series, 2021.
- Megan S. Wright, **Dementia, Autonomy, and Supported Healthcare Decision Making**, Maryland Law Review, Volume 79 Issue 2 (Spring 2020).
- National Institutes of Health (NIH), **What Is Dementia? Symptoms, Types, and Diagnosis** [Online], Source: <https://www.nia.nih.gov/health/alzheimers-and-dementia/what-dementia-symptoms-types-and-diagnosis>
- on Private International Law, **Status Table, 30: Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition** [Online], Source: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=59>
- Paisarn Limsatit, **Protection of the Rights of the Elderly and Patients Who Cannot Care for Themselves** [Online], Source: <https://cheevamitr.com/knowledge/rights-and-laws-for-the-elderly>
- Paul S. Appelbaum, **Preventing Abuses in Guardianship Cases**, Psychiatric Services, Volume 74 Issue 2 (February 2023).
- Rebekah Diller and Leslie Salzman, **Stripped of Funds, Stripped of Rights: A Critique of Guardianship as a Remedy for Elder Financial Harm**, University of Pennsylvania Journal of Law and Social Change, Volume 24 Issue 2 (Summer 2021).

- Sharon Shakargy, **Capacitating Personal Capacity: Cross-Border Regulation of Guardianship Alternatives for Adults**, Journal of Private International Law, Volume 19 Issue 1 (March 2023).
- ThaiHealth Official, **Revealing the results of research on the situation of elderly abuse** [Online], 10 September 2025. Source: <https://www.thaihealth.or.th/%E0%B9%80%E0%B8%9B%E0%B8%B4%E0%B8%94%E0%B8%9C%E0%B8%A5%E0%B8%A7%E0%B8%B4%E0%B8%88%E0%B8%B1%E0%B8%A2%E0%B8AA%E0%B8%96%E0%B8%B2%E0%B8%99%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%93%E0%B9%8C%E0%B8%9C%E0%B8%B9/>
- Toshihiko Mizushima, **Enabling Supported Self-Directed Living: Supported Decision-Making and Safeguarding Mechanism Japan Network of Supported Decision-Making (SDM-Japan)**, presented at EAP Summer School, 10 August 2023.
- Toshihiko Mizushima, **Enabling Supported Self-Directed Living: Supported Decision-Making and Safeguarding Mechanism Japan Network of Supported Decision-Making (SDM-Japan)**.
- United Nations Committee on the Rights of Persons with Disabilities (CRPD), **Concluding Observations on the Initial Report of Thailand' (CRPD/C/THA/CO/1) (2016) para 25** [Online], Source: <https://digitallibrary.un.org/record/830768>
- Uthaihan Thanapet and Penchan Pradubmook-Sherer, **Subjectivities of Older Spousal Caregivers in Rural Northern Thailand: A Qualitative Study on Sociocultural Influences**, Journal of Population and Social Studies, Volume 33 (January 2024).
- Weena Limsakul, **Legal Knowledge in Caring for Patients with Dementia**, Thai Journal of Nursing, Volume 67 Issue 4 (October–December 2018).
- World Health Organization, **Dementia** [Online], Source: <https://www.who.int/news-room/fact-sheets/detail/dementia>
- World Health Organization, **Life expectancy, Thailand** [Online], Source: <https://data.who.int/countries/764>
- Worsak Kanok-Nukulchai, **In Thailand, 70 is the New 51** [Online], Source: <https://www.bangkokpost.com/opinion/opinion/2473977/in-thailand-70-is-the-new-51>
- Yukio Sakurai, **Risk Analysis of Principals and Adult Guardians: Japan's Adult Guardianship System and Its Practice**, Journal of Aging and Social Change, Volume 14 Issue 1 (March 2024).

- Yukio Sakurai, **Supported Decision-Making in the Japanese Context: Developments and Challenges**, Journal of Aging and Social Change, Volume 13 Issue 1 (January 2023).
- Yukio Sakurai, **The Idea of Adult Support and Protection Legislation in Japan: Multiple Options for Vulnerable Adults to Make Their Own Choices**, Journal of Aging and Social Change, Volume 12 Issue 1 (January 2021).
- Yukio Sakurai, **Value of Legislation Providing Support and Protection to Vulnerable Adults: Consideration for a Core Agency and Supported Decision-Making**, Journal of Aging Law & Policy, Volume 14 (Fall 2023).
- Zi Yan, **Helping Seniors Aging in Place: Adult Guardianship and Its Role in Geriatric Social Work Practice in China and Japan**, Innovation in Aging, Volume 7 Issue 1 (January 2023).