

Juridically Secure Trade Mechanisms for Alternative Dispute Resolution in Transnational Business Negotiations

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Abstract : A pluralistic methodology focuses on promoting an understanding that an alternative juridical framework for the regulation of transnational business negotiations (TBN) between private business parties is fundamentally required. This paper deals with the evolving assessment of the doctoral research of the author which demonstrated that due to insufficient juridical tools, negotiations are commonly misunderstood within the complexity of pluralistic and conflicting legal regimes. This inadequacy causes uncertainty in the enforcement of legal remedies, leaving business parties surprised. Consequently, parties cannot sufficiently anticipate when and how legal rights and obligations are created, often counting on oral or incomplete agreements which may lead to the misinterpretation of the extent of their legal rights and obligations. This uncertainty causes threats to business parties for fear of creating unintended legal obligations or, conversely, that law will not enforce intended agreements for failure to pass the tests of contractual validity. A need to find a manner to set default standards of communications and standards of conduct to monitor our evolving global trade would aid law to provide the security, predictability and foreseeability during alternative dispute resolution required by TBN parties. The conclusion of this study includes a proposal of new trade mechanisms, termed 'Bills of Negotiations' (BON) to enhance party autonomy and promote the ability for TBN parties to self-regulate within the boundaries of law. BON will be guided by a secure juridical institutionalized setting that caters to guiding communications during TBN and resolving disputes that arise along the negotiation processes on a fast track basis.

Keywords : alternative resolution disputes, ADR, good faith, good faith, juridical security, legal regulation, trade mechanisms, transnational business negotiations

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