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Eva-Maria Henke

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Master's Thesis from the year 2009 in the subject Law - Civil Action / Lawsuit Law, grade: 1,5, Stellenbosch University (Departement of Mercantile Law), course: LL.M. International Trade Law, language: English, abstract: Since international trade and commerce as well as cross-border transactions have grown rapidly the need for effective dispute resolution systems has significantly increased.

Alternative Dispute Resolution (ADR) like Mediation and Conciliation serve as an alternative procedures to litigation and can be characterised as dispute resolution based on the consent of the parties. Besides being more cost-effective procedures than litigation Mediation and conciliation offer the opportunity of a settlement truly agreed upon by the parties. To secure a situation where both parties are able and willing to speak frankly over the issues in dispute, confidentiality is a key feature of mediation.

This research paper evaluates how confidentiality in mediation is dealt with in different legal systems and whether improvements may be provided by implementation of the Directive on certain aspects of Mediation in Civil and Commercial Matters (hereafter “the Directive”) and the UNCITRAL Model Law on International Commercial Conciliation (2002) (hereafter “the Model Law”).

After an explanation of the relevant definitions of mediation and confidentiality, confidentiality rules established in typical Common - Law and Civil - Law systems are examined. Exploring the legal basis of confidentiality rules and their exceptions, special reference is made to existing gaps in the rules which cause problems in practice. Afterwards the aims, scope of application and the confidentiality provisions of the Directive as well as existing gaps and challenging matters concerning the Directive and its implementation into national law will be focused upon. Subsequently the Model Law will be considered concerning the same issues as the discussion on the Directive. A final comparison of the results will lead to suggestions as to how mediation rules should deal with confidentiality issues comprehensively.

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