Assurance Services as a Substitute for Law in Global Commerce

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In this article we discuss the role of a fourth enforcement mechanism that we claim is rapidly becoming extremely important in global business and trade. This is the use of third-party, non-governmental inspection and assurance services. We present evidence of an explosion in recent years in demand for third-party assurance services, and for development of quantifiable performance metrics by which such services can measure and report on performance by parties to actual and potential contracts and other agreements.

Our thesis in this paper is that a number of factors are coming together in the global business environment to cause the demand for third-party assurance services to explode. In fact, we speculate that the role played by such services is rapidly becoming so important that, in some parts of the world where rule of law is weak, business norms unreliable, and regulation of business practices erratic or non-existent, private sector players may be turning to third-party assurance services as the dominant mechanism for regulating business and enforcing contracts. We explore some of the reasons for this development, attempt to describe its scope and scale, and consider questions about whether this development will encourage the spread of sophisticated legal institutions and rule of law, or whether, by acting as a "private law" substitute for public law in some parts of the world, it may impede the development of strong legal institutions through the political process.