

Why Arbitrate?

By

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Introduction

Today, we focus our attention on commercial arbitration, a process with which not all are familiar. Arbitration differs from mediation in that, even though both are consensual, the arbitrator hears the disputants and makes a binding award. On the other hand, a mediator merely facilitates the process in which parties generate the outcomes on terms agreeable to them. By its nature, arbitration resembles court litigation, the difference being that (a) the parties appoint an arbitrator of their choice; (b) it is informal and is conducted at the pace and convenience of the parties; and (c) it is expeditious and cost-effective. In practice, it is not uncommon to conduct an arbitration in a matter of months while it takes years to have a dispute determined in court.

The Nature of Arbitral Proceedings

Arbitration is contractual. Parties agree (in writing) to submit their present or future disputes to an arbitral tribunal (of one or more arbitrators). They agree on the procedure for appointment. Unlike court litigation the parties are free to design the arbitral process to accommodate their respective needs and interests. In recent decades, arbitration has become the preferable procedure for the determination of commercial disputes. Its advantages outway court litigation. Yet few are aware of this private, yet legally binding, process whose benefits are unmatched by the conventional judicial process.

Advantages of Arbitration

There are many reasons why arbitration beats litigation in the determination of commercial disputes, but we will highlight only a few. In their article title "Why Arbitration Beats Litigation in Commercial Disputes," Stephen R. Stern and Sloan J. Zarkin, renowned American arbitrators and legal counsel with a wealth of experience in both litigation and arbitration, observe that as a general rule, clients are cost-conscious. They need quick results. Arbitration generally affords these clients the best of all possible worlds. According to them, the key is the control the client can exercise over the entire process, a fundamental feature of arbitration.

Unlike in court litigation, parties to an arbitral proceeding exercise more control over the outcome of the process right from the onset, and before a dispute arises. They design the arbitration agreement in such a way as to accommodate their particular needs and interests, such as (a) confidentiality; (b)

informality; (c) the qualities, expertise and experience of their preferred arbitrator; (d) the form and conduct of hearing (whether oral or by evidential documents); (e) the length of time and venue; (f) the nature and scope of discovery of documents; (g) the finality and binding effect of the process, only to mention a few. In effect, party autonomy and control makes arbitration stand out as the process of choice for determination of commercial disputes.

In contrast, parties to court litigation have no control over the choice of judicial officer to whom their case is allocated. The pace at which the proceedings progress depend on the court calendar and diary, not to mention the characteristic backlog of cases with which courts have to contend. More often than not, their legal counsel take over the process to demonstrate their legal prowess at the cost of their clients in time, money and emotional distress. The quick determination of arbitral proceedings frees parties and gives them the opportunity to make business decisions without undue delay, particularly where their contractual relationship from which the dispute arises continues or is at an end. In short, they are in control which, in turn, yields satisfaction attributable to the flexibility, quality procedures and quality outcomes of arbitration.

Conclusion

Properly used, arbitration has innumerable advantages over court litigation. The savings on time and costs, and the flexibility of its informal procedures are more than rewarding to the parties. Where parties are unable to reach a mediated agreement, arbitration is the recommended process.

Premier ADR Consultants are a firm of chartered arbitrators and mediators. We work hand-in-hand with entrepreneurs with strained business relations on the verge of breakup to resolve their disputes by means of our transformative conflict management and dispute resolution strategies. We help parties salvage, restore and maintain healthy business relationships in a safe and peaceful environment with guaranteed privacy and confidentiality.

Our expeditious, cost-effective and party-controlled techniques guarantee consumer satisfaction resulting from the voluntary and jointly generated win-win outcomes. We provide the best alternative to the all-familiar costly, time-consuming, adversarial and often emotive court litigation that only works to weaken and ultimately destroy business relations.

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