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Litigation is a process which allows public access to court documents; identifying and addressing in detail all of the issues in dispute between parties. Arbitration—an alternative to in-court dispute settlement—allows the parties involved input and access to the qualifications of, and number of persons who will decide on a matter. As in the case of litigation, the decision of the arbitrator is binding, with limited grounds for appeal.

Arbitration is private and usually only the parties involved have access to the documents related to the disagreement. This is advantageous considering that in the event of a dispute, businesses favor confidentiality, preferring instead to have matters adjudicated in private but within an environment where decisions are legally binding.

Since litigation is state governed, certain dispensations are unobtainable. The option to choose who adjudicates the hearing—for example, the judge or prosecutor—is unobtainable. ADR, however, allows parties to select their arbitral panel and select experts from various industries or disciplines to advocate on their behalf.

Many of the contractual issues that often culminate in dispute can be suppressed early on in the negotiation stage. In fact, I advise that all contracts include an arbitration clause as a customary criterion.

In the case of domestic arbitration, and particularly in the wake of the Baha Mar debacle, it is imperative that we have an alternative to in-court dispute resolution. This is even more essential when the sum in dispute is of great significance and or there is much at stake. During the entire Baha Mar ordeal, the BCCEC strongly advised all of the parties involved to seek relief and restitution through the ADR process, rather than a litigious process. Although our recommendations were not considered, we are satisfied nonetheless that the Baha Mar project is back on track two years later and is set to open within a few short months.

Growth and Investor Confidence

In The Bahamas, we are not yet well known for our arbitration, or ADR services. However, The Bahamas is ideally situated to become the hub for arbitration activities in the region; particularly in the western hemisphere and certainly in the Americas. Besides our state of the art technological and telecommunications infrastructure, well-trained workforce and stable political and judicial system, the Bahamas is perfectly situated geographically to be the new hub for arbitration in the region. It also helps that we are on the same time zone as one of the world's leading financial centres, New York.

I believe that a robust, closely regulated, appropriately structured and well organized ADR centre in The Bahamas would be a single but significant catalyst that would drive investors to The Bahamas and cause them to want to do business not only in The Bahamas, but with Bahamians, because they would be able to repose confidence in, and rely on, the competency of our arbitration system.

The Bahamas Chamber of Commerce commenced an exercise in 2016 with the Bahamas Investment Authority on revising and updating the investment policy for The Bahamas. The revision of the policy is to make doing business in the Bahamas easier, both for the international and Bahamian investor. One of the areas that we would have focused our attention on was that of Alternative Dispute Resolution, particularly because investors usually inquire as to the level of protection they would have against their investments in The Bahamas.

Training and Development

In order to build and develop a strong domestic arbitration centre we must ensure that we have the right skillsets available. Competent and internationally recognized arbitrators can only be made through training and skills development. Fortunately, there currently exists a cadre of well-trained and qualified arbitrators and mediators who are able to serve on arbitration panels to hear and resolve disputes; not only on the domestic side, but on international matters as well.

However, if we are going to seriously engage an ADR centre as a new sector of our economy, more must be done to get additional civilians and experts trained in the art of arbitration so that as a country, we can build our capacity to attract the right clients and to meet the demands that will be placed on this country to provide arbitration services.

Fortunately, The Bahamas already has a legislative framework in place for ADR settlements, although the legislation needs some tweaking and updates. The Bahamas Chamber of Commerce is committed to working with the Government and other partners to ensure that we have the most modern, internationally accepted legislation in place that will give comfort to both the local regulators, as well as domestic and international practitioners.

The Bahamas Chamber of Commerce officially joined the membership of the International Chamber of Commerce (ICC) in 2013. Since then, discussions have been ongoing both with the ICC as well as with local partners and organizations including the Government of The Bahamas, to properly establish The Bahamas as a serious player in the world of arbitration. Further serious consideration was also given to establishing The Bahamas Chamber of Commerce as the official Domestic Arbitration Centre in The Bahamas. The BCCEC previously expressed its commitment to establishing such a centre and is hopeful to see this as a reality in the not too distant future.