



Mediation As The New Trend...

The Companies Tribunal

There are over 40 pieces of legislation in our country containing mediation provisions. Mediation is well known as an accepted procedure in the fields of both family and labour law, and is becoming more and more prevalent in other areas – including commercial law.

The King III Report states that it is incumbent on directors and executives in carrying out their duty of care to a company, to ensure that disputes are resolved effectively, in a cost effective manner and not be a drain on the financial resources of the company. This is especially relevant from a commercial perspective where relationships need to be preserved and enhanced.

Statistics reveal that for those disputes referred to formal litigation, one can expect a 50% success range as opposed to an 85-90% average where both parties are willing participants in an alternate dispute resolution process.

The Companies Act has incorporated King III's recommendations and provides that any aggrieved person may voluntarily bring an application to attempt to resolve any dispute arising out of any matter under the Act by mediation, conciliation or arbitration to either the Companies Tribunal, or an accredited entity – an Alternative Dispute Resolution Agent.

The Companies Tribunal is a new body introduced by the Act - providing **free and speedy access** to any aggrieved person to lodge an application. It is proposed that there will be one such Tribunal in every major city in South Africa.

Any aggrieved person includes:

- A shareholder
- A director
- A company secretary
- A prescribed officer



- An employee
- A registered trade union or other representative of the employees
- A supplier of goods or services to the company, or employee of such a supplier
- Any person acting on behalf of any of the above-named persons (who cannot act in their own name)
- And, with the leave of the court:
 - Any person acting as a member of, or in the interests of a group or class of affected persons or an association acting in the interest of its members
 - Any person acting in the public interest

King III recommends that the Board of a company should adopt a formal dispute resolution process for internal disputes (those that arise within the company) and external disputes (between the company and outside entities or individuals). The Board is required to select appropriate individual(s) to represent the company in alternative dispute resolution (ADR) processes.

Mediation is a reflection of the concept of Ubuntu – 'I am because you are, you are because we are'.... – promoting mutual support, respect, unity, collective work and responsibility.