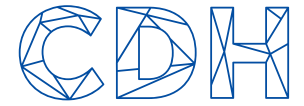


# Dispute Resolution

ALERT | 15 April 2025



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## The dispute resolution process explained

Civil disputes are an inevitable part of everyday life, affecting not only individuals, but businesses and communities as a whole. An understanding of how to resolve these disputes efficiently and effectively is therefore not only beneficial to the parties involved, but crucial to prevent unnecessary escalations of matters and to save the parties money, time and resources. In this article, we explore the dispute resolution process as it exists within the South African landscape as well as the key mechanisms available for resolving disputes.

### What is dispute resolution?

Dispute resolution is the process of resolving disagreements and conflicts that arise between parties. The disagreements and conflicts that generally arise between parties can vary in complexity and diversity but often include disputes in relation to breach of contract, property related matters, personal injuries and defamation.

Being aware of the mechanisms available to you when you are faced with such a dispute is very important. Dispute resolution mechanisms can range from the very formal – civil litigation – to more informal alternative dispute resolution methods, which are used by parties who wish to resolve a dispute without legal proceedings or the need to go to court. It is important to choose wisely.

### What are the different dispute resolution mechanisms available in South Africa?

In South Africa, civil litigation is the most traditional form of dispute resolution. It involves going to court to settle a dispute. An aggrieved party will institute a lawsuit in an appropriate court having jurisdiction to hear the particular matter. Both parties will present their evidence and arguments and thereafter, a court will deliver a binding decision that can be appealed. Civil litigation is typically most appropriate for disputes where the issue is time-sensitive, requiring urgent court action, the outcome needs to be legally binding, or where one of the parties is unwilling to participate in an alternative form of dispute resolution.

However, embarking on civil litigation as a form of dispute resolution is being discouraged by the judiciary. This is evident from the new draft directive issued by the Judge President of Gauteng in April 2025 which introduces an obligatory mediation process in the Gauteng Division. While still in draft format, the directive is said to come into effect on 14 April 2025. With effect from the first day of the second term of 2025, the registrar of the civil trial roll will not issue a trial date unless the request for a trial date is accompanied by a mediator's report. The Judge President reasoned that this step had to be taken due to the increased caseload of the division, which has now reached unmanageable levels. The current state of affairs is self-evidently unacceptable and intolerable, and mediation, as an alternative dispute resolution process, is now a requirement before embarking on more formal, civil litigation. It is very likely that we will see other divisions adopting the same approach in the near future.

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# The dispute resolution process explained

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Mediation is a process of resolving disputes with an independent person, known as a mediator, who assists parties in reaching a mutually satisfactory settlement. This process is entirely voluntary and non-binding on the parties and on the mediator. The mediator does not render a decision, but instead allows the parties to make their own decisions and fashion their own settlement. The process begins with a meeting between the appointed mediator and the relevant parties, after which the mediator will facilitate a series of negotiations between the parties and will assist them in identifying their common interests and areas of agreement as well as exploring options for resolution. If an agreement is reached, the mediator will assist the parties in drafting a settlement agreement that outlines the terms of the agreement.

Besides mediation, other alternative forms of dispute resolution include negotiation, conciliation and arbitration.

Negotiation is typically the first step towards dispute resolution outside of a court setting. During negotiation, both parties work together in an attempt to reach a mutually acceptable solution to their dispute, without the assistance of a third party. It is an informal, flexible process that can be tailored to suit the individuals as well as the dispute in question.

Arbitration is a further option available to parties. Arbitration is a process in which parties to a dispute agree to submit their dispute to an independent third party, known as an arbitrator, in order for the arbitrator to make a binding decision. The arbitrator is selected by the parties and is typically an expert in the subject matter of the dispute. The process usually involves the parties agreeing to submit their dispute to arbitration, the parties agreeing on an arbitrator, the holding of a preliminary hearing to set out the scope of the dispute, identifying the issues to be decided as well

as the rules for the arbitration. Thereafter, the parties will enter a discovery phase where they exchange relevant documents and evidence. Thereafter, the arbitrator will hold a meeting where the parties will present their evidence and legal arguments. Once this occurs, the arbitrator will issue a written decision, which is binding and enforceable.

A further available option is conciliation. Conciliation is a process which involves the parties to a dispute utilising a conciliator to assist them in reaching a mutually acceptable solution to their dispute. The process is similar to mediation.

### What are the key steps in the dispute resolution process?

No matter which dispute resolution process is chosen by parties to resolve a dispute, the key steps are typically to identify the dispute between the parties, to evaluate and consider the dispute resolutions processes available, and to attempt to make use of alternative dispute resolution processes before embarking on the traditional, often costly, process of litigation.

When looking at each process in isolation, the key steps will, of course, vary.

## The dispute resolution process explained

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### What are the advantages and disadvantages of using dispute resolution processes?

#### *Civil litigation*

There are many advantages that parties who choose to follow the traditional form of dispute resolution, see. These advantages include, but are not limited to: disputes that are time-sensitive can be dealt with urgently in urgent court, the outcomes of disputes are legally binding and a precedent is set, any judgment handed down becomes public record providing a clear "line in the sand", the process fosters co-operation between litigants by imposing court-mandated deadlines and requirements and, lastly, it affords parties the option of an appeal. However, it is important to remember that with the introduction of the obligatory mediation process, embarking on civil litigation as a form of dispute resolution must follow mediation between the parties.

As with advantages, disadvantages are part-and-parcel of the process. Some disadvantages with regards to civil litigation include huge back logs with regards to the allocation of trial/hearing dates, a lot of time and resources are expended, it can damage the relationship between parties and, commonly, it can be very costly.

#### *Alternative dispute resolution processes*

Alternative dispute resolution processes too, have advantages and disadvantages. The advantages include the fact that these processes are often much more cost effective when compared to civil litigation, they are often dealt with quicker than civil litigation, the processes and time constraints are flexible, they foster co-operation between the parties, and they are confidential in nature.

Disadvantages of alternative dispute resolution are that there is no guaranteed resolution of a dispute, decisions are not binding, there is a lack of precedent which can lead to inconsistent decisions, there is limited scope for appeals, and power imbalances can play out.

Regardless of this, the dispute resolution process, when considered holistically, offers a wide range of benefits. It is, however, essential to weigh the advantages and disadvantages of each process against the other in the context of the specific dispute and against the needs of the parties involved.

#### **Conclusion**

Disputes and conflicts are, and will remain, a part of everyday life. How we manage and handle these situations are what matters the most. Making informed decisions regarding which dispute resolution process to follow at the outset of a dispute is vital to ensure that unnecessary costs are not incurred and that time and resources are not wasted. Aggrieved parties are best left in a position to say "I am glad we settled our conflict this way. War is expensive."

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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