

5.3 Dispute resolution may result in consent order

If the ADR process results in the dispute being resolved, the Tribunal is empowered to record the resolution in an order. If the parties to the resolution consent to the order, it may, in terms of the Tribunal's rules be confirmed as a consent order in court. The confirmed consent order may in terms of the Act include an award for damages without having to go to court to achieve this.

If the Companies Tribunal concludes that either party to the conciliation, mediation or arbitration is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the Tribunal must issue a certificate in Form CTR 132.3 stating that the process has failed.

6. How much does ADR cost?

Currently no fees are charged for any of the Tribunal services.

7. Where to file for ADR?

An application must be filed with the Registrar using the following methods: -

- delivered to the physical address;
- sent by registered mail to the postal address;
- sent by fax; or
- sent by e-mail.

In response to an application, the Registrar allocates a unique reference number to the matter. A document that is delivered by fax must include a cover page, and a document that is transmitted by Email must be accompanied by a cover message, in either case setting out the name, address, and telephone number of the sender, either the name of the person to whom it is addressed, and the name of that person's attorney, if applicable; or, the name or description of the class of intended recipients. A document delivered by fax must also include the transmission date, the total number of pages and the name and contact details of the sender.

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Companies Tribunal
**A SIMPLE, SPEEDY
and COST EFFECTIVE
way of resolving
Company Disputes**



1. Alternative dispute resolution

In terms of Section 166 of the Companies Act 71 of 2008 (the Act), the Companies Tribunal (the Tribunal) acts as an alternative dispute resolution body. This section allows a person who would be entitled to apply for relief or file a complaint in terms of the Act to refer a matter for mediation, conciliation or arbitration to the Tribunal or an accredited entity as an alternative to going to court or applying to the Companies and Intellectual Property Commission (CIPC). The parties involved in alternative dispute resolution are required to participate in good faith.

2. What is alternative dispute resolution?

Alternative dispute resolution (ADR) refers to the process of resolving disputes among parties without necessarily resorting to court action, disputes are resolved outside the courts, although the agreements and outcomes are legally binding. Parties choose ADR as a form of dispute resolution to avoid the lengthy and time-consuming processes required when a matter is litigated in court. With ADR disputes are resolved without formal adjudication process.

2.1 Types of ADR processes

The Tribunal ADR processes comprise of mediation, conciliation or arbitration of all matters that arise in terms of the Companies Act.

- **Mediation:** the Tribunal acts as an independent, neutral third party helping parties in dispute to find a mutually acceptable solution. It cannot impose the terms of the settlement; the parties find

mutually acceptable settlement.

- **Conciliation:** this is a process in which the Tribunal impartially serves as a communicator between the parties, to encourage and facilitate movement towards finding a resolution to the dispute.
- **Arbitration:** This is a process whereby the parties make presentations before the Tribunal and commit themselves to abide by the Tribunal's decision. The Tribunal act as an independent, impartial, neutral third party that hears both sides in a dispute and makes a decision to resolve the issue.

3. What type of cases can be brought for ADR?

As an alternative to applying for relief to a Court, or filing a complaint with the CIPC in terms of the Companies Act, a person who would be entitled to apply for relief, or file a complaint in terms of the Act, may refer a matter that could be the subject of such an application or complaint for resolution by mediation, conciliation or arbitration. However, the referral to mediation, conciliation or arbitration is subject to the other party agreeing to the process.

4. What are the benefits of ADR?

- Reduced costs; the process is generally completed within a day or two
- ADR is much quicker than waiting for a court date and is scheduled at the parties' convenience
- Control by the parties; the parties retain ultimate control over the process and its outcomes
- Relationships between parties are preserved
- Privacy; the proceedings and agreements,

if reached, may be kept private to the parties concerned

- Parties reach mutually accepted agreements
- The Tribunal give its decisions effectively and expeditiously

5. Alternative dispute resolution procedures

5.1 Who can file for ADR with the Companies Tribunal?

- Any person may refer a matter for alternative dispute resolution to the Tribunal; this includes juristic/ artificial person(s) like companies and close corporations.
- All parties involved in the dispute have to agree in bringing the matter for ADR.

5.2 Referring a matter for ADR

A person may refer a matter for alternative dispute resolution to the Tribunal as contemplated in section 166(1) of the Act by filing a completed Form CTR 132.1. This Application must be filed and served on each respondent within 5 business days after it is filed. This form can be found on the Companies Tribunal website.

The CIPC or the Takeover Regulation Panel (the Panel) may also refer a complaint to be resolved by alternative dispute resolution as contemplated in section 169(1) (b) by delivering a copy of Form CTR 132.2, to the complainant, the respondent and the Tribunal.