

Conference on alternative dispute resolution to address South Africa's inadequacies

The Johannesburg Global Pound Conference, being held on 29 June 2017 at Bowmans' offices in Sandton, will address the issue of alternative dispute resolution (ADR) and the South African position.



John Brand

“It is becoming increasingly urgent for South Africa to catch up with the rest of the world in the use of ADR for civil and commercial disputes. The country has fallen behind and this could further discourage foreign investors who are already jittery about the protection of their rights,” says conflict resolution veteran, John Brand.

“Other African countries such as Nigeria, Namibia and Mauritius have well-established mediation and arbitration frameworks for domestic and cross-border disputes. This is to their advantage in attracting the growing number of investors interested in doing transactions across borders in Africa. South Africa cannot afford to continue lagging behind.”

“This conference is a serious effort to have a meaningful conversation on where South Africa stands on ADR in the civil and commercial spheres, and where we should be heading,” says Brand, a consultant to pan-African law firm Bowmans and director of Conflict Dynamics.

The one-day conference is part of an international event involving 40 cities. Johannesburg will be the 39th city to host a Global Pound Conference event, with only London still to follow.

Ahead in labour dispute resolution, behind in civil and commercial

Commenting on why South Africa has fallen behind in civil and commercial dispute resolution, Brand said the problem appeared to have its roots in the apartheid years, when the rest of the world had taken major strides in the use and formalisation of mediation, arbitration and similar mechanisms to resolve disputes of all kinds.

“Post-1994, South Africa took large, swift leaps in labour dispute resolution, quickly mainstreaming arbitration and mediation mechanisms and infrastructure for resolving labour conflict. It is widely acknowledged internationally that our employment mediation and arbitration system is an example to follow.”

By contrast, South Africa’s processes and systems for resolving civil and commercial disputes - both inside and outside the courts - have all but stagnated.

“It doesn’t help that dispute resolution through litigation is so expensive and time-consuming in South Africa. Other jurisdictions have overhauled their pre-action protocols and court proceedings but we have not followed world best practice in this regard.”

To make matters worse, the dti had cancelled South Africa’s system of bilateral treaties, provoking a negative reaction from foreign investors.

“At the very least, foreign investors expect access to a credible, well-established civil and commercial mediation and arbitration dispensation that meets international standards - which South Africa does not have.”

SA Law Reform Commission takes the lead

“Fortunately, the South Africa Law Reform Commission has established a committee to consider the development of legislation that will promote the optimal use of ADR to provide access to justice. The committee will be holding its first meeting in July 2017.”

In addition, the Department of International Relations and Cooperation (DIRCO) is participating in the deliberations of the United Nations Commission on International Trade Law (UNCITRAL), which is seeking to formalise instruments for international cross-border mediation.

“In South Africa’s case, this is putting the cart before the horse,” continues Brand. “A country needs to have a proper domestic mediation system in place before it can effectively participate internationally and this is lacking in South Africa.”

The dti is also trying to put mediation in place for party-state disputes, through the Promotion of Foreign Investment Bill. “This is unlikely to succeed because if mediation fails, investors do not want to rely on local courts; they demand the international arbitration which has been removed in South Africa.”

Conference could steer the conversation

The upcoming Johannesburg Global Pound Conference could help steer the conversation on civil and commercial dispute resolution in South Africa in the right direction.

The theme is “Shaping the future of dispute resolution and improving access to justice.” The chair of the local organising committee is Judge Sharise Weiner.

The GPC is intended for anyone with a stake in civil and commercial dispute resolution: individuals, business owners and executives, in-house counsel, lawyers in private practice, judges and court officials, conciliators, mediators, arbitrators, ombuds, academics, teachers in law and business schools, government officials, policymakers and NGOs.

For more information, go to [The Johannesburg Global Pound Conference](#).

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