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Corporate Governance Framework

Savage Jooste & Adams

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Dealing with contractual disputes more effectively

For as long as people will be people, and our differences of character and opinion remain, we can and always will be assured of the certainty of conflict or dispute that will arise between two parties. Throughout history, mankind has dealt with conflict in various ways - ranging from the extreme and barbaric medieval slaughter of innocent by-standers caught in the conflict, to modern day warfare controlled by computers and sophisticated artillery. Whilst the image of warfare conjures thoughts of immense grief, in more modern-day times, businesses and their leaders *need not be sparked to extreme measures* when faced with conflict or a dispute.

"A more sedate, and less painful route can be adopted between two parties where a dispute has arisen and such which can be resolved through open dialogue, where the parties genuinely want to resolve their differences," says Terry Booysen, CEO of CGF Research Institute and provider of governance related business reports. "This form of dialogue and approach is known as 'Alternate Dispute Resolution' or ADR, and is far less invasive to resolving conflicts or disputes, than the typical civil litigation which is often the first form of action taken between warring parties," continues Booysen. Supporting Booysen, Jonathan Hendey, a director at Savage Jooste and Adams Inc, says "as an alternative to the time consuming and expensive civil litigation, ADR provides a good form of relief when the processes attached to ADR are correctly applied and followed by the aggrieved parties. If managed correctly, ADR can go a long way to save relationships, rather than to destroy them." Moreover says Hendey, "because ADR can be molded to suit almost any circumstance, its flexibility can provide better solutions for the aggrieved parties and such which the courts are most often not able to provide."

According to the honorable Mr. Justice Mervyn E. King, the Chairman of the Editing Committee of the draft Code of Governance Principles for South Africa -2009 (King III), he is quoted saying, "that once awareness of ADR is aroused in the business and professional worlds the procedure will be seen as so appropriate that it will become unstoppable."

Business leaders and their legal aides are encouraged to investigate this relatively new field of study and practice - it's implementation within contracts is simple and will go a long way to assist, particularly in South Africa, de-congest our back-logged courts. Booysen and Hendey state that, "by more companies adopting the practices of ADR, the courts will be able to concentrate on more serious crime issues, rather than 'business squabbles' that can be resolved outside the court system." Whilst the parties may agree to deploy the practice of ADR which includes mediation and arbitration, they may still however not reach a compromise which could then result in litigation as the final method to seek relief.

Terry Booysen adds that the South African legal system is in somewhat of a crisis and it is hoped that through the adoption of ADR, that essentially three goals will be achieved, namely to:

(i) relieve the courts of certain congestion, where business cases involving disputes can be resolved without labouring the courts;
(ii) encourage less aggressive action which is perpetuated through the litigious approaches - embrace more communicative and open discussion to resolve conflict and disputes; and
(iii) provide access to justice with more effective means to resolve differences.

"Indeed, one would hope that Judge King is correct and that ADR is applied more vigorously within our business procedures and legal contracts - that its impact will have positive results upon our courts and businesses," concludes Hendey, saying that it is critical that we find an effective and efficient way to resolve our differences, without destroying the relationships which so often take years to foster.

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Further Media Information:

Terry Booysen
CEO: CGF Research Institute (Pty) Ltd
Office: (011) 476 82 64 / 1 / 0
Cell: 082-373 2249
Fax: 086 623 1269
Email: tbooysen@cgf.co.za
www. cgf.co.za

Jonathan Hendey
Director: Savage, Jooste & Adams Inc.
Office: (012) 452 8200
Cell: 082-826 6716
Email: jonathanh@savage.co.za
www.savage.co.za