

CAPABILITY STATEMENT TECHNOLOGY



Construction & Technology Attorneys

COMPANY PROFILE





Providing objective, innovative and practical solutions to contractual and commercial challenges, **MDA Attorneys (MDA)** work closely alongside our clients to offer a full range of legal services for large-scale construction and technology projects in Sub-Saharan Africa and worldwide.

Our team of highly respected specialist lawyers and consultants provide business minded advice to ensure successful completion of complex construction and technology projects. Our lawyers and consultants have the international qualifications, knowledge and practical experience required to address the on-going pressures inherent to the construction and technology sector.

We are committed to building long-term relationships with our clients to deliver ongoing value. Our objective and cost-effective approach to the challenges faced by our clients during the project lifecycle sees us tailoring each service offering to satisfy our clients' specific commercial objectives.

Our clients include domestic and international companies involved in major projects in the infrastructure, water management, petrochemical, mining, energy and building sectors.

MDA engages proactively with our clients to design strategies and assist clients in practically managing the implementation of these strategies through:

-  reducing the negative impact of commercial challenges on project deliverables;
-  minimising the opportunity for commercial risk events arising;
-  determining practical solutions to avoid conflict and dispute situations eventuating; and
-  dealing with disputes when they arise to achieve the most favourable results for our clients.

OUR SERVICES

MDA's comprehensive list of services are packaged into the following main categories:



CONTRACT DOCUMENTATION

MDA applies big-picture thinking while paying meticulous attention to detail in the contract documentation process to help clients realise their objectives.

The contract documentation service offering includes:

- project structuring;
- contract risk assessment;
- negotiation; and
- drafting all construction contract documentation.



COMMERCIAL SUPPORT

MDA's skilful application of contractual mechanisms and practical administrative insight supports clients through the construction project life cycle.

The commercial support service offering includes:

- site administration;
- claims management; and
- documentation, audits and 'lessons learnt' workshops.



DISPUTES

MDA's wealth of experience, objective advice and application of specific dispute-management and resolution services produces best possible results for clients.

MDA has positioned itself as the 'go to' specialist construction adjudication practice in South Africa.

In addition to its specialisation in construction adjudication, the dispute management services offering includes:

- Alternative Dispute Resolution (ADR)
- Arbitration
- Litigation

CONSTRUCTION & TECHNOLOGY

The construction sector is not restricted to bricks and mortar; in fact, construction law dovetails across various sectors. In its simplest form, the completion of the works revolves around the project owner being able to realise benefits and performance enhancements. For the desired outcome to be achieved, the contractor is expected to utilise specialised skills, experience and technologies in addition to typical construction activities. These skills, experience and technologies will often be contracted or subcontracted to specialist OEM's, who in turn will require protection of their intellectual property.

In our experience, the owner will typically require the signature of a construction type contract (for example a plant design and build contract) the terms and conditions of which will then filter down the contract chain to the specialist OEM's – who may have little experience on the complexities that come with the signing of a construction contract.

At MDA, we have worked on several affiliated projects as extensions to construction projects encompassing tech advancements, for instance ship building, CCTV and related security infrastructure, fire suppression systems, electrical installations, HVAC and plant that is built and designed off-site for installation and commissioning on-site.

As such, we have seen that our experience in construction projects is often applicable in technology matters. Our experience with construction contracting highlights thinking that is valuable in technology build projects, such as variation procedure if specifications change, provisions and remedies if the commissioned technology does not work as envisaged and delays during the project.

Robotics and artificial intelligence (AI) are used to automate processes in the construction sector as well as cloud technologies, software and IT usage. All of these have legal considerations. There are some exciting developments in the technology space when it comes to the use of technology for contract management [BIM] and we at MDA are at the forefront of these technology advances having worked with consultants to incorporate BIM into the relevant construction contracts.

CREDENTIALS – TECHNOLOGY

- Ongoing commercial assistance (as in-house legal counsel) to a supplier of equipment using patented and licensed technology to the mining industry, focusing on advising qualifications to tender submissions across a range of standard form and bespoke contract conditions, non-disclosure agreements, distribution and license agreements with international OEM suppliers, technology development agreements and the like. Providing on-site commercial support to the mechanical contractor (balance of plant) by drafting templates for notices, claim submissions and general correspondence.
- Assisted a provider of technical machinery with the drafting of a FIDIC Green Book involving the design and build of a mechanical handling storage facility for a large provider of feed in South Africa.
- Drafted EPC and back to back subcontracts including requirements of external lender for a mineral processing engineering house for the design and construction of a processing plant and enabling works.
- Assisted an international mineral processing contractor with an EPC contract, associated subcontracts and supply agreements for the engineering and commissioning for a flotation plant.
- Assisted German OEM in recycling industry on dispute around the interpretation of acceptance testing parameters in the contract regarding design and nominal throughputs on project in Holland.
- Assisted large South African plant hire company with payment dispute on an Eastern Cape Wind Farm project based on bespoke contract.
- Assisted South African Transformer supply company with a dispute on payment for a City of Johannesburg substation based on an NEC3 contract.
- Assisted a process plant technology design and supply contractor on a FIDIC based dispute on a Tungsten process facility in Spain.
- Assisted a specialist chemicals and waterproofing contractor with commercial support and claims management on various high value projects, either appointed by a Private owned property developer or a State-owned entity as the employer.
- Assisted Employer specialising in food manufacturing settle dispute (under a FIDIC plant design and build contract) regarding defective equipment supplied by contractor for one of its sugar production facilities.
- Assisted a global industrial automation organisation to understand the operation and key risk areas of an NEC ECC contract for the supply, installation and commissioning of plant into a South African mining house.
- Continuous involvement on the development of the BIM Protocol and relevant FIDIC contractual amendments with a consulting house providing services to a state infrastructure department.

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