

MDA ATTORNEYS
CAPABILITY STATEMENT
MINING PROJECTS



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 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 projects. Our lawyers and consultants have the international qualifications, knowledge and practical experience required to address the on-going pressures inherent to the mining, 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 mining, infrastructure, water management, petrochemical, 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

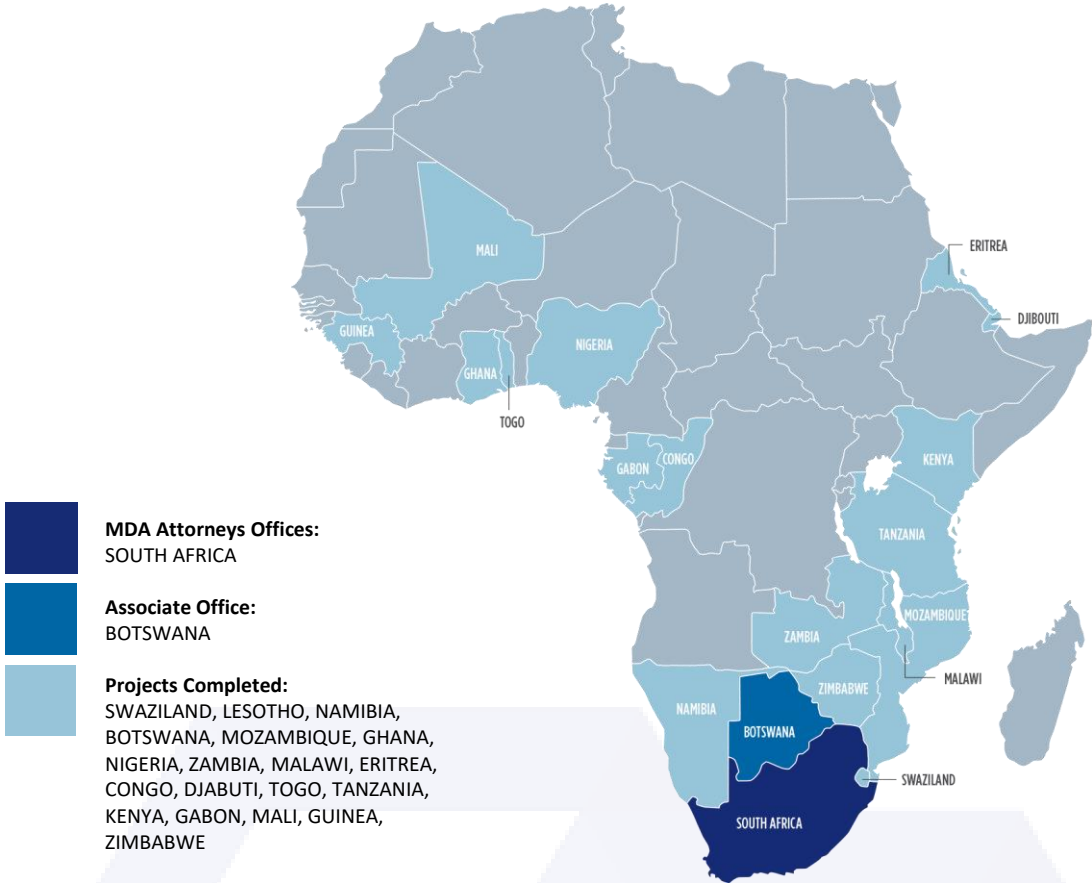
MDA's wealth of experience, objective advice and application of specific dispute-management and resolution services produces best possible results for clients.

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

OUR REACH





Anglo Coal South Africa

- Responsible for drafting a full suite of contracts for use in procurement across all operations, including services contracts for underground/open cast mining to construction works contracts (based on the FIDIC 1999 suite);
- Drafting, negotiating and finalising various agreed target cost contracts for the development of the Mafube colliery including for the conveyors and coal processing plant;
- Drafting, negotiating and finalising contracts for the Goedehoop discard silo and flotation plants;
- Drafting, negotiating and finalising various contracts for the Phola/Zondagsfontein collieries including for the coal processing plant and the operations and maintenance contract; and
- Drafting, negotiating and finalising contract for the mine water treatment plant at South African Coal Estates.
- Facilitation of numerous risk workshops
- Training of project management and procurement personnel

Anglo American Chile

- Drafting, negotiating and finalising contract for tailings facility at Las Tortolas mine

BHP Billiton South Africa

- Drafting, negotiating and finalising a build operate transfer contract for a mine water treatment plant at Optimum Colliery



Biwater International

- Drafting, negotiating and finalising a Build Operate Own Transfer contract for a mine water treatment plant at Optimum Colliery

Kumba Iron Ore

- Manage and administer EPCM contractor for the Sishen Expansion Project
- Drafting conditions of contract (GC suite) used by Kumba Iron Ore, including professional services contract, works contracts and EPCM contract
- Provide management and administration services to the procurement team for the Sishen South Project, including negotiating and finalising EPCM contract and key construction contracts, and managing/administering such contracts including dealing with claims, termination and disputes

Universal Coal South Africa

- Drafting opencast mining contract for Kangala Colliery
- Providing advice on management and administration of Design Build Operate contract at Kangala
- Drafting Design Build Operate contract (Based on FIDIC Gold Book) for Roodekop Colliery
- Drafting bespoke underground mining services contracts
- Drafting bespoke crushing and screening services contracts
- Drafted group Procurement Policy and associated standard forms contracts for suppliers service providers



Aquarius Platinum South Africa

- Drafting, negotiate and finalise mine infrastructure contract and underground mining services contract

MCC South Africa

- Review and identify potential risk in current open cast mining services contracts – the assignment required the review of 8 open cast mining contracts between MCC and various mining employers in Southern Africa in order to identify contractual risk and potential exposure

Swakop Uranium - Namibia

- Drafting a standard set of FIDIC templates for use on the HUSAB project
- Drafting, negotiating and finalising the procurement of critical capital equipment with Caterpillar and Komatsu for the HUSAB project

Tshipe e Ntle South Africa

- Provided management and administration services to the procurement team for the Tshipi Borwa Mine, including negotiating and finalising key construction contracts, and managing/administering such contracts including dealing with claims, termination and disputes

Khoemacau Copper Mining – Botswana

- Provided procurement strategy advice and drafting of key contracts

CAPABILITY STATEMENT

MINING SERVICES



Morupule Coal Mine - Botswana

- Development and drafting of suite of contracts for an opencast coal mining project and associated services
- Draft and negotiate mining services contract for open-cast mining operations

ERG Africa

- Drafting set of particular conditions (FIDIC Red Book) for the upgrading of the Sabot Kitwe depot in Zambia
- Conducted internal audit for capital expansion project to ensure compliance with procurement policy and limits of authority

IMS Engineering (Pty) Ltd

- Ongoing commercial assistance (as in-house legal counsel) 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



Ero Copper

- Drafting contract documentation for feasibility study, design and construction of expansion projects in Brazil.
- Drafting FIDIC based client specific suite of contracts and bespoke agreements for shaft deepening project in Brazil.

Shaft-sinking and raise-boring contracts

- Our professional staff have assisted in drafting and negotiating the several shaft-sinking contracts including:
 - Anglo Gold's Tau Tona shaft deepening
 - Bindura Nickel Mine Trojan shaft deepening
 - Sinking, Lining and Equipping of the Main and Ventilation Shaft for the Venetia Mine
 - Konkola Copper Mine shaft deepening
 - Currently assisting with contract negotiations for new platinum mine in Zimbabwe
- We also regularly assist with drafting and negotiating raise-boring contracts for ventilation shafts and chair-lifts.

DIRECTOR PROFILES



Euan Massey holds an MSc in Construction Law and Dispute Resolution from Kings College, London, and is an admitted attorney and director of MDA Attorneys, with extensive experience in commercial litigation and construction related issues. Euan's expertise includes specialist legal counsel on capital project procurement strategies such as EPC, EPCM and agreed target cost contracts. He adds significant value to the contracting process and comes highly recommended as an acknowledged specialist in contract drafting and effective risk management strategies.

Euan represents major South African and international contractors and employers in resolving construction related disputes through all forms of dispute resolution, with a particular interest in adjudication. He regularly acts as an arbitrator, adjudicator and mediator when required.

Euan is a widely acknowledged and experienced lecturer and trainer in construction contract law and standard form contracts, including those recommended by the Construction Industry Development Board. He presents numerous training workshops, both public and in-house, across the country and lectures on the Construction Adjudication Course at the University of Pretoria.



Vaughan Hattingh holds an MSc in Construction Law and Dispute Resolution from Kings College, London and is a qualified attorney and director of MDA Attorneys, who has provided commercial advisory services to leading role players in major infrastructure development, water processing, civil, energy, mechanical piping and erection, engineering, petro-chemical and mining sectors for the past 15 years.

Vaughan's expertise lies in the drafting, negotiating and commercial implementation of bespoke and standard form construction contracts (including particularly the FIDIC Suite of Standard Form Construction Contracts (1st Edition, 1999)), managing claims for additional time and / or cost in connection with construction contracts, designing and facilitating training programmes across a spectrum of relevant industry related topics and representing either contractors or employers in alternative dispute resolution procedures (including particularly adjudication, mediation and arbitration).

Vaughan is a specialist adjudication practitioner who is regularly engaged in adjudication procedures, representing either contractors or employers and acting as adjudicator. He has together with Professor Maritz (Head of Department of Construction Economics, University of Pretoria) designed the University of Pretoria's Certificate Programme in Construction Adjudication which he continues to facilitate and lectures on.

DIRECTOR PROFILES



Odette Potgieter, is an admitted attorney and a director at MDA Attorneys. Odette joined MDA in 2012 and has since gained considerable experience and knowledge in all aspects of construction and contract law.

Odette's experience covers a broad spectrum of construction and contract law including:

- Contract negotiation, drafting and amendments to standard form contracts such as the FIDIC suite of contracts.
- Drafting and providing advice in respect of various forms of security, including parent company guarantees and performance bonds.
- All aspects of construction dispute resolution including adjudication and arbitration.
- On-site contract administration, including claims, contract audits and advice.
- General opinion work

Odette has been involved in and represents numerous role players in the construction industry in resolving disputes through all forms of dispute resolution, including adjudication and arbitration.

Odette has for the past 3 years provided on-site commercial support and provided on going value to contractors and sub-contractors to ensure compliance with contractual provisions and to effectively manage the commercial challenges. This includes: site administration, claims management and drafting of correspondence.



Director, **Natalie Reyneke**, is an admitted attorney with 15 years post article experience. She started her career in the litigation department of a large law firm, moving over to the commercial contracts team in 2008. Since then, Natalie has been involved in the drafting of numerous commercial agreements and has spent 2 years at one of the big banks managing a team of legal advisors and vendor managers in the bank's infrastructure department.

Natalie joined MDA in October 2012 and has been advancing her specialist contracts skills to include all contracts used in the construction industry. Her specialist skills include:

- All aspects of construction and engineering claims, including claim formulation, claim motivation and defence/rebuttal of claims.
- Drafting of all forms of contracts, supply contracts, service agreements, particular conditions of contract, FIDIC, NEC3, JBCC, GCC 2010/2015, bespoke construction contracts and various other documentation relating specifically to the construction and engineering industries.
- All aspects of Arbitration and Adjudication.
- Legal opinions and forensic audits of construction contracts.
- In-house training on basic contract law, company specific terms and conditions, the JBCC and FIDIC Suite of Contracts.

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