

# MDA ATTORNEYS – CAPABILITY STATEMENT – ENERGY PROJECTS



Construction & Technology Attorneys

# COMPANY PROFILE

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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 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

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**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

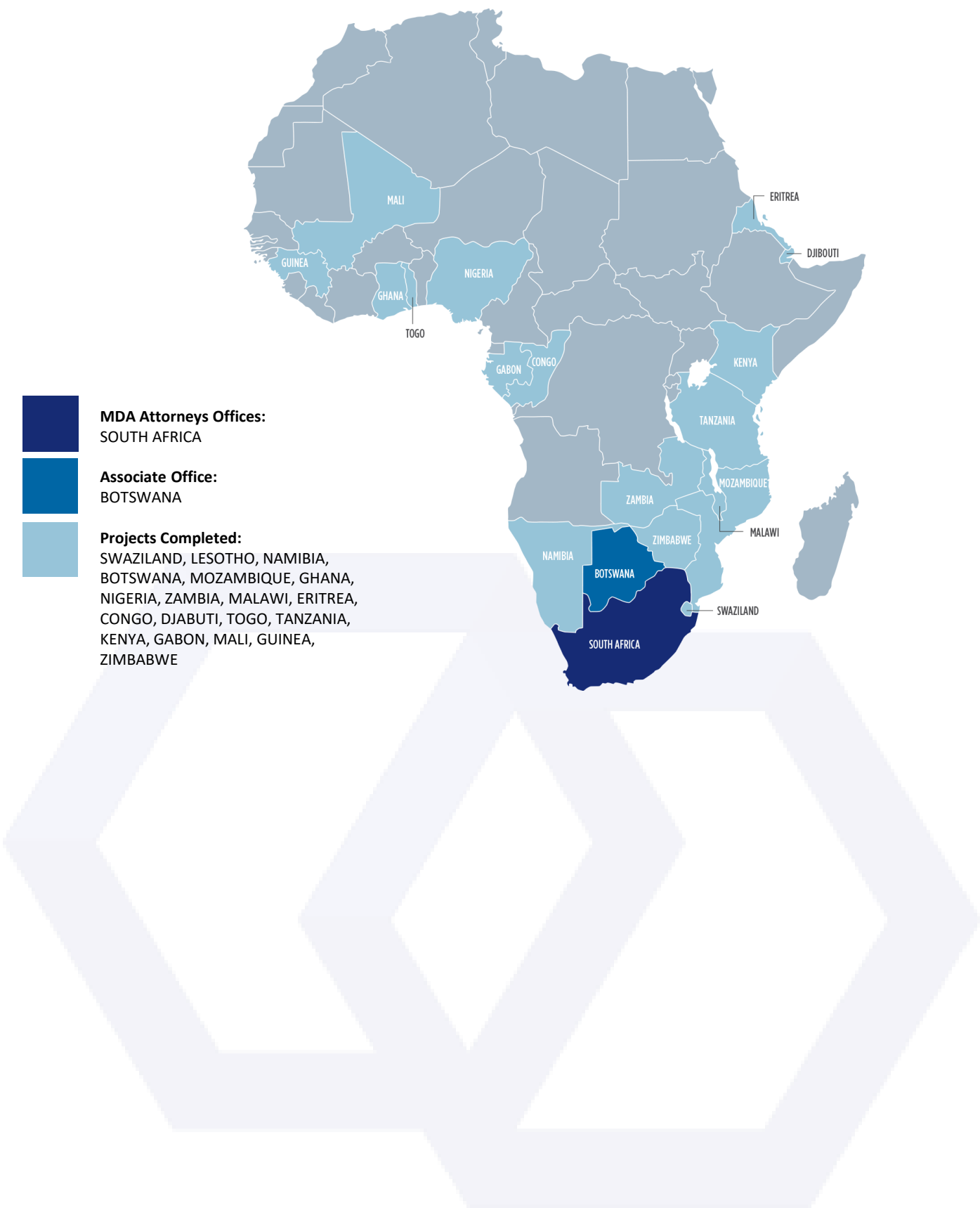
**MDA's** wealth of experience, objective advice and application of specific dispute-management and resolution services produces best possible results for clients.

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

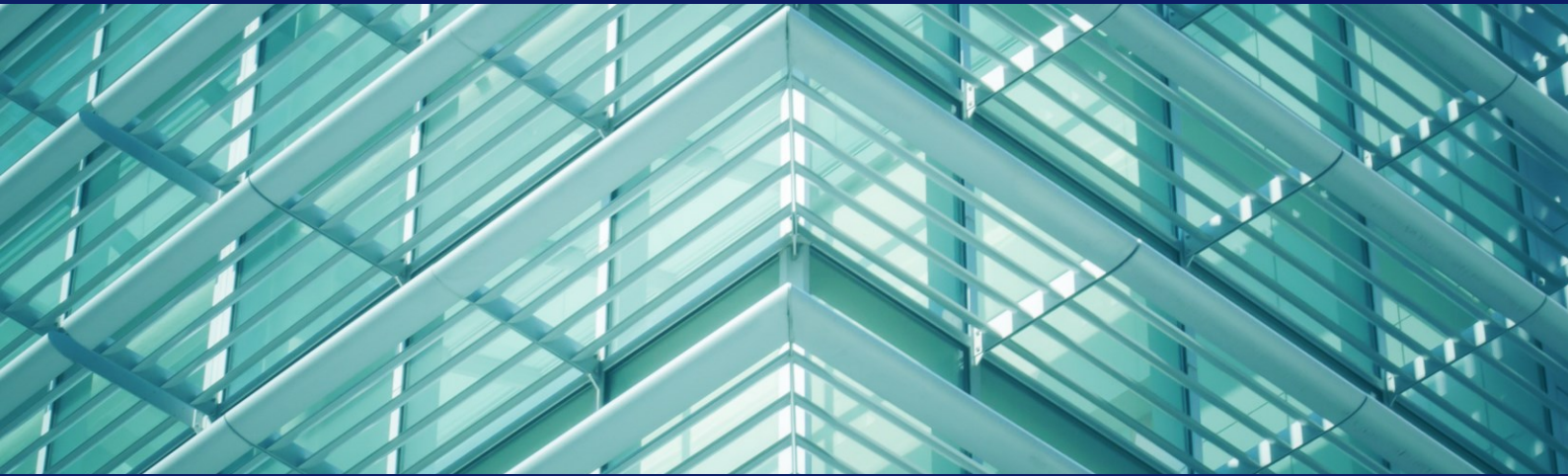
In addition to its specialisation in construction adjudication, the dispute management services offering includes:

- Alternative Dispute Resolution (ADR)
- Arbitration
- Litigation

# OUR REACH



# CREDENTIALS





# CREDENTIALS – ENERGY PROJECTS

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## **Construction of transmission lines (On both the NEC3 (April 2013 edition) and FIDIC Red Book (1999, First Edition) international standard form construction contracts) on several Eskom Holdings SOC Ltd transmission line construction projects.**

- ▶ Participating as member on contractor's commercial review panel in the contractor's tender review of commercial terms proposed by Eskom on several transmission line construction projects including on the Hendrina, Kusile – Kendal – Zeus, Ferrum, Ngwedi – Lilo transmission lines, and in preparing the commercial terms of the contractor's tender on each and in negotiating the final commercial contractual terms including each contract.
- ▶ Assisting the contractor's project manager and team through the construction of the transmission lines in the commercial management and effective implementation of the commercial administrative procedures under the NEC 3 (April 2013 edition) in accordance with the *conditions of contract*.
- ▶ Drafted contractual arrangements with various sub-contractors to accord with the NEC 3 (April 2013 edition) contractual framework regulating the relationship between employer and contractor.
- ▶ Assisted the contractor's project manager and team in preparing compensation event quotations and claims and managing implementation of the compensation event and claims procedure with both the employer – contractor and contractor – sub-contractor.
- ▶ Assisted the contractor's project team through each projects construction life cycle in managing the contractor's commercial risks vis-à-vis both the employer and sub-contractor's and ensuring execution within the contractor's specified risk appetite.
- ▶ Assisting the contractor in implementing each step through the prescribed adjudication and arbitration dispute resolution mechanisms under both the main and sub-contracts.

- ▶ Supporting the contractor through the defects assessment, final certification procedures and through the final close out processed on each of the transmission lines projects.
- ▶ Representing the contractor in several post close out arbitrations on the Hendrina and Kusile – Kendal – Zeus projects and adjudications on the Ferrum and Ngwedi – Lilo projects.

## **Kusile Power Station (All FIDIC contracts unless otherwise stated)**

- ▶ Assisting with and forming part of the commercial team of the civil works joint venture. Our services included identifying claim events/circumstances, drafting of notices and claims, drafting correspondence to subcontractors, attending DAB meetings, drafting DAB submissions and responses, attending and representing the joint venture at DAB hearings and drafting of agreements.
- ▶ Providing on-site commercial support to the mechanical contractor (balance of plant) by drafting templates for notices, claim submissions and general correspondence.
- ▶ Reviewing claim submissions of a civil works subcontractor, assisting with the substantiation of and drafting of composite claims with the view of referring claims to arbitration, and negotiating settlement.
- ▶ Assisting with and drafting of delay and disruption claims for the mechanical contractor appointed to fabricate and erect the air cooled condensers.
- ▶ Assisting with and drafting of delay and disruption claims for the building contractor.
- ▶ Assisting with and drafting of delay and disruption claims for the contractor on the infrastructural piping contract.
- ▶ Assisting with and drafting of delay and disruption claims for the earthworks contractor appointed for constructing the platforms and stormwater system.

# CREDENTIALS – ENERGY PROJECTS

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## **Kusile Power Station (All FIDIC contracts unless otherwise stated)**

- ▶ Representing a specialist geotechnical contractor in adjudication and arbitration under the NEC3 contract (pipejacking).
- ▶ Providing commercial support on an ad hoc basis for a contractor on the finishing works contract. This includes drafting of correspondence and adjudication referrals.

## **Medupi Power Station (All FIDIC contracts)**

- ▶ Assist contractor with the negotiation of the chimneys contract.
- ▶ Assist subcontractor with the negotiation of cladding and scaffolding contract.
- ▶ Providing on-going commercial support to the mechanical contractor (balance of plant).
- ▶ Providing commercial assistance and advice to structural steel contractors. This includes reviewing claims and drafting adjudication referrals.
- ▶ Reviewing claim submissions and assisting with compiling and substantiating claims for various civil engineering contractors packages.

## **Ingula (all NEC3 contracts)**

- ▶ Assist contractor responsible for construction of dam, including negotiating contract and on-site commercial assistance.
- ▶ Providing on-site commercial support to piping contractor. Our services included general on-site support, drafting of claim submissions and terminating subcontract.
- ▶ Provide advice to subcontractor responsible for concrete repairs to tunnels.

## **220kV Ring around Nairobi Metropolitan Area (GCC)**

- ▶ Commercial Support on variations, claim formulation, contractual support, contract training.

## **Kusile - Lulamisa 400kV Transmission Lines (NEC3)**

- ▶ Commercial support on the drafting of the Tender for the Kusile – Lulamisa 400kV Transmission lines pertaining to the risks on the Bill of Quantities for the Safety, Health and Environmental Specifications.

## **Kangas Wind Farm (Bespoke contract)**

- ▶ Represented specialist crane operating contractor with risk review and payment dispute.

## **Excelsior and Golden Valley Windfarms (bespoke contracts)**

- ▶ Assisting contractor with arbitration proceedings following the imposition of delay liquidated damages
- ▶ Assisting contractor with fast track dispute resolution proceedings before an independent expert to settle various disputes

## **Roggeveld Windfarm (bespoke contract)**

- ▶ Assisting contractor with adjudication proceedings against a subcontractor following termination of the subcontract and non-payment in terms of the final account

## **Matimba**

- ▶ Providing on-site commercial support to the contractor responsible for the construction of the cooling platforms.

## **Bokpoort Concentrated Solar Plant (Bespoke contract)**

- ▶ Assisting with the assessment of claims and representing civils contractor in adjudication

# CREDENTIALS

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## **Coega PV Plant (FIDIC)**

- ▶ Reviewing and identifying potential risk in draft EPC contract, drafting changes and negotiating EPC contract on behalf of the EPC contractor with the employer.

## **Boshoff Solar Plant (Bespoke contract)**

- ▶ Representing contractor in arbitration.

## **Koeberg Nuclear Power Station (NEC3)**

- ▶ Providing contract management and administration services to the maintenance contractor.

## **EPC Nuclear Power Station (FIDIC)**

- ▶ Assisting contractor with contract negotiations.

## **Chaba Windfarm (Bespoke contract)**

- ▶ Review and assess subcontractor's claim submissions.

## **Metrowind Windfarm (FIDIC)**

- ▶ Represent EPC contractor in adjudication following fire to substation.

## **Kathu Solar Park (Bespoke contract)**

- ▶ Assisted in the defence (and ultimate settlement) of a number of multimillion ZAR claims of a solar power plant. These claims had a combined value in excess of ZAR 318 million.

## **Garob/ Copperton/ Roggeveld (Bespoke contract)**

- ▶ Assisted a company with both local and international shareholders with ad hoc commercial support and preparation for the defence of a number of claims, each with a bespoke dispute resolution procedure. These contracts have a combined value in excess of ZAR 392 million.



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