



Construction & Technology Attorneys

Adjudication Survey 2022



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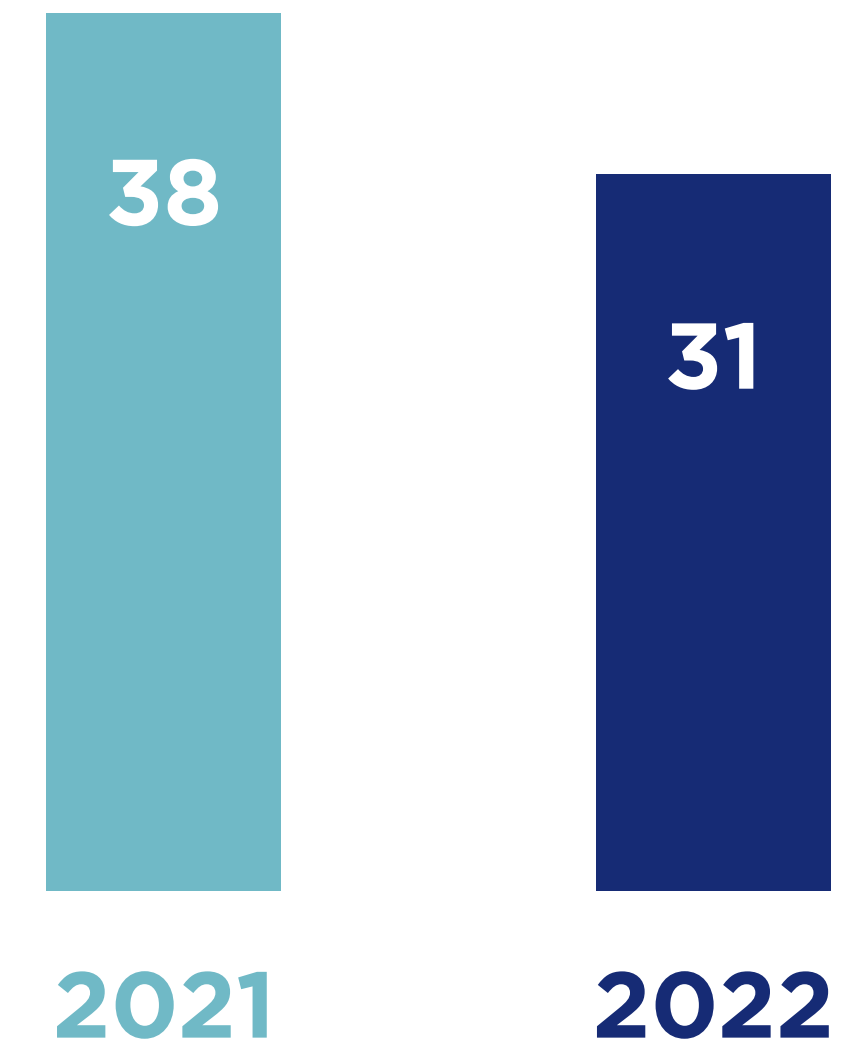
Introduction

The MDA Adjudication Survey aims to provide some (albeit limited) statistical information regarding the state of adjudication in South Africa.

The survey consists of information collected by MDA in respect of adjudications where MDA were retained to represent one of the disputing parties, or where one of our fee earners acted as an adjudicator.

The information collected relates to adjudications where a decision was issued between 01 January, 2022 and 31 December, 2022. MDA assisted with **31** adjudications during this period.

The survey does not attempt to provide a representation of statistics of all adjudications in South Africa but simply provides analysis taken from these **31** adjudications and provides some interesting insight.



Nature of dispute

Claim for payment of outstanding monies/ incorrect certification	9
Claim for extension of time and time related costs	8
Claim for defective work	2
Enforcement of contractual rights	4
Other:	
Claims for revision to the date for practical completion, refund of penalties previously deducted and interest	1
Enforcement of deemed accepted compensation events	2
Contractor disputed the project managers rejection of a compensation event relating to commissioning	1
Matter referred to Adjudication to interpret the meaning of the word 'work' in the term Final Contract Value in Clause D1003(d) of the Scope of Work	1
Entitlement of contractual relief/ remedy	1
Termination of the contract and outstanding monies as per final account	1
Claim for defective design	1
Withholding tax issue. Under recovery due to lower exchange rate	1

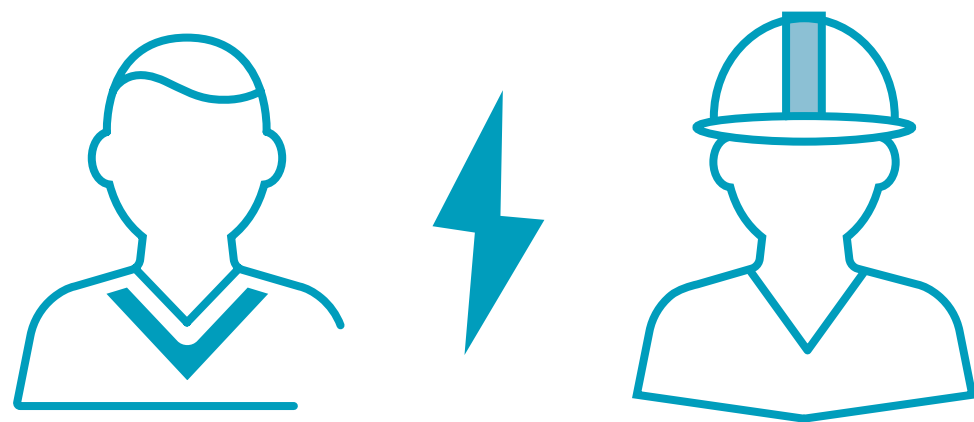


The most common disputes referred to adjudication during the 2022 year were those in respect of claims for payment of outstanding monies/ incorrect certification followed by claims for extension of time and time related costs. This is a continuation of the previous years trend.

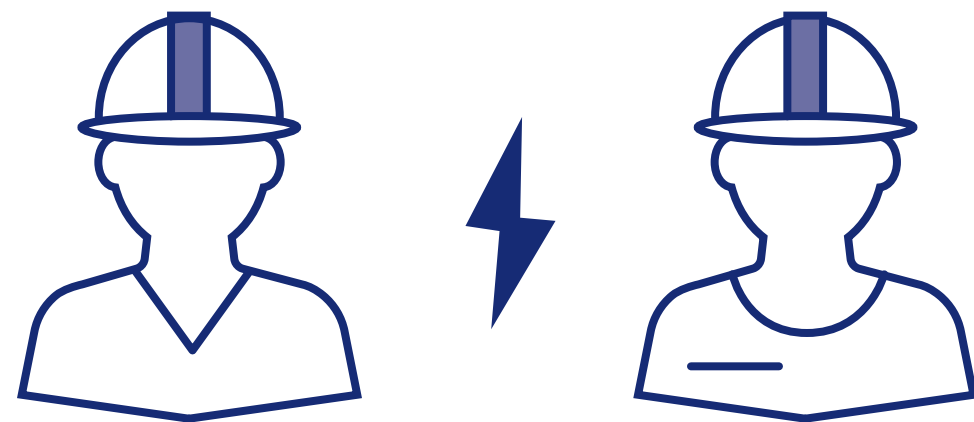
Parties to the dispute



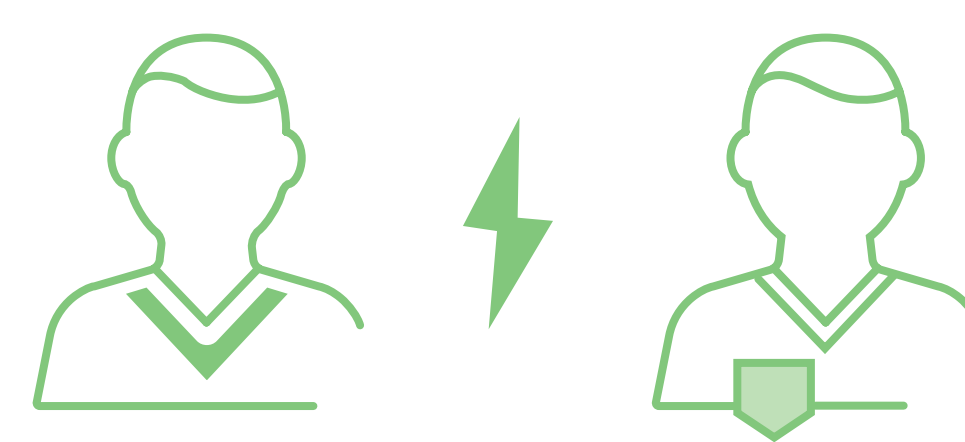
Employer / Contractor



Contractor / Subcontractor



Employer / Consultant



Similar to previous years, the majority of the disputes handled by MDA involved disputes between contractors and employers, with only 4 out of 31 disputes between employers/ consultants or subcontractor/ contractor.

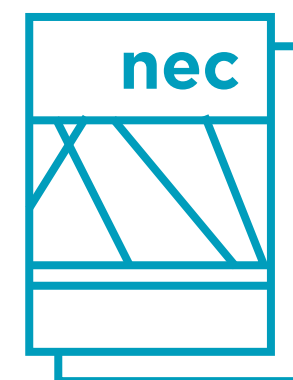
Conditions of contract



FIDIC Suite



NEC Suite



JBCC 2000 series



GCC 2010 or GCC 2015



Bespoke



NEC makes up the largest portion of the contracts creating disputes in 2022. Many of the adjudications were relating to power project hence the proportionate increase.

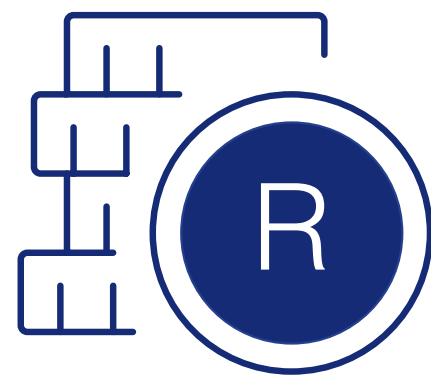
Monetary value of dispute



Less than R1 mill



R1 mill to R5 mill



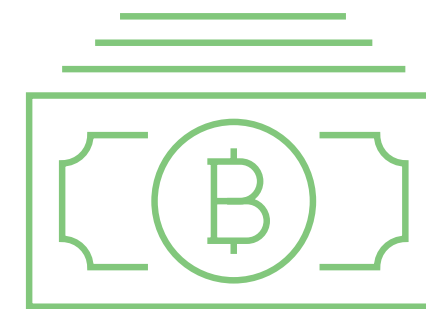
R5 mill to R10 mill



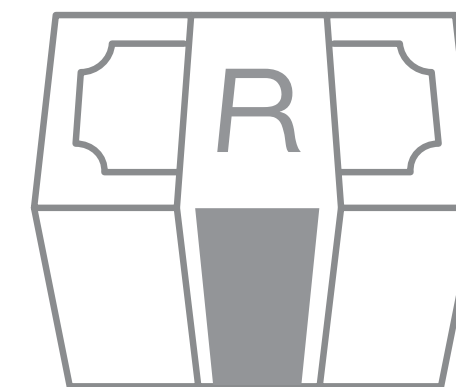
R10 mill to R20 mill



R20 mill to R50 mill



More than R50 mill



N/A



Continuing the common trend, a large majority of the disputes referred to adjudication dealt with monetary values of R5 million and less.

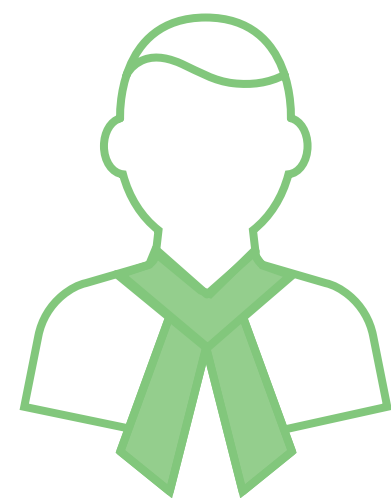
Qualification of adjudicator



Quantity Surveyor



Attorney/advocate



Engineers



Dual qualified



Once more engineers and attorneys make up the majority of the adjudicators. Most DAB's appeared to contain at least three members with an even spread of qualifications. The proportion of adjudicators to the total number of adjudications is due to DAB (Dispute Adjudication Board) panels.

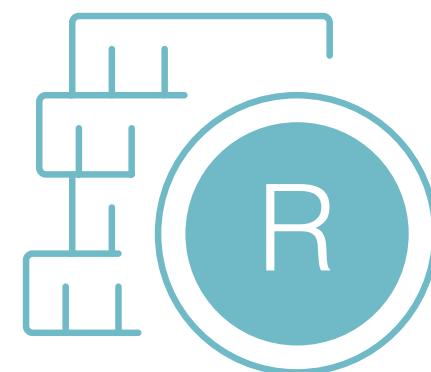
What was adjudicator's hourly rate?



R2000/ hour or less



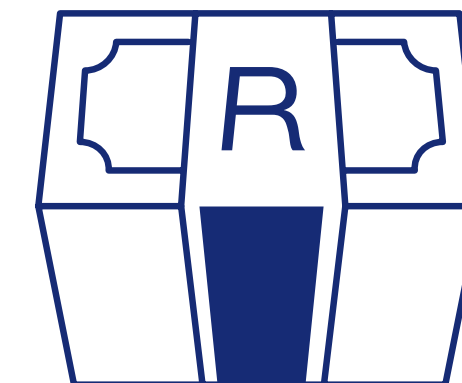
R2001 - R2500/ hour



R2501 - R3500/ hour



More than R3500/ hour



On average the most typical rate charged per hour for an adjudication falls into the region of over R3500/ hour.

Appointment of the adjudicators



Agreed between parties

Appointed by adjudicator nominating body

- ICE-SA
- Assoc of Arb
- SAICE
- Ad hoc Adjudication Board
- Dispute Adjudication Board



This years data once again showed most adjudicators being appointed via agreement between parties.

Was there a hearing?



Yes



No



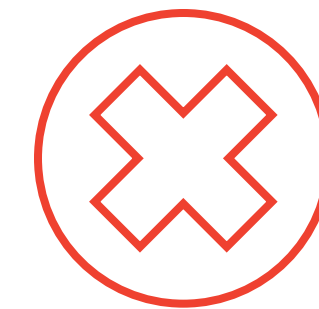
Was there a settlement reached during the adjudication process?



Yes



No



Was the adjudication converted into an arbitration - or another process - prior to the decision being published?

31

No



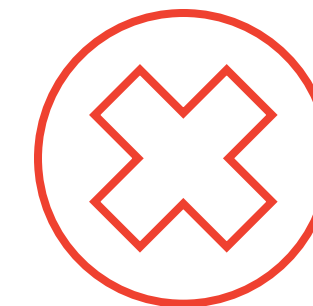
Did the adjudicator issue his/her decision in time?



Yes



No

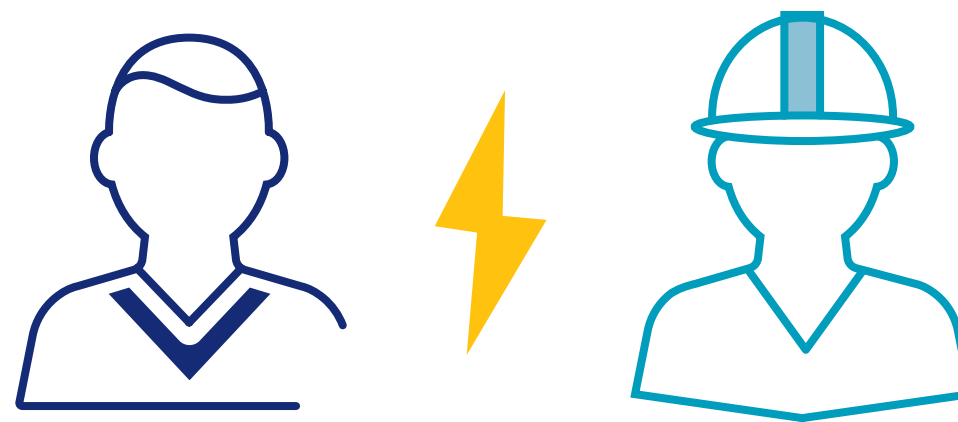


Some of these late decisions were due to late payment by the employer.

If dispute an Employer / Contactor dispute then decision in favour of



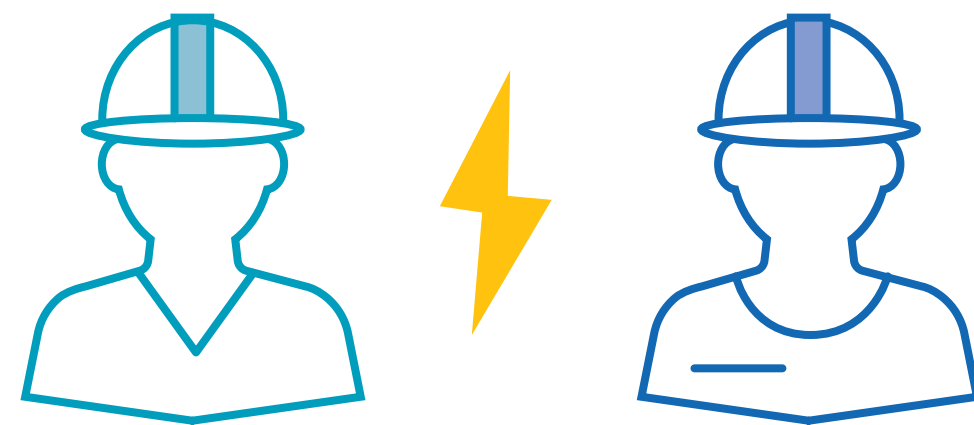
Employer / Contactor



If dispute a Contractor/ Subcontractor dispute then decision in favour of



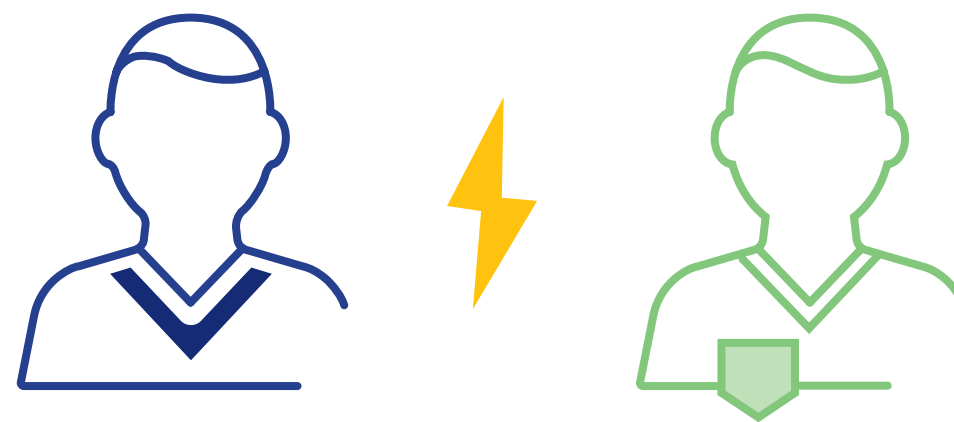
Contractor / Subcontractor



If dispute a Employer/ Consultant dispute then decision in favour of



Employer / Consultant



Monetary value of decision



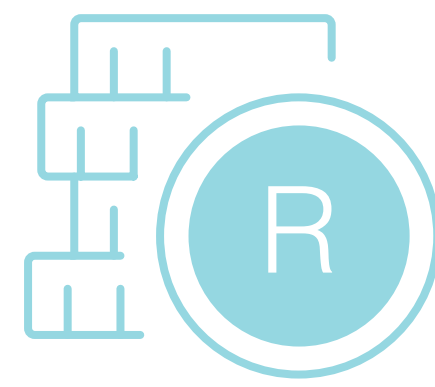
Zero



Less than R1 million



R1 million to R5 million



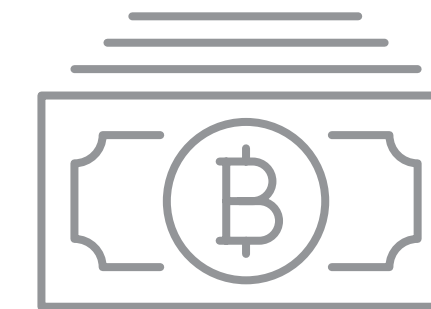
R5 million to R10 million



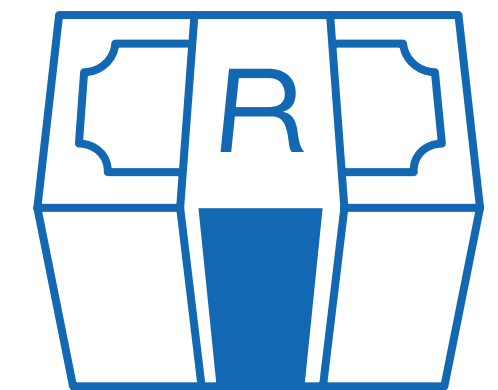
R10 million to R20 million



R20 million to R50 million

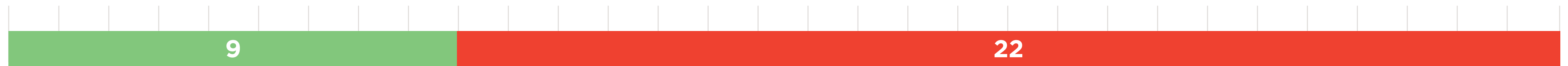


More than R50 million



Continuing the common trend, a large majority of the disputes referred to adjudication dealt with monetary values of R5 million and less.

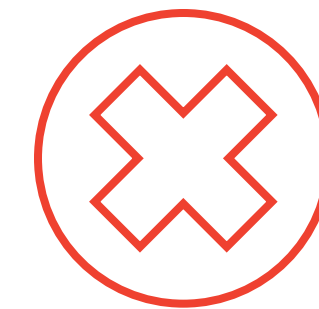
Has a notice of dissatisfaction been issued within the required time period?



Yes



No





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