



**DLA CLIFFE DEKKER  
HOFMEYR**

**EVERYTHING MATTERS**

# **BANKING LITIGATION**

An overview of our practice

Drawing on the expertise of nearly 70 litigation and arbitration lawyers across our offices in Johannesburg and Cape Town, we have capacity to handle large, complex local, national or cross-border cases. We litigate in many jurisdictions, particularly in the US, UK, Europe and Africa.

## **Our Dispute Resolution team**

Our Dispute Resolution lawyers have a reputation for succeeding in the most sensitive and complex litigation and arbitration cases.

Our primary aim is to help clients avoid litigation wherever possible. When litigation is unavoidable, we focus on the commercial objectives of clients, while assessing legal, commercial and reputational risk. Our team is trained in devising the optimum procedural tactics or creative settlement approach.

We offer a complete service in methods of dispute resolution. Our lawyers work together with clients to identify and execute the most advantageous business-oriented solutions, either by pursuing or defending arbitration or litigation proceedings, or through alternative methods, such as mediation.

Our Dispute Resolution lawyers are skilled in identifying the correct approach to disputes in order to influence outcomes more positively and manage risk most effectively.

Insolvency and liquidation are an inevitable part of commercial practice. We have acquired considerable experience over many years in representing our clients in this sphere, particularly as creditors, where our role is to ensure that our clients achieve the best result.

Our lawyers operate in key business areas including commercial litigation, banking, industrial, tax, liquidation, insolvency, construction, product liability, media, aviation, insurance, forensic, contract, mining and minerals, and environmental law.

## **Our Experience**

Our Banking team in South Africa has advised numerous players in the finance sector from regional and local financial institutions, multinational organisations and global banking giants. The team has extensive experience in all aspects of contentious banking and finance, including:

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- Corporate recovery work against principal debtors, sureties and guarantors
- Business rescue
- Perfection of securities work including perfection of general and special notarial bonds over movable assets
- Acting in consultation and cooperation with the Asset Forfeiture Unit in order to prevent the externalisation of funds where major fraud has been committed against financial institutions
- Insolvency related High Court applications and liquidation applications against individuals and corporations
- Cross-border insolvencies and liquidations for recovery of overseas assets including applications for the recognition of South African trustees abroad and launching injunctions in this regard
- Forensic investigations in the context of corporate fraud. We have expertise in Anton Pillar type discovery procedures.
- Successfully defending application proceedings by the South African Revenue Services (SARS) to challenge ABN AMRO's secured proven claim in a liquidated estate which would result in it being an unsecured concurrent creditor, where its proven claims were valued at approximately R300 and R30m
- Prosecuting liquidation proceedings in the British Virgin Islands on behalf of Banque Belgoise in a liquidated estate with losses estimated to exceed R1bn
- Assisting Nedbank with the recovery of significant losses estimated to exceed R500m resulting from Nedbank acting as a depository institution in terms of the Safe Deposit of Securities Act 1992
- Representing a leading South African bank in a dispute with a software provider on the countrywide rollout of ATM software
- Representing a mortgage finance company in a dispute with a software house regarding the failure of a major software development to provide the functionality specified by the development contract
- Advising a major South African Bank on the removal of directors of a subsidiary company in connection with fraud and breaches of good corporate governance
- Representing a leading South African bank in securing its intellectual property rights (and more particularly copyright) relevant to computer programmes written for its banking systems, where the contractors employed to assist with the writing of those programmes sought to develop similar software for their independent financial gain
- Representing various financial institutions in reported cases involving bills of exchange, financing arrangements, exchange control, customised trade solutions, security documentation and letters of credit
- Advising the Reserve Bank of an African country and a major client in the UK on the South African laws on insolvency, liquidations and judicial management
- Advising Absa on suspicious transactions in terms of FICA
- Advising a banking group on a R237m suit brought by various plaintiffs relating to the bank's alleged breach of duty.

### Examples of our work

- Advising on the biggest action ever instituted to date against a bank including dealing with complaints to the Registrar of Banks and the Securities Regulation Panel
- Working closely with Absa's Forensic Department, the Scorpions and Asset Forfeiture Unit in a matter involving a crime syndicate's "kite flying" activities resulting in a large loss for Absa
- Challenging the Provincial Government's decisions to refuse Absa permission to demolish numerous buildings due to the heritage status of such buildings and negotiating the successful reversal of those decisions
- Instituting proceedings in Tanzania to freeze oil to secure an indebtedness owed to Absa
- Advising and providing opinion work in relation to the theft of commodities, a bank's breach and liability of collateral agreements, avenues of recovery, etc
- Advising Standard Chartered Bank in respect of various commodity transactions with a view to enforcing its securities where its exposure was several million rand
- Furnishing liquidation advice and assisting Standard Chartered Bank to secure its position in a standstill arrangement relating to a multinational financial services company providing micro-lending credit solutions

# WHY CHOOSE CLIFFE DEKKER HOFMEYR?

## Africa footprint; global reach

Cliffe Dekker Hofmeyr is one of the largest business law firms in South Africa with more than 120 directors (partners) and some 270 lawyers at offices in Johannesburg and Cape Town.

Our exclusive relationship with DLA Piper, one of the largest legal services providers in the world, extends our reach on behalf of our clients to all the major business centres globally. Our exclusive alliance with DLA Piper means that we are able to provide international legal solutions for clients wherever they choose to do business.

Cliffe Dekker Hofmeyr is a member firm of DLA Piper Africa Group. With this exclusive network of firms across the African continent, we are able to offer our clients unparalleled pan-African support and advice that is enriched by genuine knowledge of both local and international considerations.

## Full service business solutions

We are business lawyers. We help companies succeed by offering corporate and commercial legal expertise across the full range of legal service areas and industries, and providing practical and commercially focused legal solutions.

We offer the advantage of one law firm with the depth of resources, capabilities and experience tailored to a client's day-to-day business needs and long term strategy.

Our lawyers specialise in their particular field of law. We work in teams.

We advise local, national and international companies across a wide range of sectors, from emerging businesses to major brands, as well as all levels of government.

## Recognition

We value diversity, respect for the individual and equal opportunity. We contribute actively to attaining the objectives of Black Economic Empowerment and have earned a **Level 2 Contributor** rating.

At Cliffe Dekker Hofmeyr, we are regularly ranked by clients and our industry peers as a first-rate firm in independent surveys and many of our lawyers are highly recommended in their respective fields in authoritative business and professional publications.

## Selected accolades

*World Finance 2010 Legal Awards* named us Best Dispute Resolution Team.

*ACQ Finance 2009 Law Awards* named us:

- Product Liability Law Firm of the Year
- Commercial Litigation Law Firm of the Year

## Chambers Global, 2010

Chambers comments: The dispute resolution team partners are praised for providing "excellent service" with "terrific response rates." *Pieter Conradie* heads the department and concentrates on product liability issues. He is lauded for his outstanding leadership skills, ensuring that "he always gets the best out of the team around him."

## The Legal 500 Europe, Middle East & Africa Series, 2010

Dispute Resolution ranked in Tier 1.

"DLA Cliffe Dekker Hofmeyr has a multi-talented and high-quality dispute resolution practice. *Jonathan Witts-Hewinson* is a renowned all-round litigator and frequent counsel to major corporates and financial institutions. *Sam Oosthuizen* is commended for banking and financial services (including insurance) litigation. Department head *Pieter Conradie* is also recommended for multi-jurisdictional disputes."

*Practical Law Company PLC Which Lawyer? 2010* highly recommends our Dispute Resolution practice, and our Restructuring and Insolvency practice.

## International Who's Who of Business Lawyers, 2007 - 2011 and Who's Who of Commercial Litigation and Product Liability

*Defence Lawyers, 2007 - 2011* *Pieter Conradie* has been selected by clients and peers as being among 343 of the world's leading Product Liability Defence lawyers.

# CONTACT US

If you would like to find out more, please visit our website: [www.cliffedekkerhofmeyr.com](http://www.cliffedekkerhofmeyr.com) or contact any member of our Dispute Resolution team listed below.



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