

Claudia Moser

Associate



Claudia Moser is an Associate in our Dispute Resolution practice, practicing with a focus on construction, infrastructure, energy disputes, commercial litigation and alternative dispute resolution (mediation/arbitration), insurance, and insolvency proceedings (including business rescue).

About Claudia

Claudia joined Cliffe Dekker Hofmeyr as a Candidate Attorney in 2021. She completed her practical vocational training contract whilst serving in CDH's Dispute Resolution and Corporate & Commercial (Private Equity) Practice.

She was appointed as an Associate in the Dispute Resolution practice in 2023 and admitted as an Attorney of the High Court of South Africa in the same year.

Credentials

Education

- BA (English Language and Literature, and History), University of Cape Town
- LLB (cum laude), University of Cape Town
- Year of Admission as an Attorney of the High Court of South Africa: February 2023

News

[Business rescue with an ulterior purpose](#)

A financially distressed company facing a liquidation application may be tempted to try and avoid or delay the inevitable by launching a business rescue application in order to suspend the liquidation process. However, if there is no merit in such an application, it will inevitably be found by the courts to be an abuse of process and the stratagem will thus be doomed to failure. The Supreme Court of Appeal in the case of PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others (543/21; 409/22) ZASCA 111; (1) SA 400 (SCA) (21 July 2023) adjudicated precisely this scenario.

Contact Claudia

+27(0)21 481 6336

claudia.moser@cdhlegal.com

[Claudia on LinkedIn](#)

Expertise

[Dispute Resolution](#)

[Business Rescue, Restructuring & Insolvency](#)

Location

Cape Town

Language

English

[Pipped at the post? \(the pitfall of instituting a claim in the wrong forum and how this relates to the relevant arbitration clause and underlying agreement\)](#)

As a result of court backlogs and delays, and the public nature of court hearings, it has become common place for commercial contracts to include an arbitration clause. Arbitrations are a form of alternative dispute resolution whereby a dispute is resolved through a private procedure before an arbitrator instead of a judge. An arbitration clause normally seeks to include all disputes between the parties arising out of an agreement.

[Insolvency enquiries: Who may examine witnesses?](#)

Insolvency enquiries envisioned under section 417 and 418 of the Companies Act 61 of 1973 (Act) are convened either by the court or the Master of the High Court (Master). Typically, such enquiries provide a useful method for liquidators to obtain the necessary information from relevant parties to assist them in winding up the affairs of a company.

[Payment on demand? A consideration of on demand guarantees](#)

It is common for a performance guarantee from a financial institution to be provided by a contractor to its employer in a construction project. It is also common for such guarantees to be formulated as an "on demand" guarantee. This is akin to a letter of credit and, provided the terms and requirements set out in the guarantee are complied with, the employer can call up the guarantee notwithstanding any contractual dispute that there may be in the underlying contract between the employer and the contractor (this is different to a guarantee that is not on demand where the contractor can resist payment on the basis that there is an unresolved dispute pending between the contractor and the employer).

[To sue, or not to sue? A discussion on agreements not to sue](#)

Parties sometimes include a clause in their agreements to the effect that they are not entitled to sue one another (what is known as a pactum de non petendo) (pactum). The question arises as to whether such clauses are enforceable, or whether they infringe on the constitutional rights of the would-be suing party and / or are contrary to public policy.

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