



MEDIATION



OVERVIEW

Mediation is a well-established form of dispute resolution. A properly managed mediation process, guided by an experienced mediator selected by the parties to the dispute can often result in a solution that makes commercial sense and preserves the relationship between the parties. Our team of Dispute Resolution lawyers is able to assist you in preparing and conducting mediation by providing professional and sound advice during the mediation process.

Mediation is aimed at establishing a safe environment where the parties and the mediator can critically examine the dispute. The confidentiality of information shared with the mediator is guaranteed allowing for the exchange of information with and through the mediator without fear that the information can be damaging to the parties if the mediation is not successful and litigation or arbitration ensues.

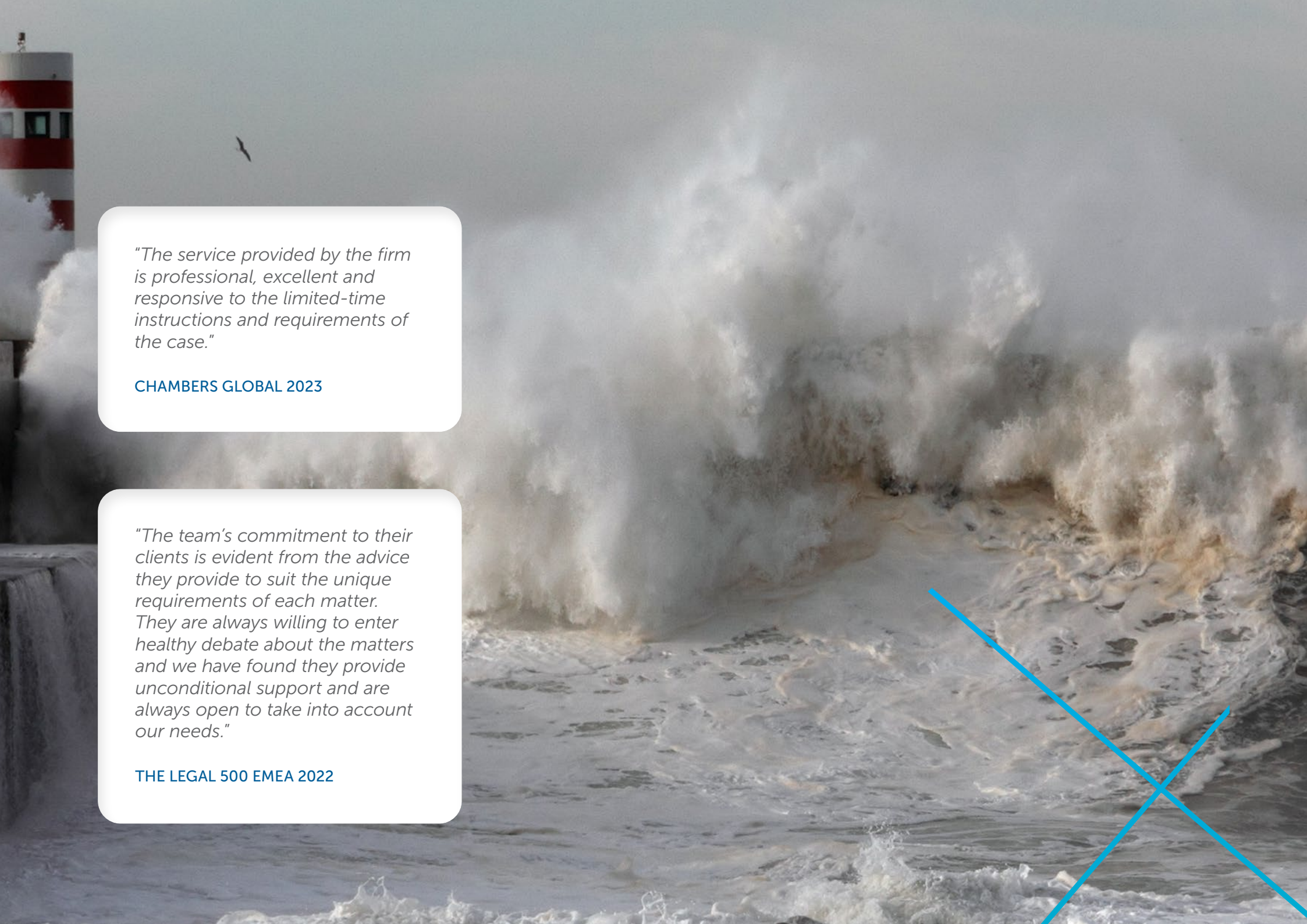
Mediation can be conducted very quickly and where successful is extremely cost effective and able to achieve a resolution that is reasonably acceptable to both parties. By contrast, arbitration empowers a chosen arbitrator to decide the dispute between the parties outside of the courts and the outcome is as adversarial as litigation with one party emerging the victor.

Disputes are a reality but if the parties are willing to work through the issues in the mediation process the result may restore or at least preserve relationships rather than be destructive of them.

Obtaining the prized 'win-win' situation requires the buy-in of the parties, which in turn relies on the parties' belief in the legitimacy of the process. More often than not, this belief is directly related to the skill and acumen of the mediator who guides the parties to a resolution.

The value of mediation is well-recognised internationally. In some jurisdictions costs orders are sometimes levied against litigants who unreasonably fail to mediate their dispute prior to approaching a court. In accordance with international best practice the Department of Justice and Constitutional Development has taken steps to provide for the implementation of court-annexed mediation in South Africa, albeit that for the time being submission to mediation is voluntary.

The rationale behind the Court-Annexed Mediation Rules for the Magistrates' Courts, which became effective on 1 December 2014, includes preserving 'relationships between litigants or potential litigants...' and to 'facilitate an expeditious and cost-effective resolution of a dispute between litigants or potential litigants...' At present these rules are in force in Magistrates' Courts in Gauteng and the North-West Province, with plans to roll the rules out to all Magistrates' Courts, and ultimately, to the High Courts.




"The service provided by the firm is professional, excellent and responsive to the limited-time instructions and requirements of the case."

CHAMBERS GLOBAL 2023

"The team's commitment to their clients is evident from the advice they provide to suit the unique requirements of each matter. They are always willing to enter healthy debate about the matters and we have found they provide unconditional support and are always open to take into account our needs."

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Our team of Dispute Resolution Lawyers is able to assist you in preparing for and conducting mediation by providing professional and sound advice during the mediation process

OUR OFFERING

Where mediation is regarded as an option, our team of Dispute Resolution lawyers is able to assist you in preparing and conducting mediation, providing advice and counsel during the mediation process. Mediation is about communication between the parties guided by the mediator during which legal issues may arise that were not foreseen by the parties. Having an experienced professional to assist at such a time can smooth the process, saving time and money. The added benefit of involving one of our professionals in your mediation team is that, should the mediation fail, the professional is already aware of the intricacies of the matter, ultimately saving money.

In our team of Dispute Resolution lawyers there are highly-trained mediators who can be called upon to act as mediators in disputes arising from commercial relationships to ensure that the process of mediation is expeditious, fast and objective - preserving the legitimacy of the process. Our skilled mediators are trained to facilitate communication, and to guide the parties to practical and commercial solutions. Once a solution is agreed between the parties we can draft the necessary settlement agreement to record the resolution, having been part of the mediation process from the start and understanding the commercial imperatives of the parties.

ABOUT CLIFFE DEKKER HOFMEYR

We are a leading business law firm in South Africa with a strong national presence in Johannesburg and Cape Town.



Our Africa practice

Our Africa service offering brings together the resources and expertise of leading law firms across the continent. This experience and geographic spread produce an extensive African capability. We offer our clients a genuine knowledge-based service at locally competitive rates.



Our value-creating approach

Our partner-led approach ensures clients receive the right level of experience and efficiency and we deliver pragmatic and commercially-focused solutions.



We prioritise efficiency

We manage, apply and share our considerable knowledge assets for the benefit of our clients through continuous skills training. We keep clients informed on regulation developments through seminars, our Matters newsletters and regular alerts.

Clients appreciate the, *"honest and succinct feedback that is relevant to each matter."*

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MARKET RECOGNITION

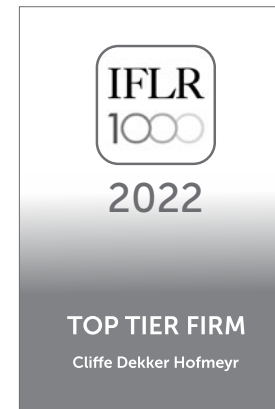
Our team of lawyers possesses a wealth of experience in all forms of dispute resolution, both traditional and alternative.

Some notable examples of alternative dispute resolution experience include:

- Representing BHP Billiton and Samancor in firstly, mediation and then, arbitration proceedings against Bilston Investments in regard to the proposed sale of shares agreement as well as a supply agreement.
- Advising and representing a multinational corporation in private arbitration proceedings relating to a contractual breach for the procurement and commissioning of a gas cooler in Zambia.

Many of our directors – who make up more than half of our 53-lawyer team – are recognised as leading lawyers in their fields.

Tim Fletcher is the Chairperson and a Director in our Dispute Resolution team. *Chambers Global 2022–2023* ranked Tim in Band 2 for dispute resolution. *Chambers Global 2019–2021* ranked him in Band 3 for dispute resolution. *The Legal 500 EMEA 2016–2023* recommended him as a leading individual for dispute resolution.



OUR TEAM

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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