

ADJUDICATION SURVEY

01 January, 2020 to
31 December, 2020



Construction & Technology Attorneys

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1 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, 2020 and 31 December, 2020.

MDA assisted with **38** 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 **38** adjudications and provides some interesting insight.

NUMBER OF ADJUDICATIONS HANDLED BY MDA - 2019 VS 2020

2019

56

2020

38

*Please note - as some of the individual adjudications analysed included multiple answer to each question, the totals may be skewed against the total number of adjudications recorded.

2

NATURE OF DISPUTE

Claim for payment of outstanding monies/ incorrect certification	15	
Claim for extension of time and time related costs	19	
Defective work	2	
Enforcement of contractual right e.g. to obtain taking over certificate	3	
OTHER:		
Claim for cost of additional work	1	
Determination of date works completed, impacting on calculation of delay damages	1	
Dispute unlawful termination	1	
Validity of exercise of a lien on the site	2	
Validity of PM's instruction	1	

The most common disputes referred to adjudication during the 2020 year were those in respect of claims for extension of time and time related costs, followed by claims for payment of outstanding monies/ incorrect certification. This is a continuation of the previous year's trend.

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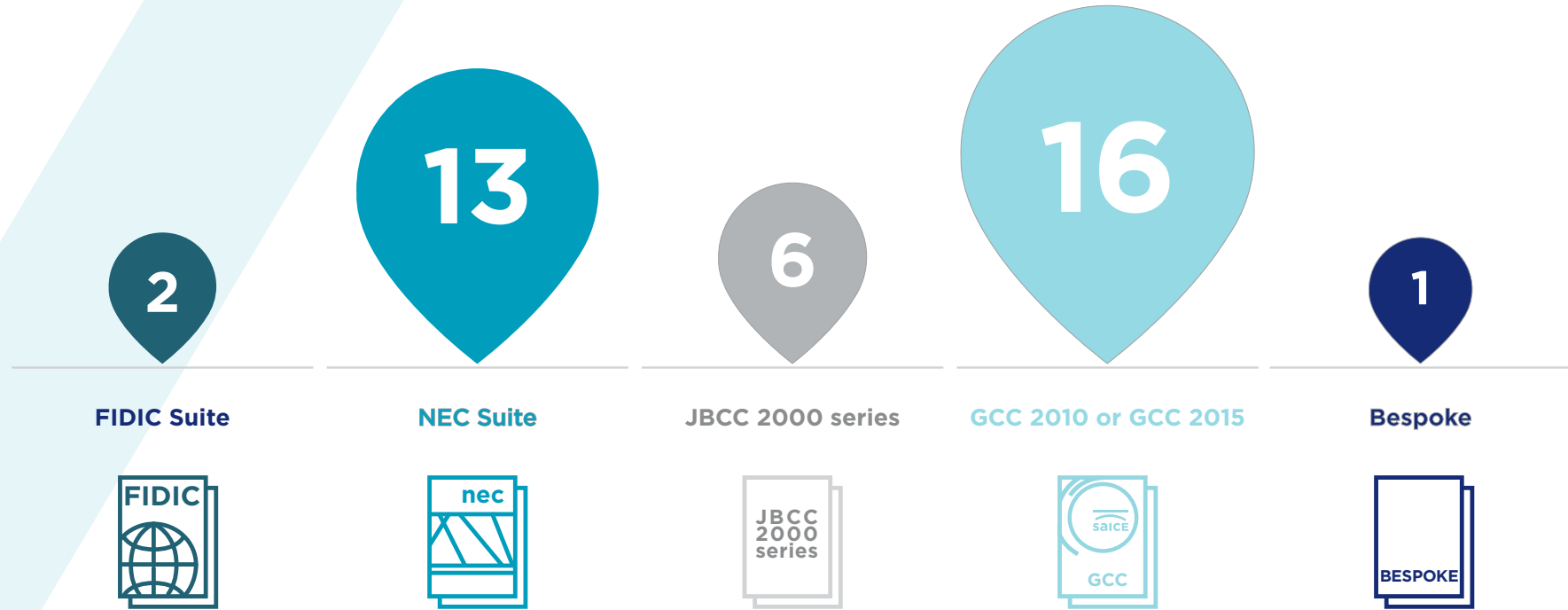
PARTIES TO THE DISPUTE



Similar to previous years, the majority of the disputes handled by MDA involved disputes between contractors and employers, with only 5 out of 38 disputes between subcontractor and contractor. Interestingly a small number of disputes arose between employers and consultants in 2020.

4

CONDITIONS OF CONTRACT



Contrasting with previous years surveys, in 2020 the GCC makes up the largest portion of the contracts creating disputes. Second in line this year is the NEC. The GCC is commonly used for municipal and local government contracts and a possible reason for this change is the constrained budgetary conditions brought on by the COVID-19 pandemic.

5

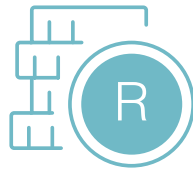
MONETARY VALUE OF DISPUTE (if applicable)

7



Less than
R1 mill

10



R1 mill to
R5 mill

5



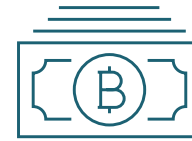
R5 mill to
R 10 mill

5



R10 mill to
R20 mill

1



R20 mill to
R50 mill

1

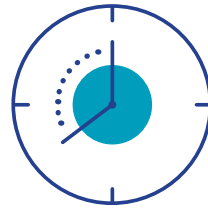


More than
R50 mill

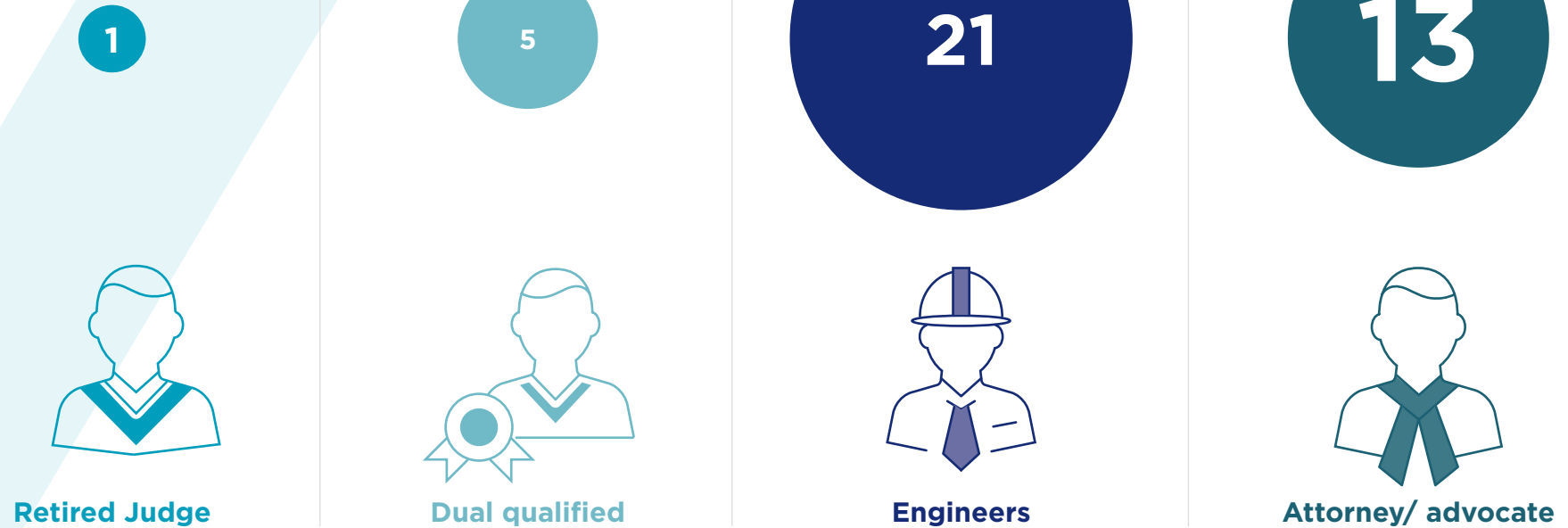
Continuing the common trend, a large majority of the disputes referred to adjudication dealt with monetary values of R5 million and less. Another observation is that large monetary disputes often proceed to arbitration given that one of the parties is less likely to accept the Adjudicators decision.

6

EXTENSION OF TIME CLAIMED (if applicable)



QUALIFICATION OF ADJUDICATOR



Once more attorneys and engineers make up the majority of the adjudicators. Most DAB's appeared to contain at least three members with an even spread of qualifications. The shift in the number of GCC adjudicators is supported by the number of Engineers acting as adjudicators - the adjudicator nominating body under the GCC forms of contract is the SAICE panel which comprises mostly Engineers.

WHAT WAS ADJUDICATOR'S HOURLY RATE?

0

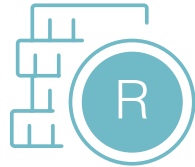
15

17

5



R1500/ hour or less



R1501 - R2500/ hour



R2501 - R3500/ hour



More than R3500/ hour

On average the most typical rate charged per hour for an adjudicator falls into the region of R2501-R3500.

APPOINTMENT OF THE ADJUDICATORS. HOW WAS THE ADJUDICATOR APPOINTED?

5

Named in contract

20

Agreed between parties

17

Appointed by adjudicator
nominating body

- ICE-SA	4
- Assoc of Arb	5
- SAICE	6
- MBSA	2

This year's data once again showed most adjudicators being appointed via agreement between parties. There seems to be an even spread between adjudicator nominating bodies being called on to make appointments.

WAS THERE A HEARING?



Yes



No

WAS THERE A SETTLEMENT REACHED DURING THE ADJUDICATION PROCESS?



Yes



No

IF DISPUTE AN EMPLOYER/ CONTRACTOR DISPUTE THEN DECISION IN FAVOUR OF?

11



Employer

17



Contractor

As with previous years, contractors are more likely to be the referring party in adjudications and are more likely to succeed in their referrals.

IF DISPUTE A CONTRACTOR/ SUBCONTRACTOR DISPUTE THEN DECISION IN FAVOUR OF?

5



Subcontractor

0



Contractor

IF THE DISPUTE A EMPLOYER/ CONSULTANT DISPUTE THEN DECISION IN FAVOUR OF?

0



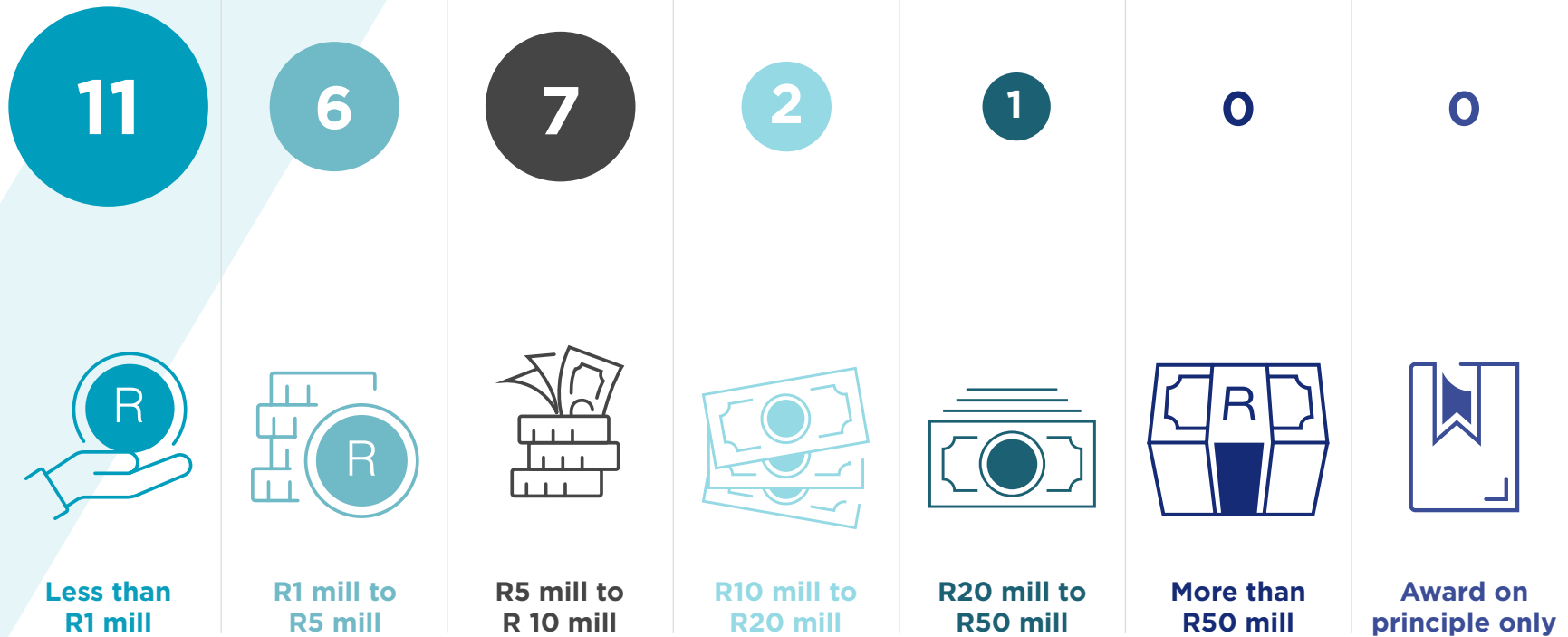
Employer

3



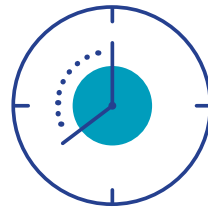
Consultant

MONETARY VALUE OF DECISION



There has been an increase in the monetary value of disputes which are referred to adjudication.

EXTENSION OF TIME AWARDED



16

WERE THE TIME PERIODS FOR THE EXCHANGE OF INFORMATION IN THE ADJUDICATION PROCESS, SET OUT IN THE CONTRACT, EXTENDED BY THE PARTIES AND/OR THE ADJUDICATOR?



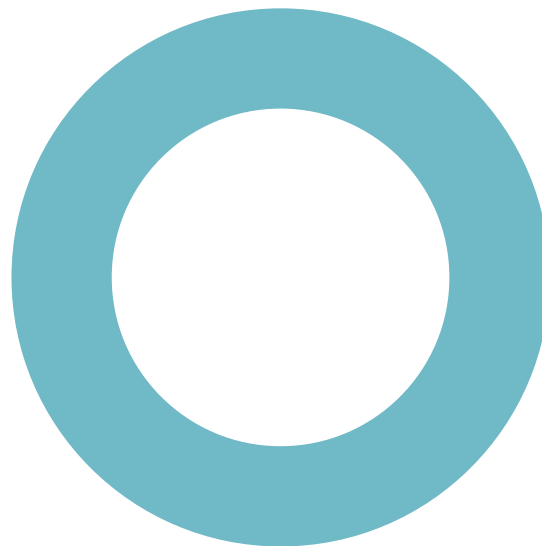
17

DID THE ADJUDICATOR REQUEST AN EXTENSION OF TIME TO DELIVER HIS/HER DECISION?



DID THE ADJUDICATOR ISSUE HIS/HER DECISION IN TIME?

Yes
38



No
0

Although we can see the impact COVID-19 had on the time periods associated with the exchange of information or deliberation of a decision, all adjudicators decisions were issued on time.

HAS A NOTICE OF DISSATISFACTION BEEN ISSUED WITHIN THE REQUIRED TIME PERIOD?



Yes



No



Time period is yet to expire

There is an increase in the number of adjudication decisions which have been referred to arbitration. This is in line with the monetary value of disputes. The parties are less likely to accept the decision of an adjudicator where there is a significant amount in dispute.

DID THIS ADJUDICATION ARISE AS A RESULT OF THE COVID-19 PANDEMIC?

