



**EQUILLORE**

Enabling Dispute Settlement

Equillore Commercial Dispute Settlement Proprietary Limited ("Equillore")

(Incorporated in the Republic of South Africa)

(Registration number: 2007/025631/07)

## **Company Overview Document**

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## CONTENTS

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1	Executive Summary .....	3
2	Background and Market Overview.....	4
3	Market Drivers.....	5
4	Service Offering .....	7
5	Key personnel .....	8
6	Conclusion .....	9
	Appendix A: Transformation of the State Legal Service .....	10

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## 1 Executive Summary

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Equillore is the market leader in alternative dispute resolution (ADR) services in South Africa. Equillore manages the lifecycle of disputes and has processed more than 45,000 disputes, relieving pressure on courts. An analysis of a subset of 23 000 cases demonstrated a clear proposition when compared to typical litigation: measurable savings in direct costs (43% lower), capital awards (34,7 % lower) and time (70% of cases settling at initial meeting).

Equillore provides purpose-designed dispute processes to match the specific needs of each industry application, supported by computerised case management and administrative services allowing staff and clients (parties and their lawyers) to monitor the progress of all cases online. It maintains a panel of accredited mediators with industry-specific expertise.

The legal framework in SA is undergoing a fundamental overhaul to address critical challenges. The civil review programme was formally tasked by Parliament to institutionalise ADR by directing all civil disputes to be mediated before a court date is set. This policy mandate is confirmed in Justice's strategic plan for 2011-2016 (available at <http://www.justice.gov.za/MTSF/mtsf.htm>). Note inter alia **Policy mandates** progress report section iii pg. 14; and **State legal services** section iv pg. 20)

Private sector service providers, accredited by the industry regulatory body, will manage both the required mediation services and the panels of skilled independent mediators. The company has developed strong strategic relationships with key decision makers in Justice, the state attorney and targeted commercial industries, notably short-term insurance and sectional title.

The King III report for the first time imposes a fiduciary duty on directors to put appropriate dispute resolution mechanisms in place and to assign formal responsibilities in that regard. The new Consumer Protection Act and the National Credit Act further emphasises the imperative for organisations to embrace changes in how disputes are managed.

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## 2 Background and Market Overview

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Equillore has enabled dispute resolution in the South African market since its founding in 1997. The company has built a successful business that has developed the processes and procedures that harness conciliation, mediation and arbitration (“Alternative Dispute Resolution” or “ADR”) effectively in the management of the life cycle of civil disputes.

The use of conciliation, mediation and arbitration as alternative and more appropriate mechanisms to relieve pressure on the courts has enjoyed much attention internationally. Comprehensive case studies are available in other jurisdictions, notably Brazil, Canada, China, Holland, India, Italy, Singapore, Uganda, UK and the USA.

The South African court system is overcrowded and in urgent need of a thorough overhaul. This is already well underway in the Department of Justice and Constitutional Development (DoJ). In-depth reviews of both the criminal and civil justice systems are in progress, geared to a number of objectives including:

- Modernisation;
- Development of a more efficient, effective and appropriate justice system;
- Development of a framework to measure and track performance; and
- Provision of more reliable information on system performance.

The current emphasis is on the civil justice system, where greater effort is being invested. DoJ has confirmed Cabinet approval of the civil review process, with four key areas of focus:

- Establishment of the Justice College to improve the quality of the judiciary;
- A performance evaluation framework to measure and track judicial performance;
- Improved court efficiency through better management and administration; and
- Diversion of select civil disputes to pre-trial processes geared to promote settlement outside formal court structures.

The demands of a fast-moving globalised market place are increasingly at odds with the traditional litigation approach to disputed and unresolved claims. Escalating legal costs, lengthy delays and unpredictable outcomes are all contributing to this reality. This results in:

- Costs often exceeding actual amounts being claimed;
- Wasted time and opportunity costs;
- Management focus diverted from core business and service delivery;
- Strained relationships with business partners.

Worldwide the application of pro-active and independent case management and the use of mediation and other forms of alternative dispute resolution (ADR) mechanisms have been growing as a more effective approach to the challenges above. Mediation actively promotes and supports early settlements and active case management ensures adherence to time-lines.

The scope of this approach to settlement is rapidly extending into the online world with the growth of online dispute resolution (ODR). Virtual market places and readily available Internet connectivity underpin the growing acceptance of ODR as a strategic tool to resolve claims and complaints speedily before they unravel into disputes.

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### **3 Market Drivers**

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#### **Department of Justice & Constitutional Development (DoJ)**

DoJ has confirmed Cabinet approval of the Review of the Civil Justice System. Equillore is closely aligned with DoJ's strategic framework, specifically the target to:

- Diverting 40% of case load from courts.
- Increasing counsel briefs to PDI to 65%.
- Reducing the state's cost of legal services by 25%

Capacity in the office of the Chief Justice is being created through the appointment of a Secretary-General. This is expected to accelerate the progress of CBM.

#### **PRASA**

PRASA has strategically agreed to implement the use of ADR as a means to contain and reduce legal costs across the whole of its operations. It has a current backlog of in excess of 6000 personal injury matters which will form the focus of its initial drive to use the multi-tier dispute resolution of Equillore. We will work directly with their panel of attorneys and claimant representatives to develop a process that is tailor made for the particular dynamics prevalent in these claims. Equillore will also rely on the purpose built personal injury dispute system developed by Modria.

PRASA has identified labour disputes as the next target.

#### **Corporate Governance**

Chapter 8 of the King III Code on Corporate Governance prescribes that boards of directors must ensure that disputes are resolved as effectively, efficiently and expeditiously as possible. Read with the provisions of the Consumer Protection Act and the Companies Act, chapter 8 requires that companies appoint private dispute settlement providers. King III is applicable to all organisations, whether in the public, non-governmental or private sectors.

Equillore offers a turnkey dispute settlement service that uses conciliation and mediation, leverages King III and is aligned to the provisions of Rule 37. Equillore is executing focused marketing and sales campaigns to ensure attorneys are aware of all these factors, and of the company's relative and proven proposition.

#### **Short-Term Insurance Industry**

The industry generates significant volumes of claims against uninsured third parties, and depends on the courts to obtain satisfaction. Delays and costs associated with this are increasing.

The knock-for-knock agreement, under the auspices of the industry body SAIA, no longer serves the requirements for inter-insurer settlement.

Equillore has facilitated an industry agreement that has been signed by Santam, Telesure, Mutual & Federal, Zurich and Hollard.

All players agree that once a claim is registered, the participants has 60 days to settle it through normal negotiation channels, following which it is systemically and automatically referred to Equillore for arbitration.



At this stage it was decided to focus on the 600,000 motor vehicle accidents of which 240,000 are insured. At this stage we will only deal with claims where both are insured, estimated in discussions with Santam and M&F to be 40% (100,000). They historically settle between 70% (M&F's estimate which correlates to their tendency to fight claims through litigation) and 90% (Telesure's estimate which correlates with their more modern business methods resulting in better settlement rates. Based on this we estimate the market potential to be 20000 cases annually.

The remaining 60% (140,000) relates to accidents where only one party is insured, and the other is either uninsured, or self-insured.. Other potential application areas exist where there is contributory negligence, eg. damages relating to freight and Public liability insurance

### **Sectional Title Market**

Industry analysts report that an increasing number of body corporates are under financial stress due to non-payment of levies.

S 71 of the Sectional Title Act prescribes arbitration as the mandatory mechanism for resolving all sectional title disputes.

Body Corporate of Greenacres v Greenacres Unit 17 CC [2007] SCA 152 (RSA) sets the principle that levies in arrears constitutes a dispute.

These arbitrations were traditionally handed over to attorneys where mounting legal costs and delays often manifest.

### **Environmental Dispute Settlement**

The provisions of the National Environmental Management Act of 1998 provide for the use of conciliation, mediation and arbitration in environmental disputes on a national, provincial and local level.

These provisions have never been implemented due to the lack of capacity within the Department, and due to the historical absence of agreements with dispute service providers with the knowledge and skills to deal with this category of case.

The Department of Environmental Affairs has awarded the Africa Centre for Dispute Settlement (ACDS) a contract to create the necessary capacity within the department, and to develop the department's ability to use dispute service providers.

Equillore has been appointed to provide the necessary technical development expertise and case management to the ACDS.

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## **4 Service Offering**

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Equillore's unique multi-tier managed conciliation, mediation and arbitration process is simple, innovative and integrated with the formal court process.

Conciliation is a first step to settle disputes through structured information exchange and recording of issues. Mediation is a structured process of defining interests, finding common ground, and helping the parties settle the dispute and continue their relationship. Arbitration is a voluntary or contractual process for authoritative legal determination of a dispute.

The company offers:

- A proven multi-tier approach;
- A panel of internationally qualified mediators with relevant practical experience;
- Enforceable and conclusive outcomes;
- Friendly and efficient service;
- Modern web-based management.

The company provides the following infrastructure:

- Specially designed dispute processes tailored to the needs of each industry;
- Computerised case management that allows online referrals and monitoring of progress;
- A dedicated case manager for each case;
- Conveniently located hearing facilities such as rooms, recording and interpreters;
- Access to a distinguished panel of expert conciliators, mediators and arbitrators.

The company concludes service level agreements to meet the specific requirements of each application.

### **Case Study**

Equillore has managed over 45 000 matters over the last 12 years, 38 000 through an initial Western Cape pilot for RAF, settling disputed claims and avoiding protracted court procedures.

An analysis of a subset of 23 000 cases in the RAF pilot showed the success of multi-tier dispute settlement as follows:

1. Settlement costs, 43% lower than typical costs of litigation;
2. High settlement rates, 76% of cases being settled;
3. Speed of settlement, 70% of cases settling at the conciliation stage;
4. Reasonable settlement amounts, awards 34,7 % lower than in typical litigation.

The benefits are clear: measurable savings in direct costs, capital awards and time. This is achieved through more efficient processes and improved management and staff focus.

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## 5 Key personnel

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1. **Louis van Wyk** (Chief Executive Officer)- Louis van Wyk started his career as a prosecutor and a magistrate. He was admitted as an advocate of the High Court of South Africa in 1995. He qualified as an internationally accredited commercial mediator in 2007.

Louis is responsible for the core ADR solutions and for the management of the Equillore panel, on-going skills training and ensuring the quality of the Equillore mediation and arbitration processes



2. **Indrani Govender** (Accredited Mediation Trainer) - Indrani is an internationally Accredited (RICS) Mediation Trainer and CEDR Accredited Mediator. She has worked extensively in the field of Labour Relations & Human Resources. She is passionate about mediation and is a senior mediator on the panel of Cheadle Thompson & Haysom Attorneys (CTH) on land rights mediating regularly on ESTA, LTA and CPA multi party matters. She also trains commercial mediators for the prestigious Royal Institute of Chartered Surveyors (RICS).



3. **Mr Deon Botha** (Operations) - Deon is a B.Comm (Hons Comp Sci) graduate of the University of Stellenbosch and a pioneer of open systems and Internet services in South Africa. He was previously the General Manager of London listed iTouch PLC's global technical development centre.

He is a founding member of Equillore and is responsible for overall management of client service..



4. **Ms Nokuthula (Nuku) Deyi** (Administrator): Nuku has been with Equillore for 12 years and is a skilled taxation case management officer and mediation panel administrator. Her responsibilities include client support, administrative support for training and case management.







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## **6 Conclusion**

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Equillore has the proven capability and experience in the dispute resolution industry to take advantage of the surge of interest in the use of ADR in both the public and private sectors. Its specific track record in managing high volume motor vehicle and personal injury disputes positions it well to secure a substantial part of this market segment.

The focus and commitment of the management team is to convert the opportunities presented by the Short-term Insurance and PRASA projects over the next 6 months with the objective to form the base for the company to rapidly expand its service nationally.

*“Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.”*

**Abraham Lincoln**

