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(HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG)  
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**NOTICE**

TO:

1. Judges of the Gauteng Division, Johannesburg
2. Chief Registrar, Gauteng Division, Johannesburg
3. Legal Practice Council – Gauteng
4. Law Society of South Africa
5. Gauteng Family Law Forum
6. Gauteng Attorneys Association
7. Pretoria Attorneys Association
8. Johannesburg Attorneys Association
9. West Rand Attorneys Association
10. South African Black Women in Law
11. National Association of Democratic Lawyers
12. Black Lawyers Association
13. South African Women Lawyers Association
14. South African Medical Malpractice Lawyers Association
15. Personal Injury Plaintiff Lawyers Association
16. South African Medico-Legal Association
17. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
18. Office of the State Attorneys, Pretoria and Johannesburg
19. Solicitor General
20. Office of the Family Advocate, Pretoria and Johannesburg
21. Legal Aid South Africa
22. Johannesburg Society of Advocates
23. Pretoria Society of Advocates
24. Gauteng Society of Advocates
25. Pan African Bar Association of South Africa
26. General Council of the Bar of South Africa
27. National Bar Council of South Africa

28. **South African Bar Association**
29. **National Forum of Advocates**
30. **North Gauteng Association of Advocates**
31. **Church Square Association of Advocates**
32. **Advocates for Transformation**
33. **Legal Division of the Department of Health: Gauteng**
34. **Legal Division of the Department of Sport, Arts, Culture and Recreation**
35. **Gauteng Department of Agriculture and Rural Development**
36. **Legal Services - Gauteng Provincial Department of Education**
37. **Gauteng Society of Advocates**

DATE : 02 June 2022

RE : REVISED COMMERCIAL COURT PRACTICE DIRECTIVE WITH EFFECT FROM 01 JUNE 2022

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1. Please find enclosed the revised Commercial Court Practice Directive with effect from 01 June 2022.
2. The professional bodies are requested to bring the directive to the attention of their members.

Yours faithfully

*Dictated by the Deputy Judge President  
Electronically transmitted, therefore no signature*

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**ROLAND SUTHERLAND  
DEPUTY JUDGE PRESIDENT**



**GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG**  
**COMMERCIAL COURT PRACTICE DIRECTIVES**  
**(Revised with effect from 1 June 2022)**

**CHAPTER 1: GENERAL**

1. The Commercial Court aims to promote efficient conduct of litigation in the High Court and resolve disputes quickly, cheaply, fairly and with legal acuity.
2. The Commercial Court is a Court administered as part of the High Court.
3. The Commercial Court may be used by litigants who have initiated or intend to initiate a trial action or an application in a commercial matter.
4. A commercial court case may be:
  - 4.1 an action
  - 4.2 an application
  - 4.3 an urgent application
5. The Judge allocated to case manage a commercial matter **SHALL**:
  - 5.1 determine any interlocutory issues at such times as the judges' schedule of commitments allows
  - 5.2 shall preferably hear the trial or application, unless an unavoidable delay in rostering the matter to be heard by that judge occurs, or other practical circumstances inhibit a retention of the matter by that judge.
6. The criteria for what types of cases constitute a commercial court case are indicated in schedule 1 to these directives. schedule 1 serves as a guideline to the type of case only and is not a closed list.
7. An application for a matter to be allocated as a Commercial Court case is made by delivering a letter to the deputy judge president. The letter must set out-

- 7.1 A broad and uncontroversial description of the case;
- 7.2 Why the case is a commercial case or should be considered as such, warranting treatment under the Commercial Court Directives. In particular, the following criteria for selection of a case must be addressed. The satisfaction of one criterion is sufficient to render a case eligible for selection:
- 7.2.1 complexity or novelty of law.
  - 7.2.2 complexity of fact
  - 7.2.3 value at stake is a minimum of r25 million rand.
  - 7.2.4 public interest.
- 8 If the letter is not directed by all the parties to the suit, the letter must be copied to the other parties in the matter providing an email address for correspondence.
- 9 A party in receipt of a letter referred to above, and who wishes to make representations, may do so by sending a letter to the Judge President or Deputy Judge President within five (5) court days of receiving the letter requesting the case be allocated a Commercial Court case. A copy of the letter must be sent to the other parties, providing an email address for all correspondence.
- 10 The Judge President or Deputy Judge President will determine whether the case should be allocated as a Commercial Court case after an assessment has been made about whether, in the circumstances of the case, the intervention by a judge to case manage the matter to conclusion shall add any material value to the litigation process. In this regard, the earlier in the process a judge intervenes, the more likely that there shall be value added to the process.
- 11 The Judge President or Deputy Judge President shall inform the parties in writing of the outcome of the application.
- 12 All proceedings in the Commercial Court will be subject to management by the Court. In the event of one or more parties conducting themselves in a dilatory manner and thus contrary to the spirit of the commercial court system, the judge assigned to manage the matter may exercise a discretion to cancel the certification of the matter as a commercial case.

## **CHAPTER 2: BRINGING A TRIAL ACTION TO THE COMMERCIAL COURT**

13. At any time after a summons has been issued out of the High Court, any party to the suit may apply to have the case allocated as a Commercial Court case.
14. If the case is allocated as a Commercial Court case, the Deputy Judge President will allocate a Judge to case manage the matter.

### **CHAPTER 3: THE FIRST CASE MANAGEMENT CONFERENCE**

15. As soon as reasonably possible after the Commercial Court case is allocated to a Judge, the first Case Management Conference must be held at a time and date determined by the Judge allocated to the matter, on application by the plaintiff within 15 (fifteen) days of allocation. If the plaintiff fails to make an application as required any other party may apply for Case Management Conference.
16. At the First Case Management Conference, the following general matters must be canvassed:
  - 16.1 A general sense of what the matter is about;
  - 16.2 What needs to be done to bring the matter to trial;
  - 16.3 A timetable for getting the matter expeditiously to trial;
  - 16.4 A potential trial date;
  - 16.5 The number of witnesses likely to be called, including expert witnesses; and
  - 16.6 The probable length of the trial;
  - 16.7 Creating an appropriate electronic means for communications and exchange and filing of documents
17. The Judge will then, absent agreement, determine the timetable to bring the matter to trial.

### **CHAPTER 4: GETTING THE MATTER READY FOR TRIAL**

18. Matters heard in the Commercial Court will be dealt with in line with the broad principles of fairness, efficiency and cost-effectiveness.
19. The following steps will usually be of application, subject to the requirements of the particular case.
20. The plaintiff, within the period specified by the Judge at the first Case Management Conference, must file a statement of the case containing the following:
  - 20.1 The plaintiff's cause(s) of action and relief claimed;
  - 20.2 The essential documents the plaintiff intends to rely on, and
  - 20.3 A summary of the evidence the plaintiff intends to rely on.
21. The defendant, and third parties, if any, within the period specified by the Judge at the first Case Management Conference must file a responsive statement of the case containing the following:
  - 21.1 The defendant's or third party's defence(s) and any counterclaim relied upon;
  - 21.2 The essential documents the defendant or third-party intend(s) to rely on;

21.3 A summary of the evidence the defendant or third-party intend(s) to rely on.

22. No request for further particulars may be sought in the Commercial Court.

## **CHAPTER 5: THE SECOND CASE MANAGEMENT CONFERENCE AND CONSEQUENTIAL STEPS**

23. A Second Case Management Conference must be held at which the parties will present either an agreed list of triable issues or, absent agreement, each party's identification of the triable issues. All interlocutory issues shall be dealt with at this conference or at any postponed date, including determination of the triable issues.

24. At this conference the dates for filing of full witness statements by the parties will be fixed, it being understood that the witness statements will constitute, save with the leave of the Judge or Judges, the evidence in chief of the particular witness.

25. No general discovery is required in commercial court cases.

26. At a second Case Management Conference, the Judge may allow for the targeted disclosure of documents. If permitted, a request for disclosure must be made concerning specific documents or classes of documents that are relevant to the dispute as defined in the statement of case or responsive statement of the case. Any enforcement applications relating to disclosure will be determined by the Judge or Judges in good time to permit of orderly preparation for trial.

27. Expert evidence that is sought to be led at trial is to be dealt with as follows:

27.1 If the matter involves expert evidence, within the time determined by the Judge or Judges, the experts must:

27.2 Convene a meeting of the experts;

27.3 File their expert reports;

27.4 Produce a joint minute setting out the issues of agreement and disagreement as between the experts and the reasons for the disagreement.

27.5 The Judge may convene a meeting with the experts to narrow the issues to be determined at trial.

27.6 Should further conferences be required, parties may approach the allocated Judge or Judges to convene a conference upon good cause; the allocated Judge or Judges will determine whether to convene such a conference and dispose of any further matters arising.

## **CHAPTER 6: THE TRIAL**

28. The case proceeds to trial in accordance with the timetable.
29. A written application must be made in advance of the trial to the allocated Judge if a party wishes to lead additional evidence at trial outside of their witness statements.
30. Such evidence will be limited to identified issues as directed at the case management conference or after that on application to the Judge.
31. Before the trial date, a bundle of essential documents to be used at trial must be compiled and agreed upon by the parties.
32. Unless otherwise specifically decided by the judge, documents will be admitted without the necessity for formal proof.

## **CHAPTER 7: BRINGING AN APPLICATION TO THE COMMERCIAL COURT**

33. A party may seek the designation of an application as a Commercial Court case in three broad circumstances:
  - 33.1 If a party has already brought an application to the High Court, another party to the suit may seek to have the case allocated as a Commercial Court case.
  - 33.2 If a party intends on bringing an application to the High Court, that party may seek to have the case allocated as a Commercial Court case.
  - 33.3 If all of the papers comprising the application have been filed, any party to the suit may apply for an expedited hearing of the matter as a commercial case for reasons of commercial urgency or on other grounds.

## **CHAPTER 8: THE CASE MANAGEMENT CONFERENCE FOR APPLICATIONS**

34. As soon as reasonably possible after the Commercial Court APPLICATION is allocated to a Judge, a Case Management Conference must be held at a time and date determined by the Judge allocated to case manage the matter, on the application of the application within 15 days of the allocation.
35. If a party has already initiated an application to the High Court, or if the party intends on bringing an application to the High Court, and that application is allocated as a Commercial Court case, at the Case Management Conference the following must be determined:
  - 35.1 A timetable for the filing of affidavits or further affidavits;
  - 35.2 A date for filing of Heads of Argument;
  - 35.3 A date for the hearing; and
  - 35.4 The length of the hearing (if at all possible)

36. If all of the papers to the application have been filed, and that application is allocated as a Commercial Court case, at the first Case Management Conference, the following must be determined:

- 36.1 A date for filing Heads of Argument;
- 36.2 A date for the hearing; and
- 36.3 The length of the hearing (if at all possible).

#### **CHAPTER 9: APPLICATIONS BROUGHT ON AN URGENT BASIS**

37. Where a party seeks to bring an urgent application, depending on the degree of urgency alleged by the applicant, the applicant ought to make a written or telephonic request that the matter is allocated as an urgent Commercial Matter and that a Judge is allocated to hear the matter.

38. Depending on the degree of urgency, the Judge allocated to hear the matter will issue directives in respect of the filling of papers on a truncated basis, appropriate to the degree of urgency contended for by the applicant.



Roland Sutherland

Deputy Judge President

2 June 2022