



OFFICE OF THE JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA
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- TO:**
1. The General Council of the Bar of South Africa
 2. The National Bar Council of South Africa
 3. National Forum for Advocates
 4. The Pretoria Society of Advocates
 5. The Johannesburg Society of Advocates
 6. Advocates for Transformation
 7. Law Society of South Africa
 8. Law Society of the Northern Provinces
 9. Black Lawyers Association
 10. National Association of Democratic Lawyers
 11. Gauteng Attorneys Association
 12. Pretoria Attorneys Association
 13. Johannesburg Attorneys Association
 14. Office of the State Attorney - Pretoria
 15. Office of the State Attorney – Johannesburg
 16. Legal Aid South Africa
 17. The Chief Registrar and Registrars – Gauteng and Gauteng Local Divisions of the High Court

COMMERCIAL COURT PRACTICE DIRECTIVE

I enclose herewith the Commercial Court Practice Directive for both the Gauteng and Gauteng Local Divisions of the High Court.

This Practice Directive comes into effect immediately.

Sincerely,

D MLAMBO
JUDGE PRESIDENT OF THE GAUTENG DIVISIONS OF THE
HIGH COURT OF SOUTH AFRICA
03 OCTOBER 2018



COMMERCIAL COURT PRACTICE DIRECTIVE

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, or by those on whom such a process has been served.
4. Depending upon court scheduling, the Judge or two Judges allocated to case manage a commercial matter will also determine any interlocutory issues and shall preferably hear the trial or application.
5. The criteria of a Commercial Court case are indicated in Schedule 1 to these directives. Schedule 1 serves as a guideline only and is not a closed list.

CHAPTER 2 - BRINGING A TRIAL ACTION TO THE COMMERCIAL COURT

1. 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.
2. An application for a matter to be allocated as a Commercial Court case is made by delivering a letter to the Judge President or Deputy Judge President. The letter must set out-
 - a) A broad and uncontroversial description of the case;
 - b) Why the case is a commercial case or should be considered as such, warranting treatment under the Commercial Court Directives.
3. 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.
4. 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.
5. The Judge President or Deputy Judge President will determine whether the case should be allocated as a Commercial Court case.

6. The Judge President or Deputy Judge President shall inform the parties in writing of the outcome of the application.
7. If the case is allocated as a Commercial Court case, the Judge President or Deputy Judge President will allocate a Judge or two Judges to case manage the matter, and ordinarily this Judge or these two Judges will determine interlocutory matters and hear the trial, either sitting alone or together.
8. All proceedings in the Commercial Court will be subject to management by the Court.

CHAPTER 3 – THE FIRST CASE MANAGEMENT CONFERENCE

1. As soon as reasonably possible after the Commercial Court case is allocated to a Judge or two Judges, the first Case Management Conference must be held at a time and date determined by the Judge or two Judges 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.
2. At the First Case Management Conference, the following general matters must be canvassed:
 - a) A general sense of what the matter is about;
 - b) What needs to be done to bring the matter to trial;
 - c) A timetable for getting the matter expeditiously to trial;
 - d) A potential trial date;
 - e) The number of witnesses likely to be called, including expert witnesses; and
 - f) The probable length of the trial;
 - g) Creating an appropriate electronic means for communications and exchange and filing of documents
3. The Judge or the two Judges will then, absent agreement, determine the timetable to bring the matter to trial.

CHAPTER 4 – GETTING THE MATTER READY FOR TRIAL

1. Matters heard in the Commercial Court will be dealt with in line with broad principles of fairness, efficiency and cost-effectiveness.

2. The following steps will usually be of application, subject to the requirements of the particular case.
3. 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:
 - a) The plaintiff's cause(s) of action and relief claimed;
 - b) The essential documents the plaintiff intends to rely on, and
 - c) A summary of the evidence the plaintiff intends to rely on.
4. The defendant, and third parties, if any, within the period specified by the Judge or Judges at the first Case Management Conference must file a responsive statement of the case containing the following:
 - a) The defendant's or third party's defence(s) and any counterclaim relied upon;
 - b) The essential documents the defendant or third-party intend(s) to rely on;
 - c) A summary of the evidence the defendant or third-party intend(s) to rely on.
5. Any party against whom a claim is made must similarly file a statement of defence.
6. No request for further particulars may be sought in the Commercial Court.

CHAPTER 5 – THE SECOND CASE MANAGEMENT CONFERENCE AND CONSEQUENTIAL STEPS

1. 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 will be dealt with at this conference or at any postponed date, including determination of the triable issues.
2. 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.
3. No general discovery is required in commercial court cases.
4. At a second Case Management Conference, the Judge or Judges 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.

5. Expert evidence that is sought to be led at trial is to be dealt with as follows:
 - a) If the matter involves expert evidence, within the times determined by the Judge or Judges, the experts must:
 - b) Convene a meeting of the experts;
 - c) File their expert reports;
 - d) Produce a joint minute setting out the issues of agreement and disagreement as between the experts and the reasons for the disagreement.
 - e) The Judge or Judges may convene a meeting with the experts to narrow the issues to be determined at trial.
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

1. The case proceeds to trial in accordance with the timetable.
2. A written application must be made in advance of the trial to the allocated Judge or Judges if a party wishes to lead additional evidence at trial outside of their witness statements.
3. Such evidence will be limited to identified issues as directed at the case management conference or after that on application to the Judge or Judges.
4. Before the trial date, a bundle of essential documents to be used at trial must be compiled and agreed upon by the parties.
5. Standardly, documents will be admitted without the necessity for formal proof.

CHAPTER 7 - BRINGING AN APPLICATION TO THE COMMERCIAL COURT

1. A party may seek the designation of a matter as a Commercial Court case in three broad circumstances:

- a) If a party has already brought an application to the High Court, any party to the suit may seek to have the case allocated as a Commercial Court case.
 - b) 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.
 - c) 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.
2. An application for a matter to be allocated as a Commercial Court case is made by delivering a letter to the Judge President or Deputy Judge President. The letter must set out-
 - a) A broad and uncontroversial description of the case;
 - b) The motivation for the allocation of the case as a commercial case; and
 - c) The motivation for the case warranting treatment under the Commercial Court Directives.
 3. If the letter is not directed by all the parties, the letter must be copied to the other parties in the matter providing an email address for correspondence.
 4. 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 5 court days (or less if an application is brought on an urgent basis). A copy of the letter must be sent to the other parties, providing an email address for all correspondence.
 5. The Judge President or Deputy Judge President will determine whether the case should be allocated as a Commercial Court case.
 6. The criteria of a Commercial Court case are indicated in Schedule 1 to these directives. Schedule 1 serves as a guideline only and is not a closed list.
 7. The Judge President or Deputy Judge President shall inform the parties in writing of the outcome of the application.
 8. If the case is allocated as a Commercial Court case, the Judge President or Deputy Judge President will allocate a Judge or two Judges to case manage the matter.

CHAPTER 8 - THE CASE MANAGEMENT CONFERENCE FOR APPLICATIONS

1. As soon as reasonably possible after the Commercial Court case is allocated to a Judge or two Judges, a Case Management Conference must be held at a time

and date determined by the Judge or Judges allocated to case manage the matter, on the application of the applicant within 15 days of the allocation.

2. 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:
 - a) A timetable for the filing of affidavits or further affidavits;
 - b) A date for filing of Heads of Argument;
 - c) A date for the hearing; and
 - d) The length of the hearing (if at all possible)
3. 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:
 - a) A date for filing Heads of Argument;
 - b) A date for the hearing; and
 - c) The length of the hearing (if at all possible).

APPLICATIONS BROUGHT ON AN URGENT BASIS

1. Where a party seeks to bring an urgent application on an urgent basis, depending on the degree of urgency alleged by the applicant, the applicant ought to make a written or telephonic request, to request that the matter is allocated as an urgent Commercial Matter and that a Judge or two Judges is or are allocated to hear the matter. Whether the request is made in writing or telephonically, the party making the request must set out-
 - a) A broad and uncontroversial description of the case;
 - b) The motivation for the designation of the case as a commercial case; and
 - c) The motivation for the case warranting treatment under the Commercial Court Directives;
 - d) The reason why the applicant contends that the matter is urgent.
2. If a written request is made, it must be copied to the other parties in the matter providing an email address for correspondence. If the request is made telephonically, the party making the request must inform the other parties of the intended application, providing information as per 1 (a) to (d) above.

3. The Judge President or Deputy Judge President will determine whether the case should be allocated as an urgent Commercial Court case.
4. The criteria of a Commercial court case are indicated in Schedule 1 to these directives. Schedule 1 serves as a guideline only and is not a closed list.
5. The Judge President or Deputy Judge President shall inform the parties in writing of the outcome of the application. Where the request was made telephonically, the Judge President or Deputy Judge President will inform the parties telephonically of the outcome of their request.
6. If the case is allocated as an urgent Commercial Court case, the Judge President or Deputy Judge President will allocate a Judge or two Judges to hear the matter.
7. Depending on the degree of urgency, the Judge or Judges allocated to hear the matter will issue directives in respect of the filing of papers on a truncated basis, depending on the degree of urgency contended for by the applicant.

03 October 2018

SCHEDULE 1 TO THE COMMERCIAL COURT PRACTICE DIRECTIVES

A 'Commercial Court case' is ordinarily a substantial case that has as its foundation a broadly commercial transaction or commercial relationship.

The following are a list of examples, which might depending on their particular facts or legal aspects, qualify as commercial court cases:

any claim arising out of the transaction of trade and commerce and includes any claim relating to:

- (a) the export or import of goods;
- (b) the carriage of goods by land, sea, air or pipeline;
- (c) the exploitation of oil and gas reserves or other natural resources that do not involve Administrative Law;
- (d) insurance and reinsurance;
- (e) banking and financial services
- (f) the operation of markets and exchanges;
- (g) the purchase and sale of commodities;
- (h) medical scheme matters;
- (i) commercial matters arising out of business rescue and insolvency cases;
- (j) all commercial matters affecting companies arising out of the Companies Act 71 of 2008 and its interpretation;
- (k) arbitration;
- (l) delictual cases that take place in a commercial context for, e.g. unlawful competition cases;
- (m) generally, appropriate contractual matters;
- (n) intellectual property cases;

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