



SOUTH AFRICA

Continent – Africa | **Region** - Africa | **Population** – 49,004,031
Size – 1,219,912 km² | **Language** – IsiZulu, Afrikaans, English | **Monetary Unit** – SA Rand
Geography – southern tip of Africa, long coastline of more than 2,500km
Religion – Predominately Christianity and Roman Catholics.

A. LIMITATION PERIODS IN GENERAL

Under the Prescription Act No.68 of 1969, the limitation periods are the same for contract, tort and land disputes. Money claims must be brought within three years from the date on which the debt became due or the cause of action arose. The time period is interrupted by the valid issue and service of a summons or other court process.

B. FUNDING ACTIONS IN SOUTH AFRICA

In general, South African lawyers are allowed to charge their clients either on an hourly rate or per day. Contingency fees can be arranged subject to guidelines set by the Law Society and the Contingency Act No. 66 of 1997.



C. PRIVILEGE

There are categories of documents that are privileged such as communications between a lawyer and his client. If the documents are prepared in contemplation of or in preparation for litigation, these are considered as privileged. However, a document is not privileged merely because it is written and delivered on the basis that it is confidential.



D. BRINGING COURT PROCEEDINGS

(i) Pre-Action Conduct

There are no pre-action conduct in court proceedings, only if a claim is brought against the state or any of its organizations.



(ii) Are Court Proceedings Public or Confidential?

High Court proceedings are open to the public whereas arbitrations and mediations are confidential. However, the High Court has the discretion to order proceedings be confidential but only in limited circumstances.

(iii) Starting the Claim

Before bringing a claim, the claimant will issue a letter of demand setting out the claim to the defendant. If the defendant does not comply with this demand, the claimant can start civil proceedings either by:

(a) Bringing an action – this involves matters of factual dispute involving witness evidence in a trial. To start an action, a summons or statement of claim must be filed at the High Court and served on the defendant;

(b) By application – this is a quicker and more efficient procedure. This is used where there are no factual dispute and only the application of the relevant law is in question. It is deemed as started once the (i) notice of motion and (ii) witness statement have been issued out of the court and served on the defendant.

The defendant must be given notice of the claim served on it by the sheriff of the High Court. By legislation, the sheriff is the statutory office to effect service of court processes.

(iv) Next Steps

The High Court Rules provides time limits for the completion of each stage of proceedings. The main time limits are as follows:

- (a) **Notice of Intention to Defend** – after service of the summons, the defendant has 10 business days to serve a formal confirmation of its intention to defend the action on the claimant’s lawyers. If the defendant fails to serve its notice within the time limit, the claimant can apply to the High Court with the registrar for a default judgment. The registrar has the discretion to refuse to grant judgment and can request witness statements and/or forms of proof in support of the claim.
- (b) **Plea** – after the defendant has served a notice of intention, it must serve a plea (a formal statement of its defence) within 20 business days. However, if the defendant does not plead with sufficient particularity, the claimant can apply to the court for an order directing the defendant to do so. If the defendant fails to deliver a plea, the claimant can apply to the registrar for judgment on the terms set out in the its summons. The claimant must first serve a notice of a bar on the defendant, giving a further five business days within which to deliver a plea. It is a last chance for the defendant to deliver a plea, failure to do so will enable judgment against it.
- (c) **Counterclaim** – if the defendant raises new issues in its plea, the claimant is allowed 15 business days from the date of service of the plea to reply.

E. THE ROLE OF EXPERTS

(i) Appointment Procedure

Each party can appoint their own experts for the trial. Typically, the court do not appoint experts in commercial disputes. If a party wishes to use a third-party expert, they must deliver a notice of its intention to do so to the other party at least 15 days before the hearing. In addition, a summary of the expert’s opinions and reasons to the other party at least 10 days before hearing.



(ii) Their Role

Experts who are instructed to give evidence at court have a duty to assist the court on matters within his/her expertise. However, it is the role of the High Court to determine the value that should be attached to the expert evidence, and it will not blindly accept expert evidence.

F. INTERIM REMEDIES

(i) Summary or Default Judgment

After the defendant has served a notice of intention to defend, a claimant can apply for summary judgment. To obtain a summary judgment, the claimant must satisfy the High Court that the defendant does not have a bona fide defence to the action and/or entered a notice of intention to defend solely for the purpose of delay.



(ii) Security for Costs

If the claimant is foreign, a defendant resident in South Africa can apply to the High Court compelling the foreign claimant to file security for costs. On the other hand, if the claimant is a resident in South Africa, it is not necessary to file security for costs. However, a court can order a corporate claimant to provide security for costs if there is reason to believe that the corporate claimant will not be able to pay the costs of the defendant successful in its defence.

G. DISCLOSURE

Under the High Court Rules, a party must make a full and prompt disclosure of all documents, currently or previously in its possession of an agent, that are relevant to the issues of the case.



H. COSTS

(i) Loser Pays?

The High Court has a wide discretion in relation to cost orders. The losing party is liable to pay the successful party's cost, but only that part of the successful party's costs prescribed by the party to party tariff (a task-based tariff that determines the amount recoverable from the losing party).

(ii) Interest?

Interest is not awarded on costs. However, after a cost award has been made, it is a debt. If a demand is made for payment of the costs awarded and payment is not made, interest accrues at the prescribed rate of interest, which is currently 15.5 percent per year (simple interest).

This note is not intended to be a definitive guide and is for general information only. It is not intended to contain definitive legal advice and should not be relied on in place of legal advice appropriate to your circumstances. If legal advice, in relation to any particular matters that you are handling, is required please contact Robert Kay (at +44 20 7864 2007 or rkay@cozen.com) or your usual adviser at Cozen O'Connor.