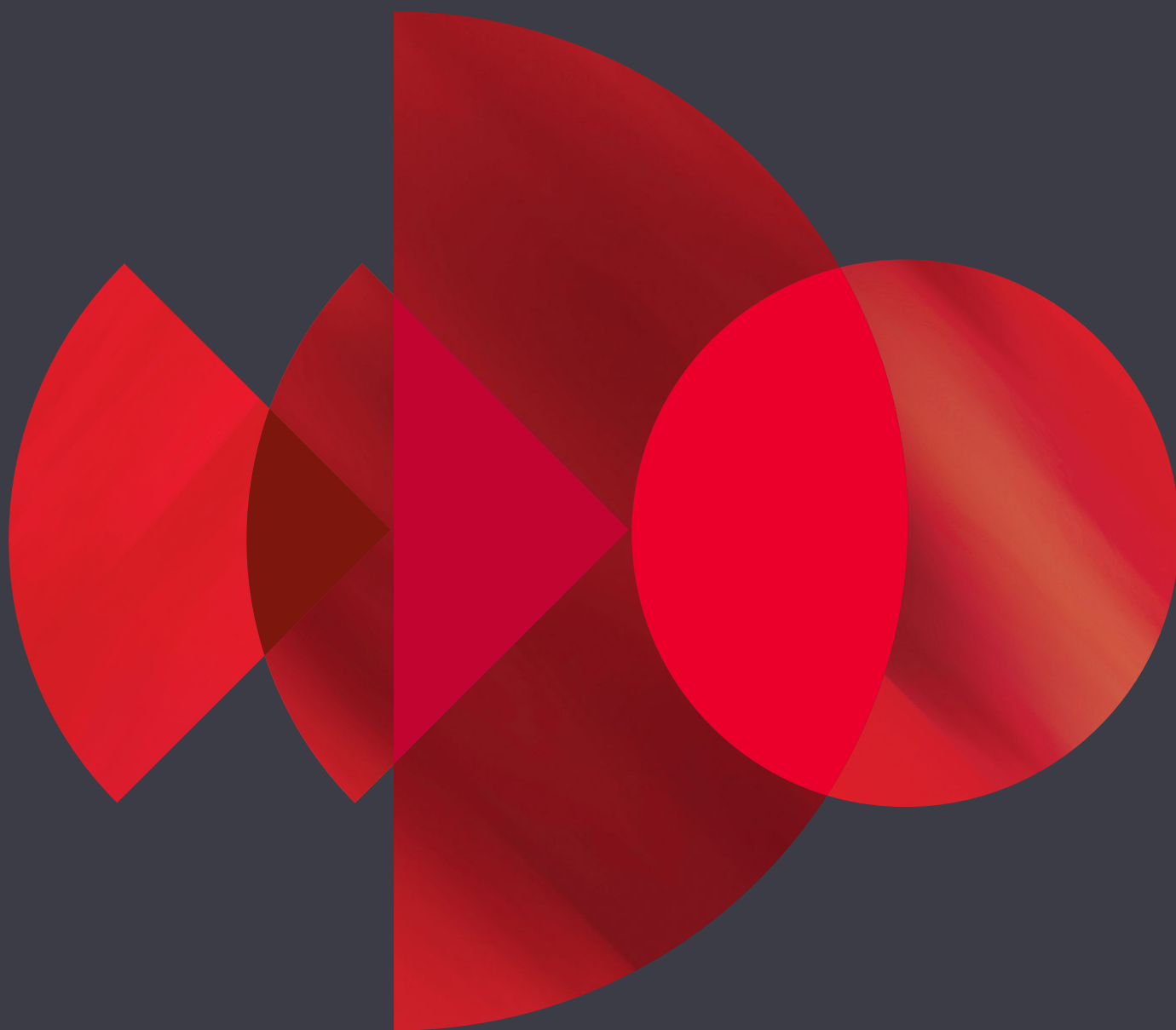




# The Big Read Book Series Volume 27

Class Actions in South Africa

May 2026



As the world moves

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## Introduction

Dearest reader

Welcome to The Big Read Book Series. This volume explains class actions in South Africa: what they are, how certification works, what the new High Court Rules have changed, and how defendants can prepare and respond.

An online version is available on our website at <https://www.deneys.co.za/thinking/insights>.

Until recently, South Africa had no statute dedicated to class actions. Courts developed the framework over the past two decades. From 19 September 2025, amendments to the Uniform Rules of Court introduced a dedicated procedure for certifying and managing class actions. These rules are procedural. The substantive requirements remain in the case law. This publication explains both the governing principles and the procedure.

## Why class actions should matter

**Class actions are a material litigation and reputational risk for corporate defendants in South Africa. Exposure can arise in a variety of sectors, for example:**

- **Liability insurance** in the form of knock-on exposure where insureds face class claims, prompting potential parallel disputes on the duty to defend and the application of exclusions, deductibles and limits;
- **Financial services** such as market-conduct claims based on alleged misstatements to investors;
- **Consumer goods** such as product-liability claims over a defective household appliance or pharmaceutical product;
- **Technology/telecoms** such as damages for data-breach claims; and
- **Mining/industrial** such as environmental or health-related claims alleging community-wide impacts.

Early, defendant-side strategies grounded in an understanding of the certification criteria and procedure for class actions helps contain exposure, control costs and protect brand.

## Contents

This publication covers: the history of class actions in South Africa; the benefits of the mechanism; the new High Court Rules; certification as the gateway; how class actions are run after certification; funding and costs; prescription; defence options; and some concluding remarks.

## History of class actions in South Africa

For many years, legal standing in South African law was restrictive. A litigant generally needed a direct and substantial interest to appear. Our rules recognised joining multiple plaintiffs or defendants in a single action, and representative litigation in specified contexts, such as a curator acting for a minor or a person lacking capacity.

A general class action mechanism took shape after the 1996 Constitution. Section 38(c) of the Bill of Rights permits anyone acting as a member of, or in the interests of, a group or class of persons to approach a court to vindicate constitutional rights. Courts then developed the broader principles that now apply to civil claims.

## Key milestones

Year	Case	Contribution
2001	<i>Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government v Ngxuza</i>	Confirmed representative relief for mass claims and emphasised access to justice.
2013	<i>Children’s Resource Centre Trust v Pioneer Foods</i>	Extended class actions to civil damages and articulated core certification factors.
2013	<i>Mukaddam v Pioneer Foods</i>	Confirmed certification is discretionary and guided by the interests of justice.
2016	<i>Nkala v Harmony Gold (Silicosis)</i>	First major mass-delict certification; allowed opt-in/opt-out features, staged trials and court-supervised notice.
2020	<i>De Bruyn v Steinhoff</i>	First shareholder certification; refined class definition, foreign claimants/jurisdiction, funding disclosure and conflicts.
2025	Uniform Rules amendments	Introduced procedural rules for class action certification and management.

## Benefits of class actions

Class actions allow courts to determine common questions once, rather than through many individual suits. This is especially valuable when individual losses from similar causes are too small to justify separate litigation. In suitable cases, a single proceeding can resolve the core issues efficiently and consistently, with individual questions addressed later if needed.

Class actions can also increase a defendant’s exposure because many claims are aggregated in one proceeding. As the Financial Services Board observed in the South African Law Commission’s 1998 report, class actions can raise the magnitude of potential liability.

## The High Court rules on class actions

Certification is the approval by the courts that the class action is justified. Certification is the permission stage. Without it, a class action cannot proceed.

Previously, courts derived both the process and the relevant factors from case law. From 19 September 2025, the Uniform Rules codify the procedure for certification and management, while leaving the substantive standards to the courts’ jurisprudence.

### The Uniform Rules of Court include:

- A definition of “class action” (Rule 1): an action instituted by a representative on behalf of a class of persons, which may include a representative. Material elements of the issues of fact or law involved must be substantially similar in respect of all members of the class, and where the members of the class are bound by the outcome of the common issues in the action.
- A dedicated certification rule (Rule 11A), which largely codifies principles established through case law, sets out what an applicant must establish, the papers to be filed, and the court’s case-management powers, in an application for certification of a class action.

The rules are procedural. They work alongside the substantive jurisprudence developed by the courts. Rule 11A requires a certification application to be brought on notice of motion, supported by an affidavit, and accompanied by draft particulars of claim setting out the grounds upon which the class action will be based.

The application must disclose the representative's ability to act in the best interests of the class, any actual or potential conflicts of interest, funding arrangements, and the capacity to conduct and manage the litigation.

The application must state whether the class will be opt-in, opt-out, or a combination.

**An applicant wishing to represent a class in a class action must establish the following at certification:**

- It is in the interests of justice to certify the action as a class action;
- The class is identifiable or definable by objective criteria;
- There is a cause of action raising a triable issue;
- The right to relief depends on issues of fact or law common to all members of the class;
- The relief sought or damages claimed flow from the cause of action and are ascertainable and capable of determination;
- Where damages are claimed, there is an appropriate procedure to allocate damages to individual class members;
- Given the composition of the class and the nature of the proposed action, a class action is the most appropriate way to determine the claims;
- The applicant is suitable to conduct the action and represent the class, which in turn requires the applicant to indicate, apart from any other relevant factor:
  - their ability to adequately represent the best interests of the members of the class;
  - whether there is likely to be any conflict or potential conflict of interest between the applicant and class members;
  - the applicant's ability to make satisfactory arrangements on funding the class action;
  - the applicant's ability to conduct and manage the class action;
- Any other relevant factor that may have a bearing on the grant or refusal of the application.

The court may direct the form and manner of notice to potential class members, considering prejudice, class size, education levels, identifiability, relief and amounts at stake, geographic dispersion, enforcement difficulties for individual suits, and any other relevant factor. The court may make any order it considers appropriate in the interests of justice. Leave to appeal follows the usual Rule 49 appeal process and is not automatic.

## **Certification: the gateway**

The certification factors reflected in Rule 11A were developed in the case law, which guides how courts will apply them in practice.

### **Class definition and identifiability**

The class must be defined using objective, precise criteria so that membership can be determined reliably. Practical attributes include the time period, product or contract type, location, and similar fixed markers.

As a starting point, the class should be defined to include local residents of South Africa (*incolae*) who meet the objective criteria. Non-residents may be included, but the mechanism should secure the court's jurisdiction for such claimants - typically through an opt-in process that constitutes submission to the court, as in *Steinhoff*.

Very large classes or long class periods do not, on their own, render a class overbroad or a trial unmanageable.

## **Triable issue**

The draft particulars must disclose a legally tenable cause of action with a *prima facie* sound evidential basis. Following *Children's Resource Centre Trust*, the founding affidavit should set out the evidence already available, evidence expected to become available, and how it will be obtained. The court does not decide the merits at certification, and a defendant can still raise an exception later if the particulars of the claim are deficient.

## **Commonality**

There must be issues of fact or law common to all class members that a court can resolve once. Not every element must be common, and quantum is often individualised. The courts may order staged trials that determine common issues first, followed by individual issues.

## **Relief and damages**

The relief sought must logically follow from the pleaded cause and be ascertainable on the evidence. At certification, the court must be satisfied there is a workable method to allocate compensation to class members. Where individual assessment is impractical, the court may consider aggregate damages with fair and auditable distribution mechanisms that directly or indirectly compensate members of the class, such as targeted price reductions. Distributions that do not compensate class members are not permitted.

## **Allocation of damages**

Where damages are claimed, the applicant should propose a clear and practical allocation procedure as part of the certification plan.

## **Representation, funding and conflicts**

The representative must be suitable and act in the class's best interests. Courts look at the representative's ability to gather evidence, instruct lawyers, and manage the case; the legal team's

capacity and experience; funding arrangements, including contingency fees, third-party funding, and after-the-event insurance; and any conflicts and how they will be managed. The litigation must not be driven primarily for the benefit of lawyers or funders.

## **Appropriateness and interests of justice**

A class action must be the most appropriate way to determine the claims, given the nature of the issues and the class composition. The overarching test is the interests of justice. The absence of a single factor is not necessarily fatal if the interests of justice favour certification.

Aspects to consider are whether individual suits are realistic (especially where individual losses are small); the cost and delay of fragmented litigation; whether a class action protects defendants from multiple inconsistent findings on common issues; and whether binding absent members can be made fair through adequate notice and opt-out rights.

## **Opt-in and opt-out**

Under an opt-in model, a person joins the class by taking a positive step such as formally applying to join the class.

Under an opt-out model, a person within the class definition is included unless they opt out within a set period. Courts often adopt a hybrid: opt-out for local South African claimants with small, diffuse losses, and opt-in for foreign claimants to secure jurisdiction.

## **Notice plans**

The plans by which it is proposed to give notice of the proposed proceedings to potential opt-in or opt-out class members should be practical and tailored to the class. The representative can use press, social media, a dedicated website, helplines and, where feasible, direct notices. The court may approve and direct the plan.

## Running the class action after certification

Once certified, the case proceeds as a trial action under the Uniform Rules. Pleadings are finalised, and discovery of relevant documents is often extensive, including e-discovery and third-party records. Courts may stage trials to decide common issues first, followed by individual issues or damages. Decisions on common issues bind the class and the defendants, subject to appeal.

The certification order will likely provide that settlements that bind class members require court approval. Courts scrutinise fairness, legal fees and distribution mechanisms.

## Funding and costs

Third-party funding is permitted when it advances access to justice. Courts require disclosure of funding arrangements to manage conflicts and ensure the litigation serves the class's interests. Contingency fees are allowed under the Contingency Fees Act, 1997, which caps fees at the lesser of double the attorney's normal rate or 25% of the award, excluding costs.

Costs at certification are discretionary. In the subsequent class action, costs generally follow the result, although courts may temper cost orders in constitutional or clear public-interest matters. Defendants should consider adverse-costs insurance and coordinated cost-sharing where multiple defendants are sued.

## Prescription

Most claims prescribe three years after the debt becomes due, which is when the claimant knew or reasonably ought to have known the material facts and the defendant's identity. In a two-stage class action, a practical issue is when prescription is interrupted. Service of process claiming payment usually interrupts prescription, but certification applications do not ordinarily claim payment.

South African courts have held that serving the certification application interrupts prescription which has not already run. Certification is a necessary procedural step to claim the debt, and it would be contrary to the interests of justice to allow claims to expire while certification is pending.

## A defendant's options

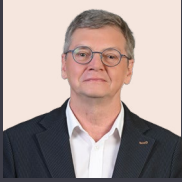
Defendants can oppose certification on any of the Rule 11A factors. If certification is granted, defendants can narrow or clarify issues through exceptions or irregular-step applications, enforce proper discovery, and propose phased trials.

Defendants can pursue settlement with class members. Court-approved class wide settlements can reduce risk and cost. Mediation is often effective, particularly with multiple defendants or heightened reputational risk, and is encouraged in some High Court divisions. Participation in a mediation can be undertaken by the class representative and their legal team rather than every class member. Class arbitration is uncommon and difficult in practice because absent class members must consent to be bound.

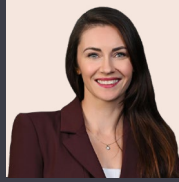
## Final word

The September 2025 amendments give class actions a procedural home. The substantive certification tests remain those developed by the courts, with the interests of justice at their core.

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