

THE INTEREST OF JUSTICE

[75] A perusal of all the facts seem to lead to the unavoidable conclusion that the certification of the class application/action will be in the interest of justice and will ensure that a large group of elderly investors be given an opportunity to bring their case before a Court for determination.

CONCLUSION

[76] In the light of all the circumstances I am of the view that the application for certification should be granted.

[77] The following order is made:

1. **Subject to the paragraphs below, leave is granted to the Fifth to Ninth Applicants to institute a class application /class action assisted and represented by their current attorneys of record (Theron & Partners) – as representatives of the investors (i.e. the holders of shares and/or units) in Highveld Syndication 21 Ltd (20th Respondent – “HS21”) and Highveld Syndication Ltd 22 (21st Respondent – “HS 22”) against First to Fifth Respondents on the strength of the buy-back agreement**

forming part of the relevant prospectuses issued in relation to HS 21 and HS 22, copies of which agreements are attached as annexure "SV1" and "SV2" to the founding affidavit of First Applicant dated 30 October 2014 filed under the above case number;

2. Such class application or class action is to be issued within 40 days of the granting of this order or such later date as the court may allow upon application.
3. Fifth to Ninth applicants are hereby permitted to act as representatives of those investors in HS 21 and HS 22 who "opt in" for purposes of such class application in the manner described in paragraph 4 below.
4. Each investor in HS21 and HS22 who wishes to be part of the class application is required to "opt in" by means of the following:
 - (a) By registering at/on a web-based registration site/form – the URL (website address) which will be communicated and published as referred to below. For purposes of such registration, an investor shall provide the following:

- (i) Full name and surname of the investor - or the name of Trust or company/close corporation) or of the investor's representative (for instance executor or curator of the investor);
- (ii) identity number of investor (or registration number in the case of a company or close corporation being the investor);
- (iii) the total amount invested in HS21 and/or HS22;
- (iv) an email address for purposes of correspondence with the investor.
- (v) A cell phone contact number (in the event of communication by means of email is or may become impractical or if an email address does not exist);

(b) Subject to subparagraph (c) below, by paying the following registration fee into a dedicated (separate) trust account of Theron & Partners Attorneys (Stellenbosch):

- (i) In the case of an investor who has an investment in HS21 and/or HS22 of R100,000.00 or less: a registration fee of R4,500;
- (ii) In the case of an investor who has an investment

in HS21 and/or HS22 of *more* than R100,000.00 : a registration fee of R6,500;

(c) Investors in HS21 and HS22 and/or who are also fully paid up members of the Highveld Syndication Action Group ("HSAG") as at 31 January 2020 are exempted from the above registration and payment of the fee. Such HSAG members will be automatically regarded as having "opted in" for purposes of the class application;

(d) Investors who opt in shall be entitled to request to pay the registration fee over a period of six months, which request the applicants will reasonably consider

(e) No cross-funding across different syndication groups shall take place from date of this order.

5. All payments made by investors in terms of this order shall be paid into a separate and distinct trust account of Theron and Partners. An independent auditor will be appointed by the Applicants to audit the aforementioned trust account and such auditor will report to the trial Court regarding the funding of the litigation.

6. Such registration (to "opt in") is to occur on a date not later

than 65 days from the granting of this order. Such period may be extended by the court upon good cause shown;

7. Within fifteen days from the opting in period expiring, the applicants shall notify the first to fifth respondents of the aggregate value of the claims of investors who opted in.
8. Should it appear during the course of the litigation that the aforementioned registration fees received are insufficient to fund the litigation; the Applicants may request additional payments to be made by class members.
9. The Seventeenth Respondent (Klopper) is hereby ordered to furnish the Applicant's legal representative, within 15 days of certification of any or all of the above class actions, with the details of the investors in each of the abovementioned Highveld companies;
10. The detail to be provided by the Seventeenth Respondent in terms of prayer 9 shall be furnished by the First and Second Respondents in suitable electronic format and shall be limited to the following, wherever known or on record: Full name and surname of the investor; Identity number (or applicable registration number in the case of, for instance, a trust); last known address; telephone numbers; e-mail address/es; the


**number of shares or units bought (and for how much money);
in which Highveld company were such shares (or units)
bought; when was such shares/units bought; and the date on
which the purchase price was paid by the relevant investor;**

11. The Applicants are directed to, in so far as may be reasonably possible, give notice to the investors by means of email or other electronic communication of the envisaged class actions to be instituted by the Fifth to Ninth Applicant;

12. Such communication to investors are to include the following:

- **A reference or link to the website of the HSAG where a copy of this order is to be displayed or made available;**
- **A reference or link to the so-called web based registration process/form referred to above to "opt in";**
- **a brief description of:**
 - (i) who the class members are who can join the class action (i.e. who can "opt in") and;**
 - (ii) the cause of action involved and the grounds thereof;**
- **The details of the attorneys (Theron & Partners), including the banking details of the bank account into which the registration fee is to be paid".**

- 13. The applicants shall file a report with the Registrar of this Court setting out any difficulties experienced by them in their efforts to give notice to investors.**
- 14. Any settlements reached in respect of the class application, action or the subject matter thereof shall be subject to confirmation by a Judge in chambers.**
- 15. The First to Fifth Respondents are ordered to pay the costs of this application under Part A and B, jointly and severally the one paying the other to be absolved (including the cost of two counsel where applicable).**
- 16. The costs of the application to transfer the matter to the Johannesburg Commercial Court, is declared to be the costs in the application under Part A and B;**
- 17. The intervening party (Van der Sandt) is ordered to pay the Applicants' wasted costs of the intervention application and withdrawal of her opposition to the main application on an attorney and client scale.**



R G TOLMAY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE OF HEARING: 13 NOVEMBER 2019

DATE OF JUDGMENT: 10 DECEMBER 2019

ATTORNEY FOR APPLICANTS: THERON AND PARTNERS

ADVOCATE FOR APPLICANTS: CHJ MAREE

ATTORNEY FOR RESPONDENTS:

KYRIACOU INCORPORATED (1ST

TO 5TH RESPONDENTS)

EG COOPER MAJIEDT

ATTORNEYS (6TH AND 7TH

RESPONDENTS)

NLA LEGAL INC (8TH

RESPONDENT)

POLSON ATTORNEYS (19TH, 20TH,

21TH, 25TH, & 26TH)

**GILDENHUYS MALATJI INC (22ND
RESPONDENT)**

**ANDRE VLOK ATTORNEYS (12TH
RESPONDENT)**

**ADAMS AND ADAMS
(INTERVENING PARTY)**

**ADVOCATE FOR RESPONDENT: ANDY BESTER & MIAS MOSTERT
(1ST TO 5TH RESPONDENTS)
BEN STEYN (INTERVENING
PARTY)**