

Strengthening South Africa's Legal Framework Through an Insolvency Court

By Shaakira Cassim



The increasing complexity of insolvency proceedings in South Africa, coupled with growing economic distress among companies and individuals, raises questions about the adequacy and capacity of the existing judicial framework. The current general court system, while competent in many areas, often lacks the necessary expertise and efficiency to handle the complex challenges posed by insolvency matters.

Over the years many legal and insolvency professionals have advocated for a specialized insolvency court to be formed and I believe that it is long overdue. A specialized insolvency court could ensure more consistent and expert adjudication of insolvency matters while contributing to broader economic revitalization. On 10 March 2025 the Deputy Judge President of the High Court of South Africa, Judge Roland Sutherland, introduced a pilot dedicated Insolvency Court in the Johannesburg High Court. This court is set to hear its first case on 12 May 2025. Given the key considerations outlined below, it is highly likely that the pilot program will evolve into a more permanent solution.



Complexity of Insolvency Matters

Insolvency cases often involve multifaceted legal, financial, and economic considerations. These matters can include cross-border insolvencies, restructuring of major corporate debts or state-owned entities, creditor negotiations, and interpretations of intricate statutory obligations. Judges, although learned in particular aspects, and who are tasked with hearing a wide range of civil and criminal matters, may not have the in-depth expertise required to fully grasp and adjudicate these complex cases. A specialised insolvency court, staffed by judges with in-depth knowledge and/or practical experience in insolvency and commercial law, would ensure more consistent and informed judgments.

Improved Efficiency and Reduced Backlogs

South Africa's court system is burdened by significant backlogs, due to the rising cases being brought to court and the lack of resources, often resulting in delayed resolution of insolvency matters. These delays can exacerbate financial distress, diminish asset values, and reduce the potential for successful business rescues. A dedicated insolvency court would reduce the caseload on general courts and ensure that insolvency matters are handled with the urgency they require. Faster resolutions would improve creditor recoveries and provide distressed businesses with a fairer chance of survival or orderly wind-down.

Support for the Business Rescue Regime

South Africa's Companies Act 71 of 2008 ('the Companies Act') introduced a progressive business rescue regime aimed at rehabilitating financially distressed companies. However, the success of business rescue largely depends on timely and competent judicial decision making due to the strict deadlines imposed by the provisions of the Companies Act and the fast-moving economic landscapes. A specialised court would be better positioned to evaluate business rescue plans, oversee the conduct of business rescue practitioners, and resolve disputes that arise during the process. This would help build confidence among investors and stakeholders in the integrity and effectiveness of the system.

Consistency and Development of Precedent

Insolvency law in South Africa is still evolving, especially in the context of modern corporate finance, international trade, and global changes. A specialised court could contribute to the development of a coherent body of rules in insolvency law, promoting legal certainty and predictability. This consistency is crucial for both local and international creditors and investors who seek clarity on how insolvency issues will be treated in South African courts.

Alignment with International Best Practice

Many leading jurisdictions have adopted specialised courts to deal with insolvency matters. For example, the United States operates federal Bankruptcy Courts under Article I of its Constitution, while the United Kingdom's Insolvency and Companies Court and Singapore's dedicated restructuring division serve as global benchmarks. These systems demonstrate that specialisation fosters expertise, speeds up proceedings, and enhances stakeholder confidence. Adopting a similar model in South Africa would align the country with international standards and provide assurance to foreign investors that contracts would be enforced and disputes resolved fairly within expert courts.

Professional Development and Oversight

A specialised court could work in tandem with regulatory bodies and professional associations to raise standards among insolvency practitioners. It could foster specialised training, continuous legal education, and clearer ethical guidelines for all professionals involved in insolvency processes. This would lead to better oversight and improved outcomes for all stakeholders.

Conclusion

The introduction of a pilot specialised insolvency court in South Africa could mark a pivotal step toward strengthening the country's legal and economic infrastructure. The Johannesburg pilot initiative is a crucial opportunity to demonstrate the value of judicial specialisation, and if successful, should be expanded nationally to ensure a more responsive and resilient insolvency framework for the future.

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