

## **PART 1**

### **GENERAL ORIENTATION**

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Apart from a general introduction, this part also contains the hypotheses and methodology that will be used in order to constructively discuss corporate insolvency law reform.

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## CHAPTER 1

### INTRODUCTION

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#### SUMMARY

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#### 1 INTRODUCTION

Since the late 1980s the South African Law Commission has been busy with a reform programme which has as its aim the complete reform of South African insolvency law. Although the Law Commission's initial brief was to reform the whole of South African insolvency law, they saw fit to delegate the reform of corporate insolvency to the Standing Advisory Committee on Company Law.<sup>1</sup> The Commission's efforts were then concentrated on the reform and revision of the Insolvency Act 24 of 1936.<sup>2</sup>

In February 2000 the Law Commission finalised its proposals on the insolvency of individuals and partnerships, but not before a sustained effort was made by the Centre for Advanced Corporate and Insolvency Law at the University of Pretoria, in collaboration with the Standing Advisory Committee on Company Law, to have proposals relating to the insolvency of (mainly) companies and close corporations, included.

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<sup>1</sup> See Boraine and Van der Linde "The Draft Insolvency Bill – an Exploration (Part1)" 1998 4 *TSAR* 621 at 622 (hereinafter referred to as Boraine and Van der Linde "The Draft Insolvency Bill – an Exploration (Part 1)").

<sup>2</sup> Hereinafter referred to as the Insolvency Act.

Considering that the value of corporate insolvencies far exceeds the value of individual insolvencies in South Africa,<sup>3</sup> there is a definite need for any new proposals concerning insolvency law reform to also address the reform of corporate insolvencies. To ignore this dire need would negate all the work which has been done thus far in revising this area of our law.

The primary source of South African insolvency law is the Insolvency Act 24 of 1936, supplemented by common law as contained in Roman-Dutch sources and the judgments of the courts.<sup>4</sup> However, the Insolvency Act specifically states that it only applies to individuals and partnerships,<sup>5</sup> and not to companies or other bodies corporate that can be wound up in terms of the Companies Act. The provisions relating to the winding-up<sup>6</sup> of companies are contained in the Companies Act, and the provisions relating to the winding-up of close corporations in the Close Corporations Act. However, there are also a myriad of other Acts which also provide for the winding-up of specific types of entities.<sup>7</sup> These latter Acts are then “connected” to the Insolvency

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<sup>3</sup> See SA Law Commission Project 63 Commission Paper 582 (11 Feb 2000) Vol 1 19 par 5.2.3 (hereinafter referred to as Commission Paper 582).

<sup>4</sup> *Fairlee v Raubenheimer* 1935 AD 135 at 136; *Swadif (Pty) Ltd v Dyke* 1978 1 SA 928 (A) at 938; *Millman v Twiggs* 1995 3 SA 674 (A) at 679-680.

<sup>5</sup> See the definition of “debtor” in s 2 of the Insolvency Act. It is to be noted that the definition of “debtor” has been given an extended meaning to include trusts (see *Magnum Financial Holdings (Pty) Ltd (in liquidation) v Summerly* 1984 1 SA 160 (W)), insolvent deceased estates and estates under curatorship (see s 3(1) of the Insolvency Act) and other entities that are not capable of being wound up in terms of the Companies Act 61 of 1973 (hereinafter referred to as the Companies Act), or the Close Corporations Act 69 of 1984 (hereinafter referred to as the Close Corporations Act). Examples of the latter would be clubs and other associations of persons that do not have juristic personality.

<sup>6</sup> The terms “winding-up” and “liquidation” will be used as synonyms throughout this study. However, in order to assist the reader of this thesis the term “winding-up” will be used as nearly as possible to indicate the current provisions relating to the liquidation of companies and close corporations in South Africa. As nearly as possible the term “liquidation” will be used to indicate provisions of the proposals for a unified insolvency statute contained in this study. It is interesting to note that the SA Law Commission has used the term “liquidation” and not “sequestration” in the Draft Insolvency Bill in Commission Paper 582. This makes unification of the various statutes an even simpler task as there is no longer any need to differentiate between sequestration and liquidation. See also Boraine and Van der Linde “The Draft Insolvency Bill – an Exploration (Part 1)” at 623 where reference is made to this uniformity.

<sup>7</sup> Eg, see part VI of the Long Term Insurance Act 52 of 1998; part VI of the Short Term Insurance Act 53 of 1998; s 29 of the Pension Funds Act 24 of 1956; s 35 of the Friendly Societies Act 25 of 1956; s 18C of the Medical Schemes Act 72 of 1967; ss 27, 28 and 39 of the Unit Trusts Control Act 54 of 1981; ch X of the Co-Operatives Act 91 of 1981; s 33 of the Financial Markets Control Act 55 of 1989; s 68 of the

Act, the central piece of legislation, by means of “connecting provisions”<sup>8</sup> that make insolvency law applicable also to these types of entities.

Having so many different provisions in such a variety of statutes causes unnecessary confusion and duplication, and the question that needs to be asked is whether it is really necessary to have separate legislation dealing with the insolvency of these various entities, or whether it would be preferable to have a single statute containing provisions for the insolvency of all types of debtors. Even the South African Law Commission has admitted that a single statute would go a long way towards simplifying insolvency law in South Africa:

“5.2 The project committee holds the view that the review of corporate insolvency should be finalised simultaneously with the review of provisions for individuals for, amongst others, the following reasons:

- 5.2.1 Once a start has been made it is surprising how easy it is to unify the provisions.
- 5.2.2 A unified Act is more user friendly, especially for foreigners like prospective foreign investors.
- 5.2.3 Corporate insolvencies far exceed individual insolvencies in terms of value.
- 5.2.4 Unnecessary differences complicate matters and are mostly inexplicable.
- 5.2.5 If the opportunity is not taken to enact a unified Act now it may not arise again in the near future.
- 5.2.6 It is easier to make amendments to a single Act than to separate Acts administered by different Ministers and considered by different portfolio committees.
- 5.2.7 There will be confusion if the insolvency law relating to individuals is reformed and nothing is done in connection with corporate insolvencies.”<sup>9</sup>

In a paper presented at a symposium on Corporate Insolvency Law Reform on 23 October 1998, Keay<sup>10</sup> discussed the unification of insolvency statutes by addressing the key issues that need to

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Banks Act 94 of 1990; and ch VIII of the Mutual Banks Act 124 of 1993.

<sup>8</sup> Eg s 339 of the Companies Act and s 66 of the Close Corporations Act.

<sup>9</sup> See Commission Paper 582 Vol 1 18-19.

<sup>10</sup> This paper has since been published: Keay “To Unify or not to Unify Insolvency Legislation: International Experience and the Latest South African Proposals” 1999 *DJ* 62-79 (hereinafter referred to as Keay “To Unify or not to Unify”).

be considered when attempting to achieve such a goal.<sup>11</sup> The value of Keay's paper lies in the lessons that may be learnt from other countries which have passed along this route before and, as Keay points out, some of which have failed at their attempts to enact such unified legislation. In his paper Keay discusses the options which are available when deciding on a single or a dual statute, international experience in respect of dual and single statutes, the advantages and disadvantages of single-statute insolvency legislation and, lastly, a brief summary of his views on the South African proposals as they appeared at the time.<sup>12</sup>

Despite some valid criticisms levelled at the first attempt at unifying South African insolvency law in a single statute, Keay brands the attempt as "a bold attempt at formulating unified legislation to replace the present system".<sup>13</sup> That Keay supports a single statute is clear from the following statement:<sup>14</sup>

"As I indicated earlier in this article, I am of the view that, on balance, the enactment of a unified statute is to be preferred to a dual system."

Since this study ultimately proposes a framework within which a single insolvency statute can be developed, and despite what has already been stated above, the first question that should be asked is why South Africa needs to unify its insolvency legislation at all. After all, the current Insolvency Act has been in operation for over sixty years and the current winding-up provisions in the Companies Act and Close Corporations Act since 1973 and 1984 respectively.

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<sup>11</sup> Keay has since called for Australia to re-think the introduction of unified insolvency legislation - see Keay "The Unity of Insolvency Legislation: Time for a Re-think?" 1999 *Insolvency Law Review* 5 (hereinafter referred to as Keay "The Unity of Insolvency Legislation").

<sup>12</sup> The proposals discussed by Keay were the first in which unification was attempted. A further attempt was made in a report discussed at a conference held at Midrand on 6 Oct 1999, and a final attempt appeared in a report submitted to the SA Law Commission in Jan 2000 - *Final Report Containing Proposals on a Unified Insolvency Act* Vol 1, a copy of which is available in the Merensky library at the University of Pretoria.

<sup>13</sup> Keay "To Unify or not to Unify" 74.

<sup>14</sup> Keay "To Unify or not to Unify" 79. In light of the reform programme currently underway in South Africa, Keay has since called on Australian legislators to reconsider the option of enacting a single statute Insolvency Act in that country - see Keay "The Unity of Insolvency Legislation" 7.

It is submitted that the problem is exactly the fact that South African insolvency legislation is interspersed between a number of Acts.<sup>15</sup> The Insolvency Act forms the basis of our insolvency legislation and contains the main provisions relating to the administration process of an insolvent estate. In the case where a company or close corporation is being wound up, one has to turn to the Companies Act or Close Corporations Act in order to find the provisions relating to these entities. The problem is exacerbated by the fact that the provisions in the Companies Act haphazardly make provision for certain procedural matters and some matters of administration, such as the appointment of liquidators, certain provisions relating to meetings, and so forth. Section 339 of the Companies Act then refers one back to the Insolvency Act for the main part of the actual administration process, the rights of creditors, distribution, contribution and the like.

The scenario in the case of a close corporation is even more problematic. Provisions relating to the winding-up of a close corporation which cannot be found in the Close Corporations Act must be searched for in the Companies Act. If no provision appears in the Companies Act, one then has to refer to the Insolvency Act for the relevant provision.<sup>16</sup>

Cross-referencing between Acts and the interpretation of provisions which are contained in the Companies Act or Close Corporations Act and which are similar, if not identical, to provisions contained in the Insolvency Act, gives rise to problems in practice. It certainly seems illogical to have incomplete provisions relating to winding-up in, for example, the Companies Act if the same Act is in any event going to refer back to the principal Act for the majority of the provisions.

There is also no sound philosophical reason for divorcing the provisions relating to the winding-up of juristic persons from those relating to individuals.<sup>17</sup> Although there are certain material

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<sup>15</sup> This duality and its associated problems are discussed in detail in ch 5 below.

<sup>16</sup> See s 66 of the Close Corporations Act.

<sup>17</sup> The reasons for the separate development of insolvency law and winding-up law will be illustrated in ch 3 below.

differences between individual and juristic persons, it is submitted that these differences are not paramount to the extent that the liquidation (of what in both cases amounts to the administration of an insolvent estate<sup>18</sup>) should be governed by separate provisions.<sup>19</sup> It is submitted that it would be both practical and good administration to have one set of provisions relating to the administration of all insolvent estates, be it the estate of an individual or that of a juristic person. It is further submitted that, in the long term, unified legislation will do away with uncertainty and ambiguity in the practice of the administration of insolvent estates.<sup>20</sup>

Creating unified insolvency legislation will mean a review of part of the philosophy behind traditional South African insolvency law. South African insolvency law has traditionally been classified as a pro-creditor system,<sup>21</sup> mostly due to the fact that our insolvency law is aimed at protecting creditors and not at assisting a struggling debtor.<sup>22</sup> The requirement of “advantage to

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<sup>18</sup> This principle has already been acknowledged by our courts in the *dicta* of Colman J in *Woodley v Guardian Assurance Co of SA Ltd* 1976 1 SA 758 (W) at 763: “I ... suggest that it is socially desirable that, as far as is practicable, all the consequences of the liquidation of an insolvent company should be similar to those [of] the insolvency of an individual ... The winding-up of a company unable to pay its debts is something closely akin to the winding-up of the estate of an insolvent individual. There are some different requirements which flow from the fundamental difference between a company and an individual: those are specifically provided for in the Companies Act. In respects other than those so provided for I cannot see why the Legislature should not have desired, not merely the procedural rules, but also the substantive rules and consequences, to be the same in both cases.”

<sup>19</sup> See Key “To Unify or not to Unify” 8 for a list of the advantages and disadvantages of unification. However, see the Australian Law Reform Commission Report No 45 *General Insolvency Inquiry* (hereinafter referred as the Harmer Report) par 29, where a previous commission of inquiry had found that the differences between corporations and individuals are too great to bring about real integration.

<sup>20</sup> This study purports to prove this fact by way of the proposals made in ann E below.

<sup>21</sup> According to Wood *Principles of International Insolvency* (1995), South Africa is a pro-creditor country, leaning towards pro-debtor (Wood scores South Africa at 6 on a scale where 1 is extremely pro-creditor and 10 is extremely pro-debtor). Wood’s classification is based on certain premises (which are not important for the purposes of these proposals), but due to our provisions relating to rehabilitation and the accompanying discharge, we are seen by most as leaning toward a pro-debtor system. One cannot necessarily agree with Wood’s classification, as there is no doubt that South Africa has a pro-creditor insolvency system (eg, South Africa still has the requirement of an “advantage for creditors” that has to be proved before a court will grant a sequestration order - see ss 6(1) and 12(1)(c) of the Insolvency Act).

<sup>22</sup> A comparison between the historical development of English and American insolvency law illustrates the change of philosophy that has taken place in the United States in this regard. Although American bankruptcy laws have their origin in English law, their bankruptcy system has changed from being a pro-creditor system to a modern liberalised pro-debtor system. As long as South Africa retains its relatively



creditors” contained in section 4 of the current Insolvency Act, is proof of this. The enactment of a unified statute would necessarily reflect a shift in philosophy also in respect of the type of debtor that will be assisted since, historically, our insolvency law has been structured around the individual. The reason for the separate development of sequestration and winding-up will become clearer in the discussion contained in chapter 3 below, but is mainly because the concept of a separate legal entity, as provided for in company law legislation, only developed a considerable time after insolvency law had already become established. A unified statute means that all debtors, be they juristic, natural or other types of entities, will be dealt with in the same insolvency statute.

It is submitted that the time is right in South Africa to seize the opportunity of reforming its insolvency law at a time when it has become stagnated and out of step with developments in other important jurisdictions, such as the United States of America and most Western European countries. In fact, the opportunity now presents itself for South Africa to become a leader in this field of the law by enacting a truly unified insolvency statute, something which no other country, with the exception of the United States of America,<sup>23</sup> and more recently the Federal Republic of Germany,<sup>24</sup> has apparently been able to achieve.

In light of the fact that this study seeks to make proposals for *corporate* insolvency law reform, it is useful to state at this point what Goode<sup>25</sup> sees as the philosophical foundations of corporate insolvency law. According to Goode<sup>26</sup> corporate insolvency law has four overriding objectives, namely:

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conservative approach to insolvency law, there is little chance that we will be able to move towards a more liberalised pro-debtor system of insolvency.

<sup>23</sup> 11 USC (hereinafter, referred to as the United States Bankruptcy Code).

<sup>24</sup> *Insolvenzordnung* of 5 Oct 1994 (which came into operation on 1 Jan 1999).

<sup>25</sup> Goode *Principles of Corporate Insolvency Law* 2nd ed (1997) (hereinafter referred to as Goode).

<sup>26</sup> Goode 24.

- (a) To restore a debtor company to profitable trading where this is possible;
- (b) To maximise the return to creditors as a whole in cases where the company cannot be saved;
- (c) To establish a fair system for the ranking of claims and the equitable distribution of assets amongst creditors; and
- (d) To provide a mechanism by which the causes of the failure of the company can be identified, those guilty of mismanagement be brought to book and, in appropriate circumstances, deprived of the right to be involved in the management of other companies.

In addition to these four objectives, Goode then states what he believes to be the ten basic principles of corporate insolvency law. Briefly, the basic principles of corporate insolvency law are stated as being:<sup>27</sup>

- (i) The recognition of rights that have accrued under the general law prior to liquidation;
- (ii) Only the assets of the debtor company are available for distribution amongst its creditors;
- (iii) Secured and other real rights that were created prior to the insolvency proceedings are unaffected by liquidation;
- (iv) The liquidator takes over the assets of the debtor company subject to all limitations and defences;

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<sup>27</sup> See Goode 53-63.

- (v) The pursuit of personal rights against the debtor company is converted into a right to prove for a dividend in the liquidation;
- (vi) Once the debtor company has been liquidated it ceases to be the beneficial owner of its assets;
- (vii) No creditor has any interest *in specie* in the company's assets;
- (viii) Liquidation brings about an acceleration of the creditors' rights to payment;
- (ix) Unsecured creditors rank *pari passu*;
- (x) As a rule the members of a company are not as such liable for its debts.

These underlying philosophies and principles will be borne in mind when addressing corporate insolvency law reform and proposing the introduction of a unified insolvency statute in South Africa. Consequently the following aspects will be examined in this study:

- (a) A historical overview of the development of South African insolvency law with particular reference to insolvency statutes.<sup>28</sup> This examination is necessary in order to place the development of a unified statute into its proper historical context.
- (b) A discussion of the historical development of insolvency statutes in South Africa with reference to corporate insolvency law.<sup>29</sup> This examination will shed light on the reasons for the separate development of individual and corporate insolvency law, and will attempt to establish whether this distinction is still justified.

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<sup>28</sup> Discussed in part 2 below.

<sup>29</sup> Discussed in part 2 below.

- (c) A brief comparative study of insolvency law reform in other jurisdictions, with particular reference to corporate insolvency law reform.<sup>30</sup> In order to bring about corporate insolvency law reform in South Africa, the lessons already learnt by other jurisdictions will be of great value in determining what the content and extent of our own law reform programme should be. In addition, a comparative study will assist in determining why some jurisdictions were more successful than others in achieving a single insolvency statute.
- (d) Proposals for a framework within which corporate insolvency law can be reformed in South Africa.<sup>31</sup> In establishing a framework within which a unified insolvency statute can be developed, a four-tiered approach will be followed:
- (i) In the first place, where an insolvency system such as the one in South Africa is not contained in a single statute but is interspersed over a number of Acts with the Insolvency Act being the main source, there has to be some or other “connecting provision” contained in the ancillary legislation that “connects” them to the main source. Examples of these types of “connecting provisions” are section 339 of the Companies Act and section 66 of the Close Corporations Act, which make the law relating to insolvency applicable also to the winding-up of these types of insolvent entities. The proposals made in this part of the study will show that a unified insolvency statute will obviate the need for such connecting provisions, as the provisions relating to the insolvency of all types of debtors will be included in a single statute. However, if a unified insolvency statute is introduced that replaces a dual system of insolvency law, there are other aspects relating to such a unified insolvency statute that will also need to be addressed. Consequently, in the first tier of the four-tiered approach that will be followed, the following aspects will be examined:

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<sup>30</sup> Discussed in part 3 below.

<sup>31</sup> Discussed in part 4 below.

- (aa) The problems surrounding the “connecting provisions” in section 339 of the Companies Act and section 66 of the Close Corporations Act, as well as how these problems can be solved by the introduction of a unified insolvency statute.
  - (bb) How a “debtor” should be defined to ensure that all types of debtors are included under the ambit of a unified insolvency statute.
  - (cc) Whether specialised institutions, such as banks and insurance companies, that are currently dealt with under extraordinary provisions contained in other legislation, should be included in the field of application of a unified insolvency statute.
- (ii) In the second place, the dual statutes that currently apply contain a number of their own provisions dealing with the winding-up of these entities. These provisions are sometimes similar and sometimes dissimilar to provisions contained in the Insolvency Act. In making proposals for a unified insolvency statute, those aspects that are dissimilar need to be examined in order to determine whether their dissimilarity is justified. Where these dissimilarities are found to be unjustified, proposals will be made for the uniformity of the provisions under a unified insolvency statute. Where the dissimilarities are justified, proposals will be made for the drafting of the provisions in such a way as to accommodate their current distinction in a unified insolvency statute. Therefore, in the second tier of this examination the following selected aspects, that mainly distinguish between natural and juristic persons, will be discussed:
- (aa) Liquidation applications under a unified insolvency statute. Due to the inherent difference between natural and juristic persons, and because the grounds upon which these types of debtors can be liquidated differ, the manner in which these entities are liquidated will be examined and proposals made for the uniformity, as far as is possible, of the liquidation application procedures.
  - (bb) The vesting of the insolvent estate and the commencement of liquidation under a unified insolvency statute. Currently there is a difference between

the vesting of the insolvent estate of a natural person, and the vesting of the insolvent estate of a juristic person in liquidation. These different vesting rules will be examined and, if the distinction is found to be unjustified, proposals will be made for the uniformity of these provisions under a unified insolvency statute. There is also currently a distinction between the commencement of sequestration of an individual's estate and the commencement of liquidation in the case of a juristic person. The difference in the current rules relating to the commencement of sequestration and the commencement of liquidation will be examined, and proposals made for uniformity under a unified insolvency statute.

- (iii) In the third place, if a unified insolvency statute is to be all-encompassing, there are certain issues that need to be addressed in order to achieve a holistic approach. These aspects are not deemed to be crucial for the introduction of a unified insolvency statute, and are considered “ancillary” for the purposes of this study. Accordingly, these aspects will not be examined in detail but will be briefly discussed in order to make an all-encompassing proposal for a unified insolvency statute. Some of these aspects relate to natural persons only, some to juristic persons only, and some aspects relate to both natural persons and juristic persons. Consequently, the third tier of this study will concentrate on the following aspects and their role in the creation of a framework for a unified insolvency statute: i) alternatives to liquidation in regard to natural persons, trusts and close corporations; ii) insolvent deceased estates; iii) business rescue provisions, entailing a discussion of compromises in terms of section 311 of the Companies Act and judicial management; iv) personal liability of directors of companies and members of close corporations; and v) cross-border insolvency issues.
- (iv) In the fourth and final place there are currently provisions in statutes, such as the Companies Act and the Close Corporations Act, relating to the voluntary winding-up of these entities. These provisions are unique to the liquidation of juristic persons and, while there is no argument as to the inclusion of these provisions in a unified insolvency statute, the question can be asked as to whether these aspects

cannot be improved upon when they are introduced into such a unified Insolvency Act. For this reason the fourth tier of this study, dealing with the framework within which a unified insolvency statute can be developed, will consist of an examination of the voluntary liquidation of juristic persons, with proposals being made for the possible improvement of these provisions under a unified Insolvency Act.

## 2 HYPOTHESES

In order to examine the above aspects, use will be made of the following hypotheses:

- (a) For the purposes of this investigation it must be accepted that the introduction of a unified insolvency statute is both possible and desirable, although the latter no longer seems to be in dispute.<sup>32</sup> An examination as contemplated in Part 4, will reveal whether or not a single statute is attainable.
  
- (b) If the purpose of a single insolvency statute is to provide a vehicle for the administration of *insolvent* estates, it must be accepted that the statute will no longer contain provisions for the liquidation of *solvent* entities.<sup>33</sup> The point of departure will therefore be that the statute should only contain provisions relating to the administration of insolvent entities.<sup>34</sup> A proper examination of this aspect will reveal whether this hypothesis is justified.

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<sup>32</sup> At a symposium held on 23 Oct 1998 on the possibility of introducing a unified insolvency statute, more than 200 people participated in the debate. At a subsequent conference held on 6 Oct 1999 to discuss the content of such a proposed unified insolvency statute, a total of 230 people registered for the conference. At both the symposium and the subsequent conference there was general consensus that South Africa should introduce a single insolvency statute.

<sup>33</sup> Eg, the voluntary winding-up of a company or close corporation by its members (as a voluntary winding-up by members) in essence deals with the winding-up of a solvent company or close corporation. It is submitted that the provisions relating to these types of voluntary winding-up should remain in the enabling legislation. This aspect is dealt with in more detail in part 4D below.

<sup>34</sup> With the exception of business rescue provisions, which will not necessarily involve insolvent entities. However, it is submitted that in most instances these entities will in fact be insolvent, or insolvency will be imminent.

- (c) If the purpose of a single insolvency statute is to be all-encompassing, it must be accepted that no entity will be excluded from the ambit of the statute, not even the so-called “specialised institutions” which currently enjoy separate treatment. This will also be the point of departure in the study of the content of a unified insolvency statute in Part 4, which will reveal whether or not it is desirable that these specialised institutions deserve to retain their current status.

### 3 METHODOLOGY

In order to create a framework within which corporate insolvency law reform can take place, and the above hypotheses tested, this investigation will be conducted as follows:

- (a) Apart from the introduction set out in Part 1, the aspects that will be investigated are set out and certain hypotheses stated. These will be tested against the framework which will form the conclusion to this study.
- (b) In Part 2 the subject under discussion will be placed in its historical context, especially as far as it relates to the development of corporate insolvency law reform. This entails tracing firstly the historical development of insolvency law as a separate legal subject, and secondly the historical development of corporate insolvency or liquidation law, which will be conducted by evaluating the history of the different statutory enactments and their parallel development with insolvency law in general.
- (c) Part 3 entails a comparative study of other jurisdictions that have attained, or have in the past attempted to attain, a single insolvency statute. The study will follow the historical development in each jurisdiction, projects and programmes which were aimed at large-scale insolvency law reform and the current status of each jurisdiction’s insolvency statutes. In addition to the reform of the substantive law of each of these jurisdictions,



the underlying philosophy of each will also be examined in order to determine the single most important motivating factor which brought about the reform in question (where this did in fact take place).

- (d) Part 4 contains proposals for a framework within which corporate insolvency law reform can take place, including proposals for the introduction of a single, unified insolvency statute in South Africa. The latest developments in the revision of South African insolvency law will not only be discussed, but will also form the basis for the proposals for a single insolvency statute.
- (e) Finally, Part 5 contains a summary and conclusion where it will be indicated what the result of the research was, seen against the background of the above exposition.