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Success factors for business rescue in South Africa

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Success factors for business rescue in South Africa

Lucien Mundie

A research report submitted to the Faculty of Commerce, Law and Management, University of Witwatersrand, in partial fulfilment of the requirements for the degree of Master of Business Administration

Johannesburg, 2017

ABSTRACT

South Africa (SA), as an emerging market, is a diverse country with opportunities for all who reside in it. Since its democratic elections in 1994, the government has focused on promoting Broad-Based Black Economic Empowerment (BBBEE) policies to try and correct the past economic imbalance. This initiative has resulted in the government awarding more contracts to companies owned by individuals from previously disadvantaged backgrounds. In addition, the government has strived where possible to lower the barriers to entry so that BBBEE companies, with all their constraints, can still try and flourish into larger companies.

As a result of this initiative, there has been a rapid increase in the number of BBBEE companies taking advantage of these opportunities. However, despite these advantages, BBBEE companies still operate in a business environment, where general market forces can either propel them to grow or cause their demise.

The negative effects of the demise of a company are felt not only by its owners but by the general community too. An owner's lack of management skills, insufficient funding, or general market forces out of the owner's control normally cause the downward trajectory of a company.

As a result, the Companies Act, No. 71 of 2008 RSA (2008) introduced a business rescue provision in Chapter 6 to try and assist distressed companies to recalibrate and emerge from their hard times.

This research report looks at identifying the factors that cause a successful business rescue in SA. Primary data is collected by means of semi-structured, face-to-face interviews with experienced and senior business rescue practitioners (BRPs). Only experienced and senior BRPs were interviewed to enhance the reliability of the study.

It is clear that most BRPs are aware of and are in agreement with the current factors that cause a successful business rescue. The research suggests that only one new factor be added, but recommends a number of enhancements to the current factors.

DECLARATION

I, Lucien Mundie, declare that this research report is my own work except as indicated in the references and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Master of Business Administration in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

Lucien Mundie

Signed at ……

On the …….. day of …… 20…..

DEDICATION

This research report is dedicated to my late father, Mari Mundie (1938 – 1991). Your humble spirit which I have inherited has been the catalyst in creating opportunities for me to persevere and succeed in life. It is worth to me, much more than any worldly inheritance a father can leave to his son.

To my mentor, Robert Shaw, your confidence in me and your consistent encouragement for me to pursue a life of excellence is highly appreciated. It has assisted me in becoming a better person.

ACKNOWLEDGMENTS

To my Lord and Saviour Jesus Christ, for making this possible.

My supervisor, Douglas Taylor, thank you for your guidance and support throughout the process.

Joan Kalk, thank you for the editing and your contribution to making this possible.

All my MBA classmates, your friendship and guidance will remain with me throughout my life's journey.

To all the Business Rescue Practitioners I interviewed, I appreciate the time that you took out of your busy schedules to help make this possible. The interview process was the most intriguing part of the process for me.

To my family, my wife Sharlene, my 2 sons (Liam and Lyle) and my brothers, sister, mother and mother-in-law. This journey has been ever bit hard on you as it has been on me. I thank you for your patience, your encouragement and support.

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ABBREVIATIONS

BRP	Business Rescue Practitioner
BRPs	Business Rescue Practitioners
BBBEE	Broad Based Black Economic Empowerment
CIPC	Companies and Intellectual Property Commission
Chapter 6	Chapter 6 of the Companies Act, No. 71 of 2008
Chapter 11	Chapter 11 of the Bankruptcy Reform Act of 1978
Companies Act	Companies Act, No. 71 of 2008
Mio	Million
PCF	Post Commencement Finance
SA	South Africa
UK	United Kingdom
US	United States of America

CHAPTER 1. INTRODUCTION

1.1 The purpose of this research

SA first implemented business rescue in May 2011, replacing an ineffective judicial management regime that was in existence since 1926. The purpose of this research document is to identify and analyse, from a BRP's viewpoint, the factors that cause a successful business rescue after a company has filed for one.

1.2 Context of research

Lamprecht (2008) cites in his journal that the Companies Act 46 of 1926 first implemented judicial management in 1926, as a legal, company rescue procedure. This procedure was to be utilised before liquidation proceedings could be initiated. It was retained in the Companies Act 61 of 1973. Judicial management proved to be ineffective and unpopular and basically did not achieve the outcomes for which it was intended. The Master of the old regime, the Supreme Court, recommended the withdrawal of this rescue procedure but this recommendation was refused.

Chapter 6 of the Companies Act, No. 71 of 2008 RSA (2008) introduced a business rescue regime to save distressed companies. Many stakeholders have considered aspects of Chapter 6 as an improvement to judicial management. Creditors' interests, rather than the actual rescue of the distressed company, were the main focus during the judicial management regime. The provisions of Chapter 6 RSA (2008) are debtor-friendly and specifically focused on rescuing a distressed company Bradstreet (2010).

Business rescue has been developed; however, from far more mature rescue legislation and processes. The essence of corporate rescue processes commenced when the United States (US) adoption of Chapter 11 of the Bankruptcy Reform Act of 1978 (Chapter 11). Articles and journals relating to business rescue have emerged based on the model of the 'developed world'. There is minimum research focused on why and how it operates in an emerging country. SA, China and Argentina are among a handful of developing economies to adopt a system ostensibly inspired by the US example. Though distinct in many ways, business rescue still

qualifies as a ‘modern’ rescue regime, sharing similarities with countries such as Germany, Australia, the United Kingdom (UK) and Canada, Marius Pretorius and Rosslyn-Smith (2014). Bradstreet (2011) intimated in his article that a change in mindset regarding the concept of business rescue could ensure the success of business rescue.

According to the Companies Act 71 RSA (2008, p. 230), business rescue is defined as

“proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for;

I. the temporary supervision of the company, and of the management of its affairs, business and property;
II. a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
III. the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company”

To work out a strategy to rescue a business, an independent and qualified person, referred to as a BRP, assumes responsibility of the management of a company to enact the turnaround process. The Companies Act 71 RSA (2008) relies significantly on a BRP to enact the provisions of Chapter 6 and to effect a turnaround of a distressed company. If the turnaround strategy does not succeed, the BRP administers the affairs of the company in a manner where the creditors are able to derive a higher return than they would have received if the company had been liquidated Marius Pretorius and Rosslyn-Smith (2014).

A successful business rescue is likely to have a positive impact on the SA economic environment in general, and a direct impact on various stakeholders such as creditors, employees and customers Conradie and Lamprecht (2015, p. 2). According to The World Bank (2016, p. 5) :

> "Business Rescue forms part of a framework with respect to Creditor and Debtor rights. This safety measure enables, encourages and facilitates the extension of credit to enable private sector development. It is axiomatic that credit is one of the key drivers of economic activity, innovation and growth. Greater access to finance for firms and individuals play a critical role in promoting inclusive development. If finance is the circulatory system of a company, credit is the lifeblood that flows through the circulatory system, ensuring the businesses to innovate, develop and grow. Indeed, businesses that have greater access to finance are more likely to retain and hire employees."

Joubert (2013) claims that the objective of business rescue is to keep companies alive and prolong the benefits the many stakeholders, employees, shareholders and creditors, receive from it. However, according to Levenstein (2012), some companies use the business rescue process as a delaying tactic to pay its creditors. The initial teething problems are being resolved via the Court process. The new rescue procedure is also aimed at aligning SA's rescue procedure with those of other countries such as US, the UK and Australia. In addition, Rajak and Henning (1999) notes in their article that a successful business rescue regime helps mitigate risk for lenders who want some form of security for the risk of lending. According to Bradstreet (2011), one of the alternatives to business rescue is reaching a settlement with creditors, however, this process does not provide the protection that is automatic with business rescue proceedings.

Conradie and Lamprecht (2015, p. 2) state that "the question of what constitutes a successful rescue is very topical among academics and practitioners, with no answers to date."

Since the implementation of the Companies Act 71 RSA (2008) in May 2011, the business rescue procedure has been popular. Although this new procedure did have challenges during its first 36 months of operation, the Companies and Intellectual Property Commission (CIPC) reported over 1500 business rescue filings. There has also been a gradual annual increase in the number of cases reported. P. M. Pretorius (2015) cited that after the implementation of business rescue, there has been a number of teething challenges and signs of deeper underlying problems with the business rescue process.

According to CIPC (2016), at the end of June 2016 an average of 50% of the companies that had filed for business rescue had remained in business rescue. This percentage should be lower to indicate that business rescue is progressing at a faster rate.

Now, six years since its inception, research and analysis of the factors that have caused the success of business rescue may, hopefully, provide direction for the various stakeholders and increase the rate of successful business rescues.

1.3 The problem statement

Identify and analyse the factors that cause a business rescue to be successful.

1.4 Significance of the study

The study fills the gap by creating awareness and crystallise the factors that cause a successful business rescue. The reports that are currently produced do not investigate this aspect in detail. Bradstreet (2011) concluded that the new business rescue provision in the Companies Act, No. 71 RSA (2008) is an overhaul of the previous ineffective regime of judicial management. The point relating to the ineffective judicial management was also confirmed in a report produced by Osode (2015). Therefore, it is important to track the progress of business rescue and identify and examine the factors that contribute to its success.

Gaining an understanding of the factors that caused the success of business rescue proceedings over the last five years, may assist stakeholders in identifying the bottlenecks that are causing the slow rate of recovery of companies in business rescue. As a consequence, it may fast track the outcomes of business rescue proceedings. Bradstreet (2011) notes in his article, that liquidation leads to the demise to the company, however business rescue gives a company the opportunity to continue trading and, in turn, save jobs, etc.

As the business rescue industry matures in SA and more cases are analysed, business management academics and students will be able to build on this research.

1.5 Delimitations of the study

The research focuses on what factors cause a successful business rescue in SA, but not on the detail of the preliminary aspects relating to business rescue. The reason is that a number of articles and research papers have already been produced on the concept and structure of business rescue prior to its inception in 2011 and subsequently. A brief summarised history has been mentioned in this research to provide the reader with context of the research.

The research only takes into account data gathered for the last five years when business rescue was first introduced. Academic research articles on business rescue success are limited because of its recent inception and the limited analysis of cases and there has been relative uncertainty about its provisions Prins (2015). The prior rescue provision (judicial management) available at the time to rescue a company was ineffective and is very different to business rescue Osode (2015). Therefore, judicial management cannot be evaluated as part of this paper.

The researcher also gives brief outlines of the business rescue provisions of other countries to gauge how SA compares on a global level in terms of business rescue. Business rescue was developed from provisions in the rescue procedures of the UK and the US Bradstreet (2011).

This study does not adopt a longitudinal approach. The research is developed from current articles, journals and the Companies Act 71 RSA (2008) because business rescue is still a relatively new concept in SA.

The interviews are conducted with BRPs in Gauteng and cover business rescue cases situated throughout SA. The reason for this is that to gain a well-informed perspective on this topic, the researcher needs to engage with BRPs that have presided over a number of company rescues. According to data from CIPC, most of these BRPs are based in Gauteng and Western Cape. There are no rules or provisions in the Companies Act, 71 of 2008 that prevent a Gauteng BRP from taking on a business rescue appointment in another province.

1.6 Definition of terms

Business Rescue ; “proceedings to facilitate the rehabilitation of a financially distressed company through the temporary supervision of the affairs, business and property of the company” RSA (2008, p. 230).

Business Rescue Practitioner ; “means a person appointed, or two or more persons appointed jointly, in terms of this Chapter to oversee a company during business rescue proceedings and ‘practitioner’ has a corresponding meaning” RSA (2008, p. 230)

Independent Creditor/s ; “means a person who (i) is a creditor of the company, including an employee of the company who is a creditor in terms of section 144(2); and (ii) is not related to the company, a director, or the practitioner, subject to subsection (2)” RSA (2008, p. 230)

Distressed Company ; “in reference to a particular company at any particular time, means that (i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or (ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months” RSA (2008, p. 230)

Supervision ; “means the oversight imposed on a company during its business rescue proceedings” RSA (2008, p. 230).

1.7 Assumptions

The research makes the following assumptions;

- The BRPs interviewed are individuals with experience in the business rescue process and willing to share the required information.
- If BRPs do not wish to disclose certain information about their business rescue cases, they can inform the interviewer accordingly.

CHAPTER 2. LITERATURE REVIEW

2.1 Introduction

This section contains the literature review on the five key propositions that are of relevance to the study. It also examines the background of business rescue and briefly compares the old regime of judicial management to the current business rescue. It also compares Chapter 6 of the Companies Act 71 RSA (2008) to other international business rescue legislation. The chapter briefly examines the goal of business rescue, distressed companies, and recent business rescue statistics published by CIPC. Finally, based on the literature review, the following factors were identified as factors that cause a successful business rescue;

Proposition 1: The early commencement of business rescue leads to a successful rescue.

Proposition 2: The ability of a company to secure PCF successfully leads to a company's success

Proposition 3: The moratorium on legal proceedings leads to a successful rescue.

Proposition 4: Developing a successful rescue plan leads to a successful rescue.

Proposition 5: The appointment of a competent, qualified BRP leads to a successful rescue.

2.2 Background discussion

A business does not operate in isolation, it is incorporated in terms of the Companies Act 71 RSA (2008) and while operating, it must continuously balance the interests of its various stakeholders. These stakeholders include, but are not limited to shareholders, employees, creditors, investors and the general public. The goal of balancing these interests necessitates the need for the company to form part of the community in which it operates. Therefore, any impact on this company that prevents it from operating will have a direct and immediate negative impact on the community Mothulwe (2015).

SA Government (2004) cites that, a company is an important element that creates and contributes to the successful economy of a country.

According to Ann Marie Leroy, the Senior Vice President of the World Bank (2016, p. ii), “well designed legal and regulatory frameworks with respect to insolvency and creditor/debtor rights facilitate the extension of credit and enable private sector development.” She also confirms in the report that providing a solution for distressed companies offers predictability and ensures investor confidence. In addition, a transparent and efficient framework directly impacts credit risk and risk management in the global financial sector and this influences access to credit and the associated cost.

M. Marius Pretorius (2009) maintained that if a company is not performing well and becomes financially distressed, the business environment will naturally cause its demise. Its ability to continue to operate profitably will depend on whether it can adapt to the ever-changing business environment. As a solution to save distressed companies from failing, Chapter 6 of the Companies Act 71 RSA (2008) introduced business rescue.

2.3 Business Rescue versus Judicial Management

According to Jijana, Chetty, and Karodia (2008), business rescue has become an important part of the SA business environment and replaces judicial management. Rajak and Henning (1999) noted that judicial management was criticised due to its poor success rate. The judicial management failure was a result of the shortcomings of legislation and the attitude of the courts and creditors towards a failing company. Ofwono (2014) stated that business rescue attempts to solve problems that were inherent with judicial management. However, Sher (2014) maintains that the recent results of the vast array of court decisions show that the Companies Act 71 RSA (2008), which makes provision for business rescue, may not be relied on unconditionally without proper regard for each individual case.

SA has a high unemployment rate of 26.7% Statistics South Africa (2016). According to Rajak and Henning (1999), when business rescue was introduced, the new legislation was supported widely as it saved jobs and allowed work in progress to be completed. It offered a better alternative to liquidation by enabling a higher value to be paid to its creditors while trying to

protect the shareholder's investment value in the distressed company. Sher (2014) echoed these sentiments about business rescue.

In his report, Anderson (2008) claims that Chapter 6 of the Companies Act 71 RSA (2008) places more emphasis on protection of employees rights when compared to the Australian rescue provision. In addition, Bradstreet (2011) confirmed that the unconditional protection of employees could result in the non-implementation of the rescue plan and thus business rescue failure. In addition, Loubser (2010a) affirms in her report that employee claims enjoy super-preferential rights in certain instances, ranking them just after the costs of business rescue proceedings and post-commencement finance. If a liquidation order is granted following an unsuccessful business rescue, these preferential employee claims remain in force. There is a real risk of abuse of the procedure unless it is carefully monitored by the Courts.

2.4 Chapter 6 of the Companies Act and international legislation

According to Levenstein (2012), the newly adopted Chapter 6 of the Companies Act 71 RSA (2008) has propelled SA to be in line with Chapter 11 of the judicial processes in the US and the administration processes of both the UK and Australia. Verdoes and Verweij (2015) claims that the desire to save a distressed company that has the ability to be rescued is driving the shift in Europe, as in SA, to more debtor-friendly insolvency procedures. Conradie and Lamprecht (2015) and Joubert (2013) reiterate the fact that the main goals of Chapter 6 of the Companies Act in SA are in line with international insolvency legislation (US, UK, Canada and Australia). They emphasised employee protection. However, Marius Pretorius and Rosslyn-Smith (2014) provide contradictory evidence in their report. They state that there are still some restrictions with Chapter 6 of the Companies Act 71 RSA (2008) when compared to international legislation and that some provisions in the business rescue plan do not align with international standards. For example, the requirement for a cash flow statement.

The Bank (2016, p. 4) notes that "as markets evolve and competition increases globally, countries must adapt and evolve to maximise their own advantage for commerce and to attract investment by adopting laws and systems that create strong and attractive investment climates. Increasingly, businesses have become global in nature and business failures or insolvencies

have had international implications, which also bring into context the importance of adopting modern practices that accommodate international business."

Bradstreet (2010) concluded that rescuing a company that is still economically viable leads to resuscitating value for creditors and other stakeholders and that this is one of the key drivers for business rescue. Jijana et al. (2008) stated that judicial management was not successful in SA and that business rescue, which is now aligned to international standards, has become an important part of the business environment. In comparison to its international counterparts, business rescue has created a competitive edge for SA. Bradstreet (2011) concluded that although judicial management was not very successful in its implementation, it caused SA to become one of the first countries in Africa to pioneer the rescue culture.

White (1994) also maintains in his article that Chapter 11 was drafted to save companies that are financially distressed but still economically viable by reorganising the company. Although Chapter 11 has been successful in many cases, it does have its disadvantages like high costs.

There are many similarities between Chapter 11 and business rescue. According to Skeel (2003), Chapter 11 protection like business rescue is debtor-friendly. Giuliani (2012) affirms that the rescue of a company is accomplished through a financial restructuring plan that is similar to a business rescue plan. Chapter 11 protection and business rescue can be initiated on a voluntary or an involuntary basis.

Giuliani (2012) notes the following differences between Chapter 11 Bankruptcy and the SA business rescue provision:

(1) The previous management of the debtor still manages the company while under Chapter 11; a trustee can be appointed. In SA, a BRP is appointed in all cases.

(2) Chapter 11 does not specify minimum requirements for a company to apply for Chapter 11 protection as does business rescue.

(3) The US has a Bankruptcy Court that specifically presides over bankruptcy matters.

2.5 The goal of business rescue

Business rescue was designed to keep a company in existence, so that all stakeholders could maximise the amount that they receive from the distressed company Joubert (2013).

Cybinski (2001), explained that “failed” and “non-failed” firms do not lie in separate boxes but rather on a continuum of “failed” and “non-failed”. His report provided an explanation that there is no clear distinction between a company that has failed and an operating company, but rather an overlap of grey area between the two. Cybinski (2001) further observed that the grey area is where the prediction of financial distress is debatable.

Levenstein (2012) notes in his article that the aim of business rescue is to provide a temporary moratorium on the rights of all creditors to proceed against the company during the business rescue period. A rescue plan must be prepared by the BRP and accepted by the majority of the creditors. The plan must detail how the company will be restructured so as to be saved as a going concern or to result in a better return for the company’s creditors in comparison with liquidation. When a BRP needs to make a decision, all the affected parties’ interests must be taken into consideration. Loubser (2010b) mentions that business rescue applications are now being carefully assessed to make sure the process is not abused by companies.

In his article, Rushworth (2010, p. 5) cites that “rescuing a company means achieving the goals of business rescue”.

2.6 Distressed companies

The Companies Act 71 RSA (2008) provides a specific definition for a distressed company. Please refer to the definition on page 17.

Sher (2014) confirms that to qualify for business rescue, a company must be financially distressed. The main requirement is that there must be a reasonable prospect of saving the distressed company. Bradstreet (2011) noted that it is important to determine the reasons for the company’s financial distress, as it will provide clarity on whether it can be rescued.

The Institute of Directors (2009) report indicated that a distressed company can be saved via the following measures: workout, sale, merger, compromise with creditors or business rescue.

According to Bradstreet (2011), liquidation is a drastic step which brings a company to its end. Jobs are lost and it has a negative domino effect on other businesses. He also said that liquidation looks to extract the remaining value of the company for the benefit of the creditors.

In his report, Bradstreet (2011, p. 1) said that "it is desirable to have legislation that is effective in providing 'escape routes' from such commercial death and that it is aimed at rescuing a financially distressed company from its decline towards liquidation." Furthermore, he states that Chapter 6 of the new Companies Act 71 RSA (2008) seeks to offer an alternative to liquidation.

The insert below reflects the different stages of a company's performance and decline, and indicates the most probable time for a company to apply for business rescue.

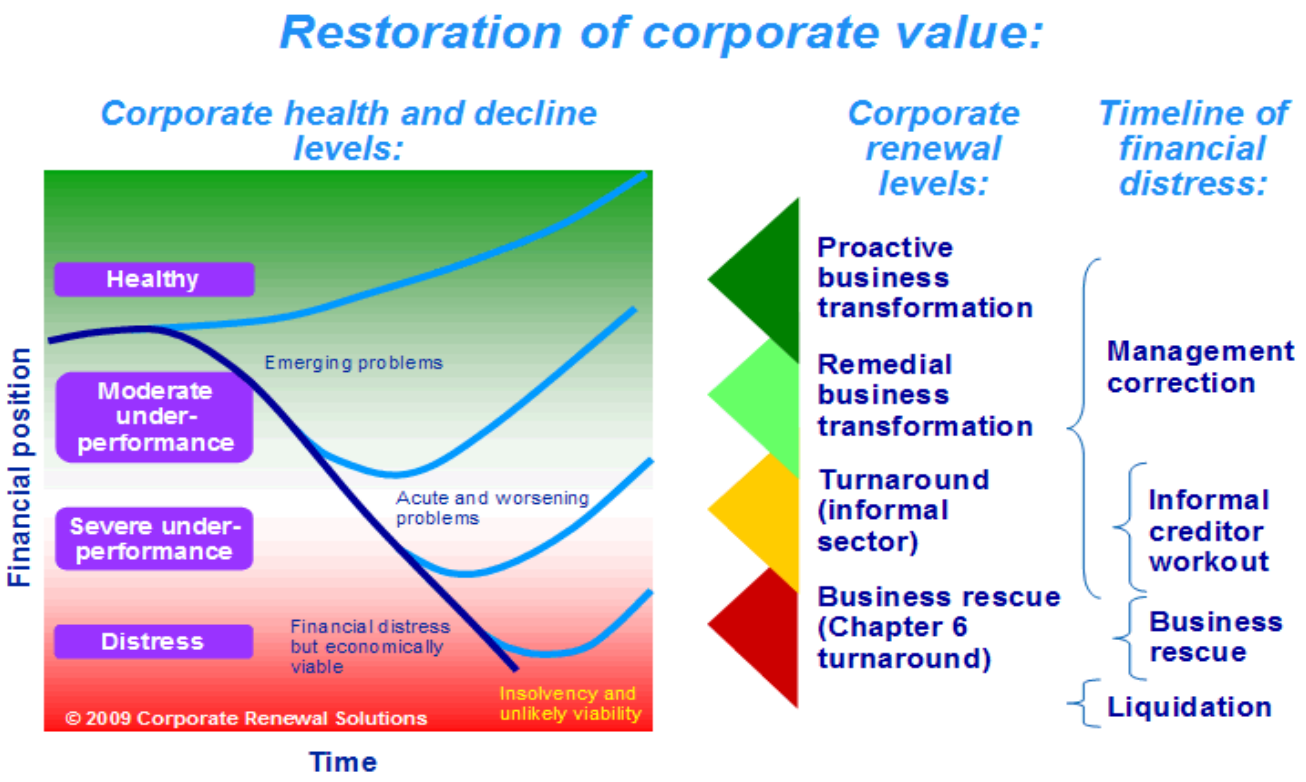


Figure 1: The different financial positions of a company, corporate renewal process and corrective measure Solutions (2011)

2.7 Key provisions that have caused a successful business rescue

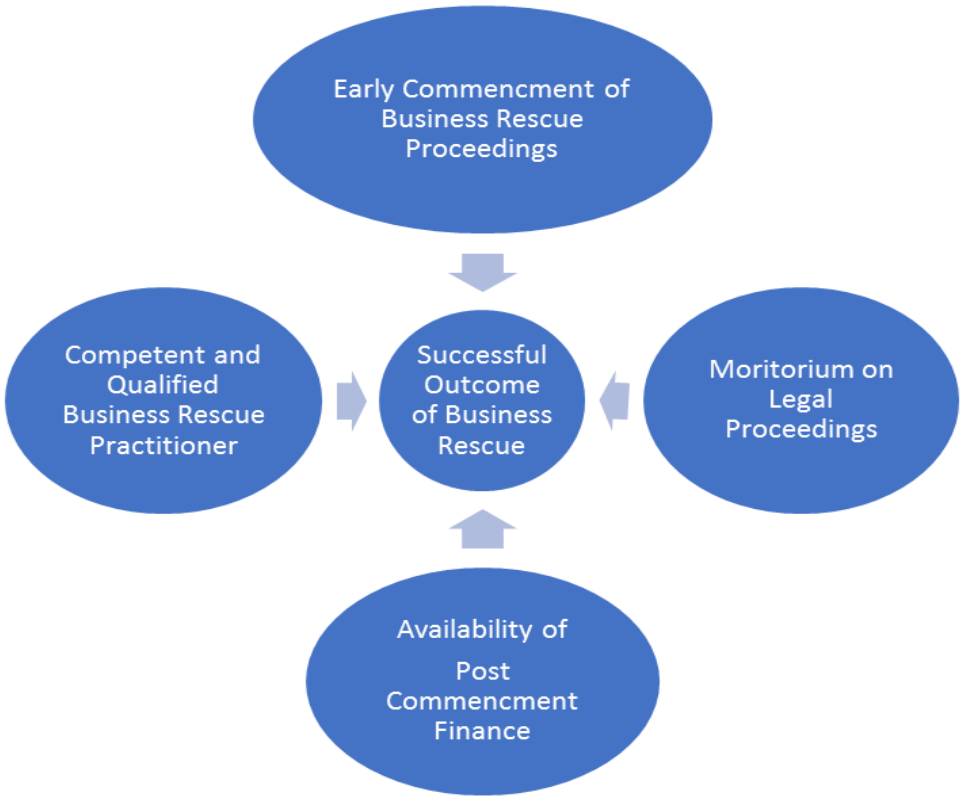


Figure 2: Current factors that cause a successful rescue : adapted from the Companies Act 71 RSA (2008)

2.7.1 *Commencement of business rescue proceedings*

The precise commencement of business rescue proceedings has a significant impact on a matter. Its timing will provide some sort of confirmation of the value each stakeholder can expect if the proceedings ended, i.e., liquidation. Premature commencement of business rescue can lead to the unfair distribution of the available value in the company between old and new creditors. A delay in commencement may lead to a loss for all stakeholders, as the now delayed business rescue process will “incur expenditure that will drain the company’s asset pool available to creditors upon liquidation” (Bradstreet (2011, p. 364). The Institute of Directors (2009) reports also state that “the commencement of business rescue should happen earlier when the degree of financial distress is less rather than later”. In addition, Bradstreet (2011) states that commencement may occur at a time when it is already too late to save the

distressed company. According to M Pretorius and Holtzhauzen (2008), the resources a distressed company has available is a key determinant to establish if the company can pursue a turnaround or how quickly it will move towards liquidation.

Business rescue can commence by (1) application by creditors, (2) application by other affected persons (3) by company resolution (Board of Directors) Companies Act 71 RSA (2008). Rushworth (2010) said in his article that the majority vote for a Board of Directors is regulated by the company's Memorandum of Incorporation. Section 129 of the Companies Act 71 RSA (2008) confirms that the Board must have reasonable grounds to believe that the company is financially distressed and that there appears to be a reasonable prospect of saving it. Loubser (2010a) identifies the broad categories of persons that can apply to court for a business rescue order in her article.

Section 132 (2) of the Companies Act 71 RSA (2008) confirms that business rescue proceedings are terminated by either a court order, the filing of a notice of termination by the BRP or the creditors' rejection of a business rescue plan.

In the conclusion of his article, Bradstreet (2011, p. 380) concludes that creditors must not view business rescue as a "halfway house to liquidation" or "failings of judicial management", as this stigma affects the stakeholders' approach to business rescue and its success.

Bradstreet (2011) further intimates that the early commencement of business rescue is a key factor in determining its success or failure. Cassim (2011) confirms this by stating that the sooner a business in distress files for rescue the better the chances for success. However, Marius Pretorius and Du Preez (2013) intimate that the newness of the Chapter 6 of the Companies Act 71 RSA (2008) deters companies from timeously filing for business rescue.

2.7.2 *Post-commencement finance*

Section 135 of the Companies Act 71 RSA (2008) defines post-commencement finance (PCF) as finance provided to a company once business recue proceedings have commenced. This includes remuneration and reimbursement expenses. An amount of money relating to employment that becomes due and payable to an employee during business rescue will also be considered as PCF. This enables funders to enjoy preferential treatment of a claim during

a business rescue as they are settled after the business rescue practitioner has been paid. This preference remains in place if a company in business rescue now files for liquidation. M Pretorius and Holtzhauzen (2008), affirmed that any unencumbered resources available in a distressed company increase its ability to borrow funds and generate cash to pursue a turnaround. This point of using unencumbered assets was further confirmed by Burdette (2004).

Vriesendorp and Gramatikov (2010) noted that a company in business rescue requires a degree of financial support from either funding institutions or creditors. This point was confirmed by Burdette (2004), who said that PCF could be provided by existing lenders and creditors or new parties for differentiating reasons. According to Marius Pretorius and Du Preez (2013), it becomes difficult to raise PCF for financially distressed companies and this is confirmed by Bradstreet (2011). The difficulty with raising the finance forces a company to operate on a cash basis (if cash is available). Vriesendorp and Gramatikov (2010) reiterated these sentiments in their article by noting that raising PCF is one of the obstacles to a company achieving a successful business rescue. Marius Pretorius and Du Preez (2013) claimed in their article that the chances of a successful turnaround are largely dependent on the company securing PCF at the inception of the business rescue proceedings. Bradstreet (2011) concluded that PCF can be obtained from creditors who enjoy the security of preferred payment and who are offered super-priority status as an incentive to assist the distressed company.

Lin, Lee, and Gibbs (2008) articulated that the problem with financially distressed companies is that, in general, lending institutions impose stricter lending criteria for financing as they are taking a risk approach when providing credit. In addition, general suppliers will also be wary of extending further credit. Lending to distressed companies is still tainted with suspicion. This perception should be removed to assist these distressed companies (Rajak and Henning (1999).

Marius Pretorius and Du Preez (2013), observed that PCF was not very accessible to companies in business rescue because of the newness of the proceedings. Jijana et al. (2008) also advised that the lack of access to PCF was the result of failed business rescue attempts.

Reineck (2015) confirms that Chapter 11 in the US has provisions in the act to encourage financiers to provide PCF. Marius Pretorius and Holtzhauzen (2013, p. 171) reiterated that "PCF in international countries is actively raised."

The SA provisions with regards to PCF are slowly changing. PCF can be raised from banks, trade creditors, customers, shareholders, development finance institutions and alternative financiers according to Marius Pretorius and Du Preez (2013). They also mention that although lending institutions view distressed companies as high risk, this view is changing as lenders become comfortable with the concept of business rescue and the risks involved.

According to Marius Pretorius and Du Preez (2013), one needs to understand the stage of decline of the company to match it to the companies financing needs. Jijana et al. (2008) indicated the following different stages of decline of a company and its the financing needs:

No	Stages	Characteristics	Finance Required
1	Performing Well	Operating normally	Normal financing
2	Under Performance	Scarce resources and weak internal operations	Venture is cash strapped and requires restructuring financing
3	Distress	Abundant resources but declining sales and loss of competitive advantage	Requires additional funding but riskier
4	Crisis	Scarce resources and pressure on cash	Request Creditors for debt forgiveness

Figure 3 : Stages of decline of a company Jijana et al. (2008, p. 49)

In his report, Prins (2015) confirmed a few times that securing PCF is crucial to a successful business rescue and that legislation has been drafted to protect a PCF funder.

2.7.3 *Moratorium on legal proceedings*

Modern legislation has created various mechanisms to protect a distressed company in business rescue and to enable its rehabilitation. This is not an easy task as there are many conflicting interests that need to be considered. Section 133 of Chapter 6 of the Companies Act 71 RSA (2008) creates a general moratorium that temporarily stops legal proceedings, including enforcement action against a company Lamprecht (2008). Bradstreet (2011) mentions that creditors interpret this provision as prejudicial and an infringement on their right of recovery. As a result, creditors try to secure their rights before the implementation of the moratorium.

Lamprecht (2008) also observed that judicial management contained a similar provision as an option. The Companies Act 71 RSA (2008), however, contains an automatic moratorium that is activated when business rescue is adopted. According to Burdette (2004), most countries around the world provide for this type of moratorium and each jurisdiction has slight differences regarding the scope of the stay and the length of time. He further states that this moratorium needs to be included for business rescue to be a success. However, Marius Pretorius and Du Preez (2013) remarked in their report that businesses with alternate objectives abuse this moratorium in their favour. Rajak and Henning (1999) noted that this moratorium allows BRPs time and space to restructure the company. This outcome was also confirmed by Bradstreet (2011) and Rushworth (2010) who both indicate that this provision provides a “breathing space” for companies to plan their way forward. Rushworth (2010) adds that the moratorium creates a chance for the company to operate on a solvent basis without creditors harassing the company for payment.

Bradstreet (2011) says that this provision is a key ingredient to the success of business rescue and helps to facilitate it. It allows the distressed company to use the assets it has available to try and raise cash to save itself, rather than pay off its debt.

2.7.4 *Development of a rescue plan*

Seccombe (2013) confirms that section 150 (2) of the Companies Act 71 RSA (2008) governs the general framework of the business rescue plan. The plan must contain details of the manner in which the business rescue practitioner proposes to rescue the company.

Loubser (2010b) found that one key benefit of the new business rescue proceedings is the rescue plan that shows how the company can be rescued. She further pointed out that the rescue plan was one of the reasons why Judicial Management did not succeed.

Section 150 (2) of the Companies Act 71 RSA (2008, p. 256), declared that "the business rescue plan must contain all the information reasonably required to facilitate effected persons in deciding whether or not to accept or reject the plan." Section 154 of the Companies Act 71 RSA (2008) confirms that once the rescue plan has been adopted, a creditor loses the right to enforce the relevant debt or a part thereof.

In addition, the Companies Act 71 RSA (2008) states that creditors must approve the development of the plan at a meeting that is also open to participation by other groups of "affected persons". A rescue plan is only approved if it is supported by 75% of the creditors out of which 50% must be claimants who qualify as "independent creditors".

The objective of the rescue plan is to detail the modus operandi to be used by the company to overcome its financial difficulty and resume as a going concern. If this outcome is not possible, then the plan must consider proposing a better return for the company's creditors or shareholders compared to a liquidation (Rosslyn-Smith and Pretorius (2015).

Marius Pretorius and Rosslyn-Smith (2014) expressed the view that although business rescue emerged from an international insolvency framework, there is still a significant contrast between the International business rescue plans and the local business rescue plans. Chapter 6 of the Companies Act 71 RSA (2008) causes this contrast. Marius Pretorius and Rosslyn-Smith (2014, p. 108) also cite that the rescue plan "should adhere to a broader and more extensive set of expectations than those explicitly provided for by the RSA (2008)".

Burdette (2004) explained that the content should focus on the key objectives and that the procedures must be clear and understandable to the various parties. Interested parties need as much information as possible to assist them in voting in the plan.

Marius Pretorius and Rosslyn-Smith (2014, p. 127 and 128) indicated that some principles for developing a rescue plan include "a tool for feasibility declaration, medium of communication, enabler for transparency, serves contractual obligations, serves to attract and secure post commencement financing."

2.7.5 *The appointment of a business rescue practitioner*

“A business rescue practitioner is appointed to oversee a company during business rescue proceedings” according to Section 128 (d) of Chapter 6 of the Companies Act 71 RSA (2008, p. 230). Bradstreet (2010) remarked that a BRP’s appointment is important for the affected persons, as the BRP has to try to manage the conflicting interests of all these parties during this process. In addition, Chapter 6 of the Companies Act 71 RSA (2008) provides the business rescue practitioner with “extensive powers and control of the proceedings.” This point was confirmed by Rushworth (2010) who used the words “wide powers” to describe this situation. Bradstreet (2011) said that a BRP should be skilled in managing a business.

The Companies Act 71 RSA (2008, p. 230) regulates the BRP twofold by involving:

(1) “The appointment of suitably qualified practitioners in accordance with the qualifications set out in section 128 of the Companies Act 71 RSA (2008, p. 230), and
(2) The monitoring of business rescue practitioners in their performance of business rescues.”

Rushworth (2010) explained in his article that Chapter 6 of the Companies Act 71 RSA (2008) is quite explicit on the BRPs’ ability, qualification, appointment, good standing, independence, impartiality and the removal and replacement of the practitioner by a court order. In addition, Burdette (2004) said that a BRP should have personal qualities such as, “integrity, impartiality and good management skills”.

Papaya (2014) confirmed that CIPC issues conditional licences to BRPs with authority from the Companies Act 71 RSA (2008). The experience of the applicant and the size of the company are contributing factors when granting licences. Bradstreet (2011) remarked that BRPs must be “suitably able” as well as “impartial”. He also says that BRPs can be removed from their office because of incompetence. In his article, Marius Pretorius (2014, p. 1 & 2) states that BRPs requires a “wide range of competencies” and should not accept an appointment if he does not have the experience, as it will reveal his shortcomings. Rescue requires “high level business management, and financial expertise, human relations skills and knowledge of legal and related frameworks and processes.” He further comments that some

general aspects of a BRP include strategic, tactical and leadership skills, which are prevalent in entrepreneurs and business managers.

Papaya (2014) concludes her article by stating that the regulations in the Companies Act 71 RSA (2008) has a solid legislative framework for regulating the profession. Bradstreet (2011) confirms that a BRP is an essential ingredient for a successful rescue. One of the key responsibilities of a BRP is to develop and implement a business rescue plan.

Bradstreet (2010) declares that the role of a BRP is important to ensure a successful business rescue. He further states that a successful business rescue is dependent primarily on the ability of BRPs and that this ability is influenced by their qualifications together with the provisions in Chapter 6. Bradstreet (2011) mentions in the closing comments of his article that a BRP's competence and "implementation of the rescue plan" indicates his effectiveness as a BRP.

2.8 Recent business rescue statistics for SA (as at June 2016)

Operational BR Proceeding Applications	**2011/2012**	**2012/2013**	**2013/2014**	**2014/2015**	**2015/2016**	**2016/2017**	**Total**	**%**
Busines Rescue Proceedings Started	**383**	**442**	**413**	**415**	**487**	**104**	**2244**	**100**
Business Rescue Proceedings Ended	**300**	**263**	**229**	**179**	**151**	**3**	**1125**	50
Terminated	64	88	70	63	80	3	368	16
Successfully Completed	76	95	85	53	27	0	336	15
Liquidation	52	48	52	36	23	0	211	9
Court Set Aside BR	2	5	3	2	0	0	12	1
Failed the test for BR	106	27	19	25	21	0	198	9
Active as at 30 June 2016	**83**	**179**	**184**	**236**	**336**	**101**	**1119**	50
Active as at 31 March 2016	**86**	**181**	**189**	**250**	**422**	**1129**	**N/A**	
Active as at 31 December 2015	**88**	**193**	**206**	**275**	**330**	**1092**	**N/A**	
Active as at 30 June 2015	**96**	**201**	**217**	**314**	**97**	**925**	**N/A**	

Figure 4 : Statistics of business rescue in SA CIPC (2016)

This figure shows that the number of business rescue cases is increasing year-on-year. The 2016/2017 period does not contain a full year set of results. The active cases remaining as at 30.06.2016 are still of concern to stakeholders, as this makes up 50% of the proceedings where business rescue matters have still not yet been finalised. Therefore, by highlighting the factors

that have resulted in a successful rescue, the researcher hopes to try and increase the number of successful business rescue cases.

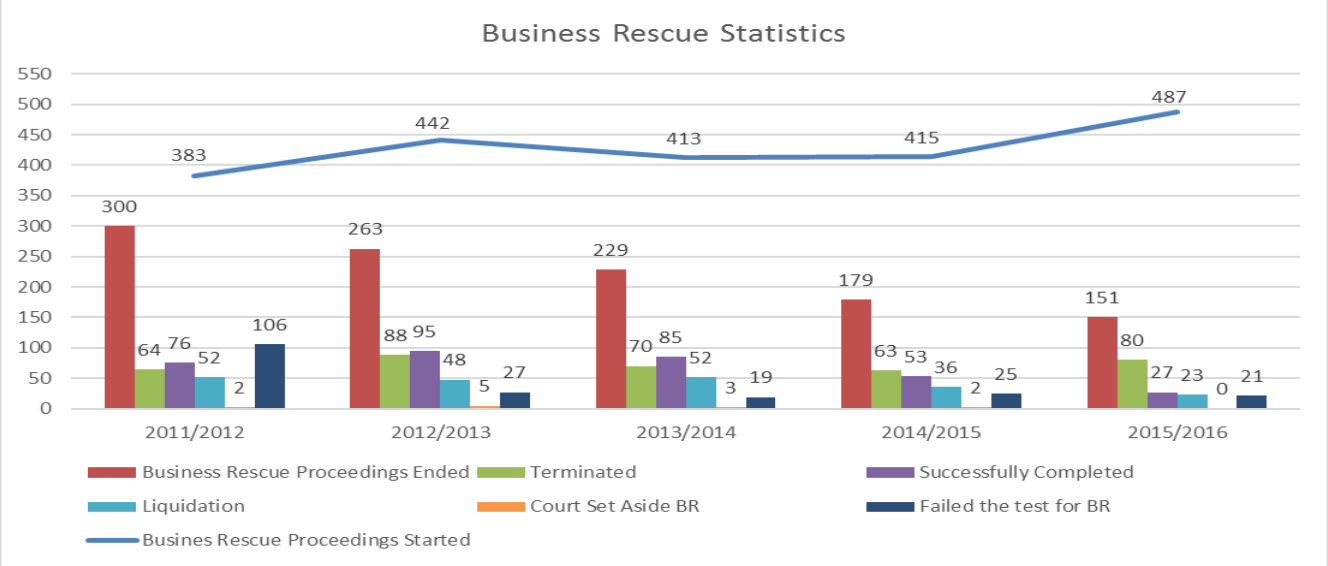


Figure 5 : Statistics of business rescue in SA CIPC (2016) (Graph)

2.9 Research propositions

No	Propositions
1	The early commencement of business rescue leads to a successful rescue.
2	The ability of the company to secure PCF successfully leads to a company's rescue.
3	The moratorium on legal proceedings leads to a successful rescue.
4	Developing a successful rescue plan leads to a successful rescue.
5	The appointment of a competent, qualified BRP leads to a successful rescue.

CHAPTER 3. METHODOLOGY

3.1 Introduction

This section provides an outline of the methodology applied to answer the research propositions. Firstly, it presents a research protocol containing a summary of and the key focus of this research. The research design, population and sample, procedure for data collection and data analysis and interpretation follow. The interview instrument shown in Appendix B of the study are informatively described in this chapter as well. The chapter ends with the limitations, validity and reliability of the study.

Five propositions, whose development was guided by the literature review, were described at the end of Chapter 2. These served as the source for the questions required as part of the data collection.

The questions raised to test the propositions that evolved from the literature review were presented to each BRP for answers. It is important to note that this research represents the viewpoint of the BRPs.

Flick (2009, p. 22) cited that “qualitative research above all works with text. Methods for collecting information, interviews or observations produce data which are transformed into texts by recording and transcription. Methods of interpretation start from these texts.”

3.2 Research protocol

The research protocol set out below is the map of the research.

Table 1. Map of the research : adaption initially from Yin (2013), also used by Marius Pretorius and Holtzhauzen (2013) .

Component	Description
Research question/problem	Analyse some of the factors that have resulted in a successful business rescue.
Context	Business Rescue
Propositions	• The early commencement of business rescue leads to a successful rescue. • The ability of the company to secure PCF successfully leads to a company's rescue. • The moratorium on legal proceedings leads to a successful rescue. • Developing a successful rescue plan leads to a successful rescue. • The appointment of a competent, qualified BRP leads to a successful rescue.
Phenomena investigated	The factors that cause a successful business rescue
Units of observations	Literature, Chapter 6 of the South African Companies Act (No 71 of 2008), international rescue regimes and business rescue practitioners.
Logical linking of data to the propositions	Since May 2011, there have been 336 companies that have been rescued. The Business Rescue Practitioners involved in this process will be able to comment on the causes of success that relate to these companies.
Criteria for interpreting the findings	Analysis of these factors for future rescues. Current causes as specified by literature and stated by BRP.

3.3 Research methodology

The research used a qualitative methodology and more specifically a face-to-face in-depth interview process to collect the appropriate data to answer the propositions. According to Strauss and Corbin (1998, p. 11) qualitative research means "any type of research that

produces findings not arrived by statistical procedures or other means of quantification. It can refer to research about persons' lives, lived experiences, behaviours, emotions and feelings …" and "It's the non-mathematical process of interpretation, carried out for the purpose of discovering concepts and relationships in raw data and then organising these into a theoretical explanatory scheme."

Strauss and Corbin (1998) also confirms that qualitative research is valuable to obtain intricate detailed, thought process which is difficult to learn from conventional research methods. As business rescue is a fairly new concept (inception in 2011), the researcher interviewed experienced and senior BRPs to extract rich, valuable, detailed data that contributed significantly to this research.

The researcher conducted a semi-structured interviewing process. The BRPs interviewed are extremely busy individuals, as can be gleaned from my sample. BRPs with a high take-up of rescues were interviewed. According to Cohen and Crabtree (2006), initially cited by Bernard (1988), semi-structured interviewing is best used when a person will not get a second chance to interview another person. In addition, Cohen and Crabtree (2006) advise that "many researchers like to use semi-structured interviews because questions can be prepared ahead of time."

Cohen and Crabtree (2006) also expressed a view that that semi-structured interviews contain mainly open-ended questions and feedback from the interviewees may digress from the interview guide. Therefore, the researcher recorded each interview while conducting it and simultaneously jotting down notes. The researcher also had a research instrument Appendix B with specific questions which help to keep the interview in line with the questions and answers in line with the research and prevent any digression. Other probing questions were used to elicit further information when an interviewee had a challenge answering a question and only provided a brief response to it. Hancock, Ockleford, and Windridge (1998, p. 16) remarked that "in a semi structured interview the interviewer also has the freedom to probe the interviewee to elaborate on an original response or to follow a line of enquiry introduced by the interviewee."

The researcher used a recording device to record the interviews. Prior approval was obtained from each BRP. The writer emphasised the confidentiality of the detailed information.

Opdenakker (2006) notes in his article that transcribing the recording can be time consuming. Therefore, a professional typist was employed to transcribe the recordings verbatim and reduce the time taken. According to Kothari (2004), there are some shortcomings in the interview process. He summarises these as:

- interviews are expensive to conduct.
- interviewer and respondent bias.
- inconvenience of supervision and control of interviews.
- unavailability of senior individuals for interviews.
- Interviews are time-consuming.
- Interviews could introduce systematic errors.
- Interviewer may obtain frank responses because of a lack of relationship with respondent.

The researcher considered all these shortcomings and they were properly adapted in the interview set-up and process.

As far as the responses from the questions are concerned, a thematic analysis was conducted to extract themes related to the topic.

3.4 Research design

The research design took the form of an interpretive study. This format is the most efficient means of collecting emotional as well as factual information (Creswell, Plano Clark, Gutmann, and Hanson (2003). Orlikowski and Baroudi (1991, p. 5) in their article define interpretive study as “People create and associate their own subjective and inter-subjective meanings as they interact with the world around them. Interpretive researchers thus attempt to understand phenomena through assessing the meanings participants assign to them”.

The advantages are the familiarity of respondents with an interview structure, the ability to discuss complex issues and the adaptive characteristics Walker (1985). However, interpretation does have some shortfalls that need to be taken into account. According to Kothari (2004), these shortcomings include wrong interpretation which could lead to inaccurate conclusions and skewed perspectives.

The research has a very clear focus, and the researcher intends to address certain issues.

3.5 Population and sample

3.5.1 *Population*

The population is the BRPs listed in the CIPC BRP Register. The register has 321 registered BRPs. The researcher interviewed 13 BRPs, representing 5% of the register. However, the majority of the population are still junior BRPs. All the BRPs interviewed by the researcher are experienced or senior, had handled a large number of rescues and were, therefore, in a better position to provide rich responses to the interview questions. They were able to provide more accurate assessments and relate a more realistic experience of these propositions. In addition, most of these BRPs were appointed to the CIPC register at the inception of the Register. After a while, the responses from the experienced and senior BRPs were starting to become repetitive and the feedback from the 13 interviews was sufficient to conclude this research.

3.5.2 *Sample and sampling method*

According to Kothari (2004, p. 152), “sampling is the process of obtaining information about the entire population by examining only a part of it.” The research sample is made up of experienced and senior BRPs who have handled a vast majority of business rescues in SA. To obtain an accurate response to the propositions, it was important for the researcher to obtain information from respondents who had conducted a large number of rescues. Meetings were set up with the respondents to conduct the interviews.

A total of 13 Interviews were conducted with 10 senior BRPs and 3 experienced BRPs over a period of two months. All the BRPs are registered with CIPC. All the individuals interviewed are experts in their field and have been involved in a consulting or advisory capacity in the field of business rescue in SA. Two BRPs have international experience. Note that the researcher had initially planned to interview 15 BRPs; however, their responses were starting to become repetitive. The 13 BRPs that the researcher interviewed provided sufficient rich data to conclude the research.

Where necessary, follow up discussions were held telephonically to better understand or clarify certain points from the interview findings. Appendix C attached, provides a summarised profile of each BRP Interviewed.

Initially, it proved difficult setting up the interviews with the BRPs. After further communication, however, the interviewees willingly agreed to the interviews. The sample used and the input received has enabled each of the propositions to be tested and has therefore satisfied the research objectives.

The pie chart below reflects the make-up of the CIPC BRP register. Before practising, BRPs need to register with CIPC and obtain a licence to practise. Based on an individuals' academic qualifications and experience as set out by the Companies Act 71 RSA (2008), CIPC will categorise a BRP as junior, experienced or senior. This categorisation, hopefully, enables the right calibre of BRPs to be appointed to a rescue. The researcher interviewed three experienced BRPs and ten senior BRPs who have handled the largest and the majority of the rescues that have occurred since the inception of business rescue in 2011.

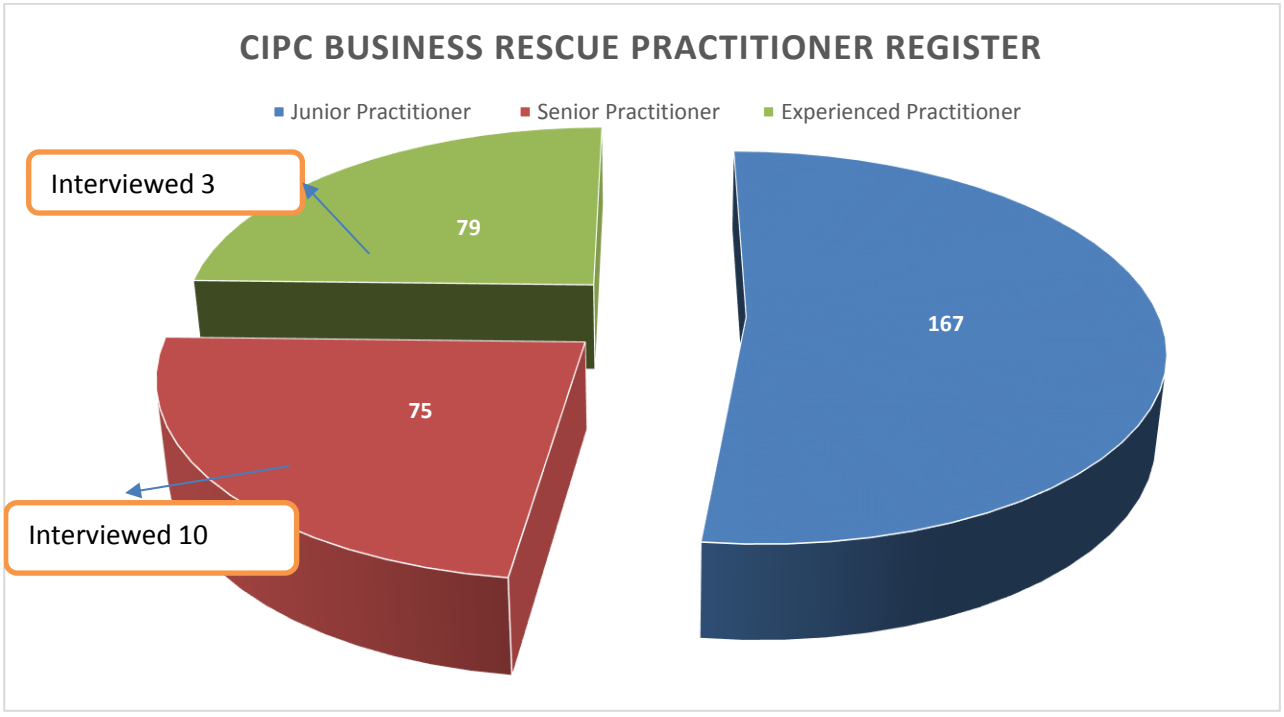


Figure 6 : Register of business rescue practitioners

CPIC has a list of registered BRPs on its website. The list is updated every quarter and was last updated in December 2016. The number of BRPs at the end of December 2016 amounted to 321.

3.6 The research instrument

The semi-structured interview with the list of questions asked is attached as Appendix B. The advantages of a semi-structured interview allow for flexibility when the respondents express their views in their own terms. In addition, questions can be prepared in advance to assist in the preparation. The problem with this method is that there may be confidentiality concerns and hesitation on the part of the respondents about sharing sensitive information (Cohen and Crabtree (2006).

3.7 Procedure for data collection

The data was collected in face-to-face interviews with the 13 BRP respondents mentioned in the sample and according to an interview sheet set out in Appendix B. Each interview lasted an average of 45 to 60 minutes. One of the reasons for the face-to-face interviews was because the researcher needed the interviews to be standardised for the results extracted to be accurate. According to Opdenakker (2006), face-to-face interviews are highly likely in situations when standardisation in an interview is important. Opdenakker (2006) also states in his report that standardisation is not important in telephone Interviews.

This approach identified and explained the personal knowledge and experiences of the specialist BRPs who have previously been involved in rescuing companies. However, Opdenakker (2006) confirms that in face-to-face interviews the interviewee may be able to guide the direction of the interview. However, having an interview protocol prevented this from occurring.

The interviews were pre-arranged with the BRPs. The researcher called a few weeks before the interview to set it up. All of the BRPs are based in Gauteng. The interviews took place at their offices. This made it convenient for the BRPs and also made sure the researcher obtained a better response to his requests by not inconveniencing them. Interviews were recorded and

handwritten notes were taken. The researcher used open-ended questions and an open-ended strategy, which meant that participants were encouraged to elaborate on their accounts or their observations. The responses to the questions raised in the interviews were treated as primary data. According to Kothari (2004), primary data, which is best collected through interviews, are fresh data collected for the first time and thus original in character.

3.8 Data analysis and interpretation

3.8.1 *Consent*

The researcher made sure that all respondents named in the sample freely consented to participating without being coerced or unfairly pressurised. The researcher also made sure that the respondents were well informed about what the participation entailed and assured them that declining would not affect any services they received.

3.8.2 *Confidentiality*

According to Wiles, Crow, Heath, and Charles (2008), researchers have a duty to state their findings and not keep them confidential. To keep in line with Wiles et al. (2008, p. 4), the researcher assured the parties that their identity would be kept confidential and that the records would also be kept confidential by limiting access to them. The researcher stored the data separately in a password secured computer. Wiles et al. (2008, p. 417) also stated that "anonymity is the one way in which confidentiality is operationalised."

3.8.3 *Recording and transcribing interviews thematic framework*

The rich, detailed raw data was obtained in the form of notes, tape recordings and observation notes. In the case of tape recordings, these were first transcribed verbatim.

In analysing the data obtained from the interviews conducted, the researcher created a preliminary list and then also extracted unidentified, seemingly important themes that emerged from the data a process similarly adopted by Leedy and Ormrod (2001). During the indexing and charting phases, Ritchie and Spencer (2002) noted emergent categories, associations and

patterns. In their book, they also state that the researcher will be able to identify key characteristics and themes from the data and map and interpret the data as a whole. In this research, the key characteristics and themes identified from the interview results served as rich data for the research to conclude chapter 4 and chapter 5.

Once the above step was concluded, a final consistent list of themes was framed similar to the process adopted by Leedy and Ormrod (2001).

3.9 Limitations of the study

The study is reliant on the small sample of individuals i.e. 13 of the 321 registered BRPs. Atieno (2009) states that some limitations to qualitative research include ambiguities inherent in human languages and the findings not being the same if the semi-structured interviews are extended to the wider population.

The researcher is not an experienced interviewer.

3.10 Validity and reliability

Leedy and Ormrod (2001) mention that validity is concerned with whether the data collected is relevant to the research questions or propositions and comprises both external and internal validity. External validity is the extent to which results can apply to the general population and internal validity is the extent to which the results describe the relationship within the study. Brink (1993, p. 35) states that “a valid study should demonstrate what actually exists and a valid instrument or measure should actually measure what it’s supposed to measure”. Brink (1993) also states in his report that error is a factor that affects the accuracy and truthfulness of the results. Therefore, sources of error in this research report were closely monitored.

3.10.1 *External Validity*

Brink (1993, p. 35) states that external validity “addresses the degree or extent to which such representation or reflections of reality are applicable across the groups.” In this research report the respondents’ feedback was checked against various literature reviews and other sources

that related to this topic. According to Ritchie, Lewis, Nicholls, and Ormston (2013, p. 43), “triangulation involves the use of different methods and sources to check the integrity of or extent, inference drawn from the data.”

3.10.2 *Internal validity*

Denzin (1970) states that internal validity is the extent to which the findings in the research are a true reflection of reality.

Collecting the data via face-to-face interviews was uniform throughout the process and ensured internal validity. The interview instrument was replicated for each interview. As this was a semi-structured interview, there were some open-ended questions. However, the researcher ensured that internal validity was not compromised. Triangulation with alternative data sources (further interviews, press articles and internal documents) also provide verification of key findings in the study Miles and Huberman (1984).

3.10.3 *Reliability*

Reliability refers to the ability of the research method to consistently yield the same results over repeated testing periods Brink (1993). An accurate research instrument tested on a trial respondent prior to the interviews with the BRPs assured reliability in this research. Refinements and clarifications were made to elicit appropriate data from the respondents.

The research paper also draws data from current legislation, as well as from empirical studies and non-empirical research to understand how the success of business rescue is evaluated.

CHAPTER 4. PRESENTATION OF RESULTS

4.1 Introduction

Chapter 2 ended by outlining five propositions and Chapter 3 set out the methodology used to test the propositions. The results are presented in alignment with the propositions indicated in the previous chapters. This chapter presents the findings extracted from interviews conducted with ten senior and three experienced BRPs working mainly in Gauteng. Two of the senior BRPs interviewed have experience with international business rescue regimes, more specifically in the US, the UK and Australia. They were able to provide valuable feedback taking their international experience into account. They could draw a contrast between the SA business rescue provision and the similar international provision.

This chapter commences with a professional profile of the sample and outlines the process flow of the data analysis. The main themes are presented, highlighted and briefly explained under the relevant propositions, which will be interpreted in Chapter 5.

4.2 Anonymity

All the interviewees and the identity of the organisations mentioned are kept anonymous. The reasons are listed below;

- Some interviewees are still working on business rescues and they might be perceived as portraying that organisation in a negative light, especially with regard to revealing information about companies that are currently in business rescue.
- Interviewees would not have been as forthcoming with sensitive information if their identities were known. Some of the companies that are in business rescue and mentioned in the interviews are public companies and information could be identified if the company name were to be disclosed.

4.3 Professional profile of interviewees

Appendix C sets out the professional profiles of the BRPs interviewed. There is no link between the professional profile of a particular BRP and the success or failure of a business rescue. As is clear from both the literature review and the information emerging from the interviews, there are a number of factors that work in tandem to cause the success of a business rescue.

4.4 Summary of the results

4.4.1 *Early commencement of business rescue leads to a successful rescue*

92% of BRPs from the sample accepted this proposition. Most of these them provided more or less similar reasoning as to why they agreed with this provision. In response to the question about whether this proposition is critical for a successful rescue; Respondent 1 remarked "*Yes, that's a big factor. I mean the longer it bleeds the more difficult it is to rescue the company as more resources are lost*". Respondent 2 indicated something very similar "*Absolutely 100%. There's no doubt about it that once you start heading towards financial distress there is a very clear inverse relationship between time and the probability of success. It just gets less and less as you get deeper and deeper into trouble*". Respondent 4 articulated the following "*Yes. Never leave it to ten days before you go into liquidation. There's one matter I picked up under the new Act. The guy (owner) left it too late and we had to liquidate*".

However, Respondent 9 did not agree with this provision and cited "*Current thinking is yes, but I don't buy into that. If a company is in trouble, the moratorium is able to assist the BRP to get the company to a level where it could potentially be saved. It's a line in the sand, business rescue has its negative connotations, no new credit or work, and the BRP needs to work within this bubble to try and save the company*".

Table 1 below reflects the themes that emerged from the interviews with a short explanation of the meaning of each theme and its relation to the proposition. It also provides an indication of how many BRPs raised the similar theme during the interview.

Table 2: Presentation of Results – Proposition 1 – The Early commencement of business rescue leads to a successful rescue.

BRP Feedback to Proposition	Themes	Explanation	Results
12 BRPs agreed that early commencement of business rescue leads to a successful rescue	Depletion of Resources	Resources (assets, staff, etc.) available in the company to enable the company in business rescue to trade and generate income or serve as security to raise funding. The process of business rescue results in the loss of key staff, suppliers, etc.	Seven BRPs agreed that this was a benefit for early commencement.
	Last resort	When the process of business rescue has been left as a last resort to save a distressed company.	Five BRPs agreed that distressed companies left the option of business rescue as a last resort.
	Stigma	Business rescue has a stigma because of its low success rate.	Three BRPs agreed that the stigma of business rescue influences the commencement of business rescue negatively.
	Immaturity	The status of the business rescue process in SA.	One BRP agreed that the infancy of business rescue creates the immaturity of the process which influences the commencement of business rescue.
	Forecast	The ability for directors to conduct various forecasts to test the viability of the future of the company.	One BRP agreed that forecasts influence the application for business rescue.
1 BRP agreed that this factor was not important	Objective	The objective of early commencement may not result in a successful rescue	One BRP agreed that early commencement of business rescue is not the only step that could lead to a business rescue, there are other factors that also play a role.

4.4.2 *The ability of the company to secure PCF successfully leads to a successful rescue*

All 13 BRPs unconditionally accepted this proposition and their responses, although phrased differently, were similar. Respondent 1 said the following with regards to PCF "*my experience is that no one is funding this other than exposed people like yourselves where, you know, you say listen I'd rather put 60 in than have a claim for 200*". Respondent 9 indicated the following

"*None except existing funders that have something to lose. If an existing creditor is in for say R10 mio and if he has to invest R2.0 mio which is secure to get back R5.0 mio".* However, Respondent 12 advised that the law needs to be upgraded with regard to this provision. He said "*So, the first thing it needs to do, it needs to provide for security for the PCF. This is one of the biggest issues. The current Chapter 6 is inadequate. Furthermore, the banks do advance PCF and funding but it is a grudge lend because they have to protect their existing interest and there are more and more kind of asset-based lenders that are doing work in business rescue and they do like merchant discounting, factoring, those kind of stuff".* Respondent 13 indicated the following when questioned on what was causing funders to restrict funding *"There is still a lot of a big educational process that is still required".*

Table 2 reflects the themes that emerged from the interviews and a short explanation as to the meaning of each theme and its relation to the proposition. It also provides an indication of how many BRPs raised a similar theme during the interview.

Table 3 : Presentation of results – Proposition 2 – The ability to secure PCF successfully leads to a successful rescue

BRP Feedback to Proposition	Themes	Explanation	Reasons
All 13 BRPs agreed that the ability to secure PCF leads to a company's successful business rescue	Incumbent Stakeholder	Stakeholders that have a vested interest in a company that is in business rescue. Includes, staff, creditors, shareholders, funders, etc.	12 of the 13 BRPs agreed that incumbent stakeholders are normally providers of PCF.
	Attitude	Funders still have a very negative attitude towards PCF because of its success rate and stigma.	Six of the 13 BRPs agreed that funders have a negative attitude towards providing PCF to companies in business rescue.
	Understanding	Understanding of the business rescue process and Chapter 6 of the companies Act that relates to business rescue. A type of funder.	Three of the 13 BRPs agreed that the increase in understanding of business rescue results in engagement with funders but necessarily reduction of the risk profile of the company.
	Private Equity	Asset Manager and Individuals looking to invest	Three of the 13 BRPs agreed that Private Equity firms are more susceptible to provide PCF than traditional funders.
	Collateral	Collateral used by companies to raise finance.	Two of the 13 BRPs agreed that if they are able to realise security

BRP Feedback to Proposition	Themes	Explanation	Reasons
			from within the company or the shareholders, raising PCF becomes much easier.
	Opportunity	Providing PCF as a business opportunity.	Two of the 13 BRPs agreed that PCF could be viewed as a product opportunity for funders. However, business rescue is still in its infancy stages, which raises the risk profile of the product.

4.4.3 *The moratorium on legal proceedings leads to a successful rescue*

All 13 BRPs unconditionally accepted this proposition. Respondent 2 said that *"100%. It gives you the time that you need".* Respondent 3 expressed the following view "*Absolutely, however, banks don't like Business rescue, they can tell me what they want and very few creditors actually like business rescue".*

Respondent 7 stated "*It does. People start filing for business rescue when they start getting nasty letters from creditors, by then it is almost too late. Unless we have access to capital and commitment from managers to handle the change".*

While Respondent 8 said *"Definitely. So, I think everyone's gotten used to the fact that there is this moratorium. People are trying to test ways around it. So, the moratorium is only on legal action. So, it means you can still pay creditors and you can still do various things, there is still flexibility outside of that moratorium, it just means you can't bring proceedings".*

Table 4: Presentation of results – Proposition 3 – The moratorium on legal proceedings leads to a successful rescue

BRP Feedback to Proposition	Themes	Explanation	Reasons
All 13 BRPs agreed that the moratorium on legal proceedings leads to a successful business rescue	Negative Attitude	Attitude of the different stakeholders to this provision.	Eleven of the thirteen BRPs agreed that all the parties affected by the moratorium have a negative attitude towards the moratorium. They believe that this provision is abused by the BRPs.
	Dispute	Reaction taken by different stakeholders to this provision.	Four of the 13 BRPs agreed that effected parties prefer to dispute the moratorium and

BRP Feedback to Proposition	Themes	Explanation	Reasons
			challenge the provision via the Court process.
	Hiatus	The effect of the moratorium which places a stay against legal proceedings against the company so that the BRP can concentrate on the rescue.	Four of the BRPs view this provision as a hiatus, to give them an opportunity to carefully consider the options available and plan the rescue without interruptions.
	Knowledge	Relates to peoples growing knowledge of the business rescue process and system and Chapter 6 of the Companies Act.	One of the 13 BRPs agrees that the moratorium is accommodated by affected parties as they become more knowledgeable of the business rescue process and believe that the process will reap better rewards than a liquidation.

4.4.4 *Developing a successful business plan leads to a successful rescue*

All 13 BRPs accepted this proposition. Respondent 1 commented *"Oh fundamental, Very important*". While Respondent 4 noted *"Absolutely important, but it needs to be properly checked out. Not just by the business rescue practitioner. It needs to be legally checked out and if possible, get the creditors to understand it. The plan is absolutely a must and you have your time periods".*

Respondent 9 declared the following *"So your plan must create the environment that allows each of those stakeholders enough comfort to be able to buy into it. So, the plan document has to tell the story basically in a way that says the supplier is now happy to come on board".*

Respondent 13 agreed that the plans have improved since 2011 "*Now it is becoming more on target to say this plan achieves what it wants to achieve".*

Table 5: Presentation of results – Proposition 4 – Developing a successful plan leads to a successful rescue

BRP Feedback to Proposition	Themes	Explanation	Reasons
All 13 BRPs agreed that developing a successful rescue plan leads to a successful business rescue	Understandable	The plan needs to be understood by all types of people. The company engages with different types of people at various	Ten BRPs agreed that the plan should be written in a format and language that is

BRP Feedback to Proposition	Themes	Explanation	Reasons
		education levels, which leads to their respective levels of understanding of the content of the plan.	easily understandable by all parties.
	Credible	The content of the plan needs to be credible to instil confidence.	Ten BRPs agreed that the plan should be credible.
	Commercial	Current day plans are written more with legalists. However, they lack showing commercial substance, which is what is required for stakeholders to make a decision.	Two BRPs agreed that the plan must not be too legalistic but have more commercial substance to show the viability of the rescue. Stakeholders that voted in the plan are not legal individuals and have a commercial background.

4.4.5 *The appointment of a competent, qualified BRP leads to a successful rescue*

This achieved general consensus, as 92% of the BRPs confirmed that this was an important proposition. Respondent 9 said that this is *"key to the success of the rescue. People skills most important factor for the BRP but most neglected. And this can make the business rescue work".*

Respondent 8 mentions *"I think it's vital. I think the choice of practitioner is essential. If you get the wrong jockey it can be detrimental to the business".*

Respondent 6 explained the following *"Absolutely vital. The skills of the practitioner and the focus of the practitioner on the rescue at hand will often determine the success of the rescue".*

Respondent 12 articulated *"It's absolutely critical because they have such unilateral power. The business rescue practitioner has got perhaps just a little bit too much power sometimes in the process and that's a problem. If the person is not experienced or doesn't know what they're doing, then it's a disaster. You can't make".*

Table 6: Presentation of results – Proposition 5 – The appointment of a qualified BRP leads to a successful business rescue

BRP Feedback to Proposition	Themes	Explanation	Results
12 BRPs agree that the appointment of a competent, qualified BRP leads to a successful rescue	Background and Knowledgeable	The BRPs' background with actually managing a business and business rescue and knowledge of Chapter 6 of the Companies Act.	All 13 BRPs stated that the background of BRPs and their knowledge of business rescue assisted them to deliver successful rescues
	Experience	Experience in rescuing a business or restructuring a business.	Ten BRPs agree that experience equips BRPs with better understanding to deliver successful rescues.
	Competence	The actual skill level of the BRP	Nine BRPs agree that a BRP should be commercially orientated to be able to deliver better commercial solutions.
	Commercial Orientation	The BRP needs to have sound commercial knowledge.	Nine BRPs agree that the competence level of BRPs will assist in delivering a successful business rescue.
	Regulation	Regulation relating to the appointment of a BRP and the powers of the BRP	Seven BRPs agree that there should be more BRP regulation.
	Character	Character entails, Integrity, confidence, accountability, generalist and credible.	Six BRPs agree that the character of a BRP is important.
1 BRP agreed that this proposition was not critical to the success of a rescue	Situational	Each situation needs to be assessed on an individual basis.	If a company cannot be saved, then no matter who you appoint as a BRP, it will still be liquidated.

CHAPTER 5. DISCUSSION OF RESULTS

5.1 Introduction

The purpose of this chapter is to discuss, in detail, the data presented in Chapter 4. This discussion ties back to the literature review concluded in Chapter 2.

Themes identified in Chapter 4 will be discussed under the following headings;

- The early commencement of business rescue leads to a successful rescue.
- Securing PCF successfully leads to a company's rescue.
- The moratorium on legal proceedings leads to a successful rescue.
- Developing a successful rescue plan leads to a successful rescue.
- The appointment of a competent, qualified BRP leads to a successful rescue.

The results of the 13 BRPs reported on will be discussed in detail here.

5.1.1 *The early commencement of business rescue leads to a successful rescue.*

Of the 13 BRPs, 12 accepted that the early commencement of business rescue leads to a successful rescue. One BRP was not convinced that this proposition was so critical for the rescue to be a success.

The following themes were extracted from the interviews;

- Depletion of Resources

This theme emerged in the literature review and was identified by Bradstreet (2011) and Institute of Directors (2009). It confirms that early commencement will stop the drain on a distressed company's assets and reduce the degree of financial distress. In terms of the researcher's interviews, this aspect was confirmed by six BRPs. Respondent 1 noted that "*the longer it (meaning the distressed company) bleeds the more difficult it is to rescue the*

company as more resources are lost, loss includes, intellectual capital, good staff and clients. The sooner you address it the better". Respondent 8 articulated that *"the company will still have a runway."* Therefore, this theme concurs with the literature review quite strongly.

- Last resort

This theme was confirmed by five BRPs during the interviews. It means that business rescue to save a company is the last resort for most companies in distress. Respondent 3 said that *"The guys still leave it far too late. It is the stigma that still perpetuates in the South African market, the companies and the directors are going into business rescue too late."* Bradstreet (2011) confirmed that commencement of business rescue may occur at a time when it is already too late to save the company. This theme concurs with what was stated in the literature review.

- Stigma

According to the responses from the interviews, the low success rate of business rescue, has given business rescue a stigma. This has influenced the "stakeholders" of distressed companies to not choose this option as a method to save a distressed company. Respondent 1 mentioned the following with regard to a matter that he was working on *"It's a massive dispute and they won't do it. They say it's got such a bad name business rescue, we don't even want to debate it."* Bradstreet (2011, p. 380) mentions in the literature review that creditors must not view business rescue as a "halfway house to liquidation or failings of judicial management." This theme was mentioned by three BRPs in the interview and ties in with the literature review.

- Infancy

This theme was stated by one BRP. He advised that due to the infancy of the business rescue process in SA, many interested parties are never certain about when the right time is to place a company into business rescue. Respondent 1 mentioned the following about a business rescue where the company first applied for liquidation "*he applied to liquidate it and then they went and asked for business rescue and so they approached me if I would*

be the Business Rescue Practitioner." This theme was noted by Marius Pretorius and Du Preez (2013).

- Forecast

This theme was confirmed by one BRP who suggested that the directors of the distressed company must continuously conduct various forecasts to test the viability of the future of the company. This will assist the directors to make a more informed decision about the most appropriate time to apply for business rescue. There is no literature to support this theme. In addition, when a company is in business rescue, it is important for the BRP to continuously conclude forecasts during the process and to assess the viability of the company sustaining itself.

- Response from BRP that disagreed with this Proposition

There was one BRP who did not agree with this proposition that early commencement of business rescue leads to a successful rescue. He said that "*If a company is in trouble, the moratorium (proposition 3) is able to assist the BRP to get the company to a level where it could potentially be saved. It's a line in the sand, business rescue has its negative connotations no new credit or work, and the BRP needs to work within this bubble to try and save the company*."

Conclusion on Proposition 1

The themes that emerged in the interviews, which mostly coincide with the literature, basically confirm that the commencement of business rescue leads to a successful rescue. If commencement is left as a last resort, which is common in SA, it results in the depletion of the distressed company's resources making it difficult to save it. Normally, the available unencumbered resources are used by the BRP to raise further capital. Most BRPs confirmed that the stigma of business rescue leads to many stakeholders delaying their decision to place a company into business rescue until it is too late. The infancy of business rescue is also one of the leading factors preventing many companies from going into business rescue early. Although one BRP disagreed with this point, his argument was not convincing enough to invalidate this point.

5.1.2 *Securing PCF successfully leads to a company's rescue.*

All 13 BRPs accepted that securing PCF could lead to a distressed company's rescue. The following themes were extracted from interviewing these individuals and will be discussed below:

- Incumbent Stakeholder

Twelve of the thirteen BRPs confirmed that incumbent stakeholders, e.g., creditors, shareholders, funders, etc. who already have a vested interest in a distressed company may provide some form of PCF to try and recover their whole exposure. They would invest a smaller amount to recover a higher amount. Respondent 2 mentioned *"Typically, in my experience, its shareholders, new investors, existing lenders and there is a growing pool of dedicated funds and it's very small at the moment."* Respondent 3 concurred and stated *"It is either a creditor with a vested interest, in other words a secured creditor. Most instances the PCF supplied is by a creditor that has a vested interest in making this thing working."*

This theme was confirmed by Vriesendorp and Gramatikov (2010) and Burdette (2004) in the literature review.

- Attitude

Six of the BRPs interviewed advised that funders still have a negative attitude towards business rescue because of its low success rate and the stigma of business rescue. Respondent 1 articulated *"I think guys are quite nervous.",* while Respondent 8 advised *"And I think financiers are still stuck in that space that we're talking about. What is my exposure and I'm not interested in going past it. So, you've got a lot of work to convince a bank to keep going with you."* Burdette (2004) cited that creditors are not keen to lend funds to a company in business rescue without some form of collateral. Respondent 3 emphasises this point quite strongly by declaring "*Banks don't like business rescue and if they tell you they do they are lying. Banks like being in control. Banks don't like the control being taken away from them. I mean they want to say to a company listen I have your securities.*"

- Understanding

This theme was accepted by three BRPS who advised that the better the understanding funders have of business rescue, the better engaged they would be to try and assist the distressed company. This was confirmed in the literature review by Marius Pretorius and Du Preez (2013).

- Private Equity

During the interviews, three BRPs confirmed that private equity providers are more willing to provide PCF than traditional funders. The literature did state that private equity is a form of PCF; however, it does not confirm that it is becoming a popular form of PCF.

- Collateral

This theme, which was elaborated by two BRPs, means that if a distressed company has some form of unencumbered assets, it is able to leverage them as collateral to raise PCF with funders. This theme was confirmed by M Pretorius and Holtzhauzen (2008) and Burdette (2004) in the literature review.

- Opportunity

Two of the BRPS confirmed that PCF could be viewed as a new product opportunity for funders. This could not be confirmed by the literature review. The literature observed that although funders are becoming comfortable with the concept of business rescue, they are a bit sceptical of lending to distressed companies because of the low success rate of business rescue and its high-risk profile (Marius Pretorius and Du Preez (2013)

Conclusion of Proposition 2

The themes that emerged in the interviews coincide with the literature and basically confirmed that PCF leads to a successful rescue. However, most of the current funders are incumbent stakeholders who invest to protect their current interests. This is not a sustainable model, as it leaves the future of a company in the hands of parties that already begrudge the distressed company. Most banks and other funders do not like business

rescue because of its high-risk profile and their lack of understanding. It is also much easier to raise cash if the distressed company is able to raise collateral. Some view PCF as an opportunity for a new product, but it seems that this would only be possible when business rescue matures in SA and its success levels increase.

5.1.3 *The moratorium on legal proceedings leads to a successful rescue*

- Negative Attitude

Eleven BRPs agreed that various stakeholders - especially creditors and funders -have a negative attitude towards this provision because it negatively affects their rights. Some BRPs believe that the reason why these parties feel this way is because some companies and BRPs abuse this provision for their benefit or the benefit of a few creditors. Respondent 13 intimated that *"Their initial thought, that their rights have been taken away." Respondent 12 mentions "the banks are pissed off because they know, they're just stuck in a holding pattern and creditors, you know, creditors get upset but they generally accept it and get on with life."*

This point was confirmed by Bradstreet (2011) in the literature review and this aspect of abuse was also mentioned by Lamprecht (2008) and Marius Pretorius and Du Preez (2013).

- Dispute

Four BRPs advised in their interviews that affected parties in most instances try to dispute this provision and seek relief from the courts. Respondent 7 mentions that "M*ost accept it, banks are a bit nasty but they eventually do accept it. They try to attack the moratorium via the court process."*

Interestingly, the literature review did not state anything on this theme.

- Hiatus

The moratorium provides a stay on all legal proceedings, which allows the distressed company "breathing space" to investigate the state of the company and carefully plan its way forward. This provision allows the distressed company to stop focusing on external factors and to focus on the distressed company to plan a way forward. If this provision were not available, then the BRPs would be fending off payment demands from creditors and leaving little time to plan the turnaround of the company. This feedback was accepted by a few BRPs. Respondent 2 advised "*It gives you the time that you need."* While Respondent 6 confirmed *"Yes. It helps the business to recover from the distress and provides the necessary breathing space to make more informed decisions".*

- Rajak and Henning (1999), Bradstreet (2011) and Rushworth (2010) confirmed these aspects in the literature review , Knowledge

One BRP stated that he believes that the BRPs' defensive reaction to this moratorium is because of its infancy and their lack of knowledge. The more knowledgeable the parties become about this process, the less it will be attacked and this will lead to greater accommodation. Respondent 13 states "*Those who have become more knowledgeable welcome it.*"

This theme was not stated in the literature review.

Conclusion of Proposition 3

The themes that emerged in the interviews coincided with some of the literature and basically confirmed that a moratorium on legal proceedings leads to a successful rescue. However, the moratorium was not very popular amongst stakeholders because it infringed their rights. In addition, most stakeholders have tried, unsuccessfully, to dispute this moratorium via the court process. Depending on the circumstances of the rescue, stakeholders believe that this moratorium was abused for the benefit of a few. This moratorium provides a "breathing space" for these companies in business rescue to focus internally on resolving issues and turning the distressed company around, rather than focusing externally on creditors and other stakeholders. Some BRPs found that the more knowledgeable stakeholders become about the concept of business rescue and the

moratorium, the more accommodating they are towards this provision and business rescue.

5.1.4 *Developing a successful rescue plan leads to a successful rescue*

- Understandable

Ten BRPs confirmed in the interviews that the plans need to be developed in a manner easily understood by all parties as companies engage with different types of people, who have different skill levels. Therefore, if the plan's language is too legalistic, it may lead to a lack of understanding and an undesirable response from the parties. Respondent 3 stated the following in the interview *"And we have to do this better and/or take away, some of it is too technical. The one thing I have realised is you can't write a legal document with all the legal jargon and nobody has a clue what you are actually saying. You have to as much as it is still a legal document you must try to do it in as plain English as possible."*

This aspect was stated by Burdette (2004) in the literature review.

- Credible

Ten BRPs confirmed that the content of the business rescue plan must be credible to instil confidence with the stakeholders who vote it in. It is important to appreciate the scenario a distressed company finds itself in - a scenario of uncertainty, high risk and fragility. Therefore, if the content is credible it creates an environment of confidence and inclusivity amongst the stakeholders. This theme will lead to all the aspects that were mentioned in the literature review by Marius Pretorius and Rosslyn-Smith (2014), i.e., "a tool for feasibility declaration, medium of communication, enabler for transparency, serves contractual obligations and serves to attract and secure PCF."

- Commercial orientation

Two BRPs advised in the interviews that rescue plans are very legalistic and lack commercial substance to indicate the viability of the rescue, which is what most stakeholders look out for to make a decision. Most stakeholders are not legalistic and

would make a quicker and informed decision about a rescue plan if the content was more commercially orientated rather than become defensive towards a proposal.

Marius Pretorius and Rosslyn-Smith (2014) mention in the literature review that a rescue plan should “adhere to a broader and more extensive set of expectations than those explicitly stated in the Companies Act (RSA, 2008).” This provision grants BRPs the scope to incorporate a commercial aspect.

The literature does not explicitly confirm this theme, but provides scope for this provision to be incorporated.

Conclusion of Proposition 4

The themes that emerged in the interviews coincide with some of the literature and basically confirm that developing a successful rescue plan leads to a successful rescue. Most BRPs believe that the current plans are too legalistic and are not properly understood by some stakeholders, thereby causing them to resist or delay voting them in. In addition, it is important for the plan to be credible so that it can gain acceptance by the stakeholders. Most importantly, the commercial orientation of the plan is a key factor to sell its viability to stakeholders.

5.1.5 *The appointment of a competent, qualified BRP leads to a successful rescue*

- Background, knowledge and experience

All 13 BRPs confirmed that the background of a BRP and his knowledge of the process are important to deliver a successful rescue. Background refers to the past experience of a BRP. If a BRP has minimal exposure to commercial aspects relating to a business, then the actual rescue becomes much harder than if a BRP has had experience managing a business. Respondent 13 confirmed this fact by articulating the following “If *it's something that he knows of then it is easier because he’s got a network and all that”.* Respondent 1 concurred with this proposition and in the interview stated *“So, in all that experience, I’ve learnt about millions of different businesses. So, I’ve got those skills to understand different*

businesses and understand the strategic nuances and to understand and assess the viability of business because of my experience." Respondent 2 acknowledged this aspect by stating that *"If a Business Rescue Practitioner has experience in that industry it helps."* In the literature review, *Marius Pretorius (2014)* declares that some general aspects of a BRP include strategic, tactical and leadership skills, which are prevalent in entrepreneurs and business managers.

Respondent 2 also articulates in the interview "*Don't take something on until you as a BRP are reasonably confident that you can affect a turnaround and then you go there with that mindset and the next thing is you can't sit in your office and do it."* Marius Pretorius (2014), confirmed in the literature review that a BRP should not accept an appointment if he does not have the experience, as it will "reveal his/her shortcomings".

In the literature review, Papaya (2014) concurs with this by stating that the experience of the applicant and the size of the company are contributing factors when granting licences.

- Competence and commercial orientation

Ten BRPs confirmed that they need to be more competent and should have some form of commercial orientation to be effective as a BRP. This competence would provide BRPs with a competitive advantage in seeking a commercial solution. Respondent 1 stated *"Business Rescue Practitioners abrogate to management because they often doesn't understand the business."* Respondent 3 in his interview said *"and the issue of business acumen, I mean you can't put a finger on business acumen but it all boils down to experience as well. Acumen comes with experience."*

In the literature review, Bradstreet (2011) cites that a BRP must be "suitably able" as well as "impartial". He further states that a BRP can be removed from his office if he is incompetent. The BRP's competencies was also clarified by Marius Pretorius (2014) who states that a BRP must have a "wide range of competencies."

Therefore, this theme ties in with the literature review.

- Regulation

Seven BRPs confirmed that their powers are too wide and should be regulated more closely. These wide powers are like a doubled edged sword. They provide BRPs with sufficient scope to seek avenues to save the company and, at the same time, provide BRPs who are dubious individuals with easy methods to abuse the process to benefit themselves or a few creditors. Respondent 2 stated *"so I think regulation of BRPs should be far more stringent; far more hands-on and involved".* Respondent 12 advised the following "*The other thing is that the Companies Act should also call for the regulation of business rescue practitioners. So right now, it's unregulated. So, the United States, the abuses around bankruptcy were taken care of by making it a court run system. So, every decision needs to be made in conjunction with the judge."* Papaya (2014) concludes her article by stating that the regulations in the RSA (2008) has a solid legislative framework for regulating the profession. However, this was dismissed by Bradstreet (2010) where he noted the various flaws inherent in the role of a BRP and their inadequate regulation and was more in line with the majority results of the interviewees.

- Character

The character of a BRP entails his integrity, confidence, accountability and credibility. These aspects were mentioned by six BRPs in their interviews. This was confirmed in the literature review by Rushworth (2010).

One BRP indicated that this proposition was not critical to the success of a business rescue. Respondent 9 stated that "*if a company cannot be saved, no matter who you appoint as a BRP, the company will still go into liquidation*". There is no literature to support this response. A BRP appointed to a company that cannot be saved will try to seek a higher return for a creditor - better than what would have been received in a liquidation scenario. This was supported by Respondent 1 who stated *"Let me go have a look and often you can save the business and do a lot better for the creditors even if you just use a business rescue process as an orderly wind down instead of a pure liquidation but the banks don't seem to understand that. You know they seem to just want to get it off their books…."*

Conclusion to Proposition 5

The themes that emerged in the interviews and that coincide with the literature basically confirmed that the appointment of a competent, qualified BRP leads to a successful rescue. Some BRPs believe this to be the most critical proposition for a rescue to succeed, as a BRP in this role mobilises the implementation of all the other provisions. The background, knowledge and experience of BRPs are important in measuring their competence. All BRPs believe that the more rescues they handle, the more they will lead to a successful rescue. To meet the outcomes of a successful rescue, some BRPs believe that their commercial orientation assists them to take a more practical and purpose-driven approach than a legalistic process-driven approach would. The BRPs also believe that because they have so much power in their roles, it is important for them to be adequately regulated. The character of a BRP also plays a major role in providing credibility to the business rescue process and instilling confidence with the various stakeholders. The experience and knowledge of BRPs are key factors in creating this credibility. Although one BRP did not agree with this provision, his response did not contain sufficient substance to back up his disagreement. In addition, there was no literature that supported his thinking. The literature supported the thinking of the majority of the BRPs.

CHAPTER 6. CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter will cover the conclusion and recommendations of this research, as well as suggestions, as they emerged from this research, for further research to be conducted on the topic relating to business rescue.

6.2 Conclusion of the study

In the almost six years that Chapter 6 of the Companies Act 71 RSA (2008) has existed, 336 distressed companies that have filed for business rescue in terms of Chapter 6 of the Companies Act 71 , have been successfully rescued CIPC (2016). Although, a very low success rate, had it not been for Chapter 6, these companies would have been purchased by another company as a going concern or would have gone into liquidation. Liquidation is an unacceptable alternative to business rescue.

It would seem that the five propositions mentioned above have thus far served as successful factors to save companies that have filed for business rescue. However, I need to emphasize that these are basic factors that have been introduced by Chapter 6 of the Companies Act 71 RSA (2008) to assist a BRP with the rescue of a company.

During my interviews with the BRPs, only one new factor, which was reiterated by a few BRPs, emerged that could possibly assist in saving companies that are in business rescue. It is the introduction of a Commercial Court to specifically preside over matters relating to business rescue. The thinking is that, a company is at a critical stage once it has filed for business rescue, and an inexperienced judge not familiar with business rescue could delay the decision process or make poor decisions that could negatively impact the company's ability to survive a rescue. The BRPs believe that a specific Commercial Court would enhance the speed, quality, consistency of judgements and decisions on matters in business rescue. There is an appeal process via the current Court system, however, when

the appeal process is engaged, costs start to escalate which is not necessary in the best interests of a company in business rescue.

The BRPs also alluded to other supplementary adjustments to the current factors that could enhance them and contribute to their success rate. These include creating an environment for a more commercialised business rescue plan rather than a process driven, legalised plan. In addition, business rescue is not a definite, concise process, as the business rescue progresses there are always changes that need to incorporated into the plan to reflect the current status of the rescue. The plan must be able to be adjusted at any time during the business rescue process, at a much quicker rate, to incorporate any changes. Any delays in incorporating changes to the plan could lead to delayed responses and ultimate failure of the business rescue.

The moratorium should be extended to be inclusive of the entire business rather than just the legal proceedings. The current provision in Chapter 6 of the Companies Act 71 RSA (2008) is still a bit vague on this provision which leads to parties pursing the Court process for a resolution. The Court process becomes costly and time consuming which again is not in the best interests of a company in business rescue

There needs to be concise provisions in Chapter 6 of the Companies Act 71 to provide greater security for the funders of PCF and critical vendors during business rescue to attract providers of PCF.

The time frames stated in the act need to be extended to be more realistic of the process. Unrealistic timeframes normally deter parties from effectively managing the process and could lead to poor decisions being made under the time constraints.

There needs to be a proper training and mentoring process for junior BRPs to gain practical, hands-on knowledge and experience. As a BRP is critical to the execution of the business rescue process, properly trained BRPs will lead to better management of business rescue matters. In addition, regulation of BRPs need to be enhanced to closely monitor the actions of the BRP i.e. the number of rescue matters per BRP should be

capped to ensure their effectiveness. There is current sentiment from the interviews that BRPs are not adequately regulated.

Chapter 6 of the Companies Act 71 RSA (2008) should include a proper investigation mechanism similar to a Section 417 enquiry in the Insolvency Act 24 of 1936. This provision would enable BRPs to investigate and assess risks more effectively. It may also increase the credibility, standard and quality of information presented to funders and creditors who are very risk averse.

These are important considerations that will help Chapter 6 evolve further and align it with the more mature international business rescue standards. As more SA companies become entrenched participants in the global village, much needed foreign capital flows into the SA economic system. These foreign companies expect some form of sustainable and progressive company rescue provision in line with international standards to make sure that their investment is protected and that there is some form of security. International companies expect Chapter 6 to be on a par with their rescue chapter provisions and it, therefore, needs to be revamped to coincide with international standards. The World Bank (2016) confirms that a transparent and efficient framework directly impacts credit risk and risk management in the global financial sector. It could also lead to international companies also interested in providing PCF knowing that the SA's business rescue system is in line with the world standard.

6.3 Recommendations

It is important to continuously evaluate business rescue in SA so as to contribute to the current growing body of knowledge. By continuously interviewing the experienced and senior BRPs and/or other stakeholders, researchers will build on the current information and various interested parties will be able to put this knowledge into practice

6.4 Suggestion for further study

The business rescue provision in SA is still in its infancy stage and there will be numerous opportunities for further research to be conducted.

Some of the BRPs advised that the stigma of business rescue is an underlying implied deterrent that creates a bottleneck for a successful rescue. It negatively affects critical decisions that could contribute to saving the company, e.g., a decision by management to place a distressed company timeously into business rescue or a decision by funders and creditors to fund a distressed company. Chapter 11 in the USA, which is a much more mature rescue system, portrays distressed companies as just another phase in the life cycle of a company. Companies go into Chapter 11 without hesitation and recover quicker. Articles that refer to Chapter 11 note that it is easier for companies in Chapter 11 to raise finances. It would be of great value to companies and interested parties if further research could be conducted on how this stigma affects companies in business rescue and what conscious measures could be established to remove it.

Another aspect that needs to be researched, as mentioned by many BRPs in the interviews, is stricter regulation of BRPs. Chapter 6 relies heavily on BRPs to undertake the provisions introduced by it, whilst engaging with various interested parties to enact these. New research needs to be done to establish if there are currently sufficient regulations for BRPs as well as the feasibility of introducing further, stricter regulations for them.

It is also important to continuously research Chapter 6 of the Companies Act to international rescue provisions. This will help to identify a possible knowledge gaps and to incorporate any potential changes so that Chapter 6 can be aligned with international standards and become more effective.

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Appendix A – Letter to Respondents

Date

Dear Sirs/Madam,

MBA RESEARCH: REQUEST FOR AN INTERVIEW TO CONCLUDE MY RESEARCH

I am currently completing an MBA at The University of the Witwatersrand (Wits), Johannesburg. My MBA thesis is on the "Success factors for Business Rescue in South Africa". This research will be done from a Business Rescue Practitioners' perspective. As a result of this approach, I am required to conduct interviews with various Business Rescue Practitioners to collect data required for this research.

I would be grateful if I could arrange a 1-hour/1-and-a-half-hour interview with you to obtain your view of the causes of a successful Business Rescue and causes of a failed Business Rescue. I understand you are extremely busy; however, I would greatly appreciate your agreement to contribute to my research.

Confidentiality will be observed throughout the thesis process and the final report will be for academic purposes only.

I will be available to meet with you at a location and time of your convenience.

Thank you for your kind assistance.

Yours sincerely,

Lucien Mundie

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SA Mobile: +27 83 399 5819

Appendix B – Actual Research Instrument

Name of Business Rescue Practitioner:

Name of Company:

Date

Start time:	**End Time:**

Note: The interview will be recorded; the interviewee will be using a recording pen.

No	Question
1	**How long have you practiced as a Business Rescue Practitioner (BRP)?**
2	**What was your previous profession?**
3	**Can a BRP also operate as a Liquidator or has this now become two conflicting professions?**
4	**What qualification/s do you currently have?**
5	**How many Business Rescue programmes have you been involved in?**
6	**Does the background of the BRP play a role in rescuing a type of Company i.e. Industry, Business Type, Size of Business?**
7	**What year did you qualify to the Companies and Intellectual Property Commission (CIPC) register?**
8	**How important is the BRP to the success of a rescue?**
9	**Are BRPs becoming more competent with the provisions of Chapter 6 of the RSA (2008).**
10	**What is it about a BRP that causes a successful Business Rescue?**

11	**Since its inception, has there been a change in the mindset of companies and entrepreneurs to Business Rescue?**
12	**What is the Courts' attitude to Business Rescue?**
13	**What are the contributions of prior management to a successful Business Rescue?**
14	**What type of funders are providing funds to companies in Business Rescue?**
15	**What is the current attitude of financiers towards companies in BR? Has it changed since the inception of Business Rescue?**
16	**Does the success of a Business Rescue of a company depend on the early commencement of Business Rescue after a company becomes distressed?**
17	**How important is the rescue plan to the success of a Business Rescue?**
18	**Have there been significant changes to the provisions in the plan and the quality of rescue plans since Business Rescue inception?**
19	**Is there a framework to develop a plan and does the plan achieve its purpose?**
20	**What other factors have contributed to a successful Business Rescue.**
21	**Does timing of filing for business rescue contribute to its success?**
22	**Does the moratorium on legal proceedings contribute to the success of Business Rescue?**
23	**What is the attitude of the different stakeholders of this provision?**
24	**In your opinion, should the Rescue Plan include any additional provisions to make it more effective?**
25	**What provision should Chapter 6 of the Company's act include to make business rescue an efficient system where companies can recover quicker and overcome any bottlenecks?**

Appendix C – Professional Profile of Business Rescue Practitioners Interviewed

Respondent	Level	Profession	Qualification		Experience			
					Period	Appointments	Date appointed	Area
1	Experience	Accountant	CA (SA)		6	10	2011	South Africa
2	Senior	Investment Banker	Bcom		2	6	2015	South Africa
3	Senior	Attorney	Bcom, LLB		6	12	2011	South Africa
4	Senior	Accountant	CA (SA)		6	10	2011	South Africa

5	Senior	Attorney	LLM		6	115	2011	South Africa
6	Senior	Accountant	CA (SA)		6	5	2011	South Africa
7	Experience	Accountant	Bcom		6	58	2011	South Africa
8	Senior	Accountant	CA (SA)		6	15	2011	South Africa, United Kingdom, United States, Australia
9	Senior	Attorney	BA, LLB		6	7	2011	South Africa
10	Experience	Business Consultant	Masters (Finance) MBA		6	20	2011	South Africa
11	Senior	Investment Banker	CA (SA)		3	5	2014	South Africa

12	Senior	Accountant	CA (SA), MBA		3	40	2014	South Africa, United States
13	Senior	Accountant	Bcom Masters (Finance)		5	66	2012	South Africa

Appendix D – Statistics of sample to the CIPC Business Rescue Practitioner Register

No	Year	No of BRPs	%
1	2011	9	69.23
2	2012	1	7.69
3	2013	0	0.00
4	2014	2	15.38
5	2015	1	7.69
		13	**100.00**

Appendix E – A summary of Results and Presentation of Results of the 5 Propositions

A summary of the results from the interviews are presented below

Presentation of result

Summarised Business Rescue Practitioner's Response to the Propositions

No	Propositions	RESPONDENTS' RESPONSE												
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	13
1	The early commencement of business rescue leads to a successful rescue.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
2	The ability of the company to secure PCF successfully leads to a company's rescue.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	The moratorium on legal proceedings leads to a successful rescue.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	Developing a successful rescue plan leads to a successful rescue.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	The appointment of a competent qualified BRP leads to a successful rescue.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Maybe	Yes	Yes	Yes	Yes
	Proposed enhancements to propositions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

A summary of the results from the interviews are presented below

Presentation of results – Proposition 1:

The early commencement of business rescue leads to a successful rescue
Business Rescue Practitioner's Response – Themes

	Themes					
Respondent	**Last Resort**	**Forecasts**	**Immaturity**	**Depletion of Resources**	**Idealistic**	**Stigma**
1				X		
2				X		
3	X		X			X
4	X					
5				X		
6				X		
7	X					X
8	X			X		
9						X
10					X	
11				X		
12	X	X				
13				X		
	5	1	1	7	1	3

A summary of the results from the interviews are presented below

Presentation of results – Proposition 2:

The ability of the company to secure PCF successfully leads to a company's successful rescue.

Business Rescue Practitioners Response – Themes

	Themes					
Respondent	**Collateral**	**Understanding**	**Attitude**	**Opportunity**	**Incumbent Stakeholders**	**Private Equity**
1			X		X	
2		X			X	X
3			X		X	
4	X	X			X	
5					X	
6			X		X	
7					X	X
8			X	X	X	
9					X	
10			X		X	
11					X	
12	X	X	X			X
13				X	X	
	2	3	6	2	12	3

A summary of the results from the interviews are presented below

Presentation of results – Proposition 3

The moratorium on legal proceedings leads to a successful business rescue
Business Rescue Practitioner's Response – Themes

Respondent	Negative Attitude	knowledge	Hiatus	Dispute
1	X			
2	X		X	X
3	X			
4	X		X	
5	X			
6	X		X	
7	X			X
8	X			X
9	X			
10	X			X
11			X	
12	X			
13	X	X		
	11	**1**	**4**	**4**

A summary of the results from the interviews are presented below

Presentation of results – Proposition 4

Developing a successful rescue plan leads to a successful business rescue

Business Rescue Practitioner's Response Themes

Respondent	Understandable	Commercial	Credible
1			X
2	X		X
3	X		X
4	X		
5	X		
6			X
7	X	X	
8	X		X
9			X
10	X		X
11	X		X
12	X		X
13	X	X	X
	10	**2**	**10**

A summary of the results from the interviews are presented below

Presentation of results – Proposition 5

The appointment of a competent qualified BRP leads to a successful rescue
Business Rescue Practitioner's Response Themes

Respondent	Commercial Orientation	Experience	Background & Knowledgable	Regulation	Competence	Character	Situational
1	X	X	X	X	X	X	
2	X	X	X	X	X		
3		X	X	X	X	X	
4	X		X		X		
5	X		X				
6		X	X	X			
7	X	X	X	X	X	X	
8	X	X	X		X		
9		X	X				X
10	X	X	X	X	X	X	
11		X	X		X		
12	X	X	X	X		X	
13	X		X		X	X	
	9	**10**	**13**	**7**	**9**	**6**	**1**

Appendix F – Presentation of the New Factors and Enhancements to existing factors that cause a successful rescue

New Factors

- New Commercial Court to preside over business rescue matters. It will lead to faster engagement time which is needed when a company is in a distressed situation. It will also lead to sustainable, consistent case law and precedents. 8 BRPs proposed this factor.

Enhancements to the current factors

- Quicker adjustment process for the business rescue plan while the rescue is proceedings – the current process is cumbersome which creates delays – 2 BRPs raised this aspect.

- Cap the number of matters any 1 BRP can handle at any 1 time. – makes the BRP more effective and stops the process of BRP farming out work which is counterproductive to the rescue process – 3 BRPs raised this point.

- Creating an environment for a more commercialised business rescue plan than a process driven, legalised plan.

- The moratorium on legal proceedings should be extended to be more inclusive to the entire business rather than just legal proceedings. The current provision in chapter 6 of the RSA (2008) is still a bit vague.

- There needs to be concise provisions in the chapter 6 to provide greater security for the funders of PCF and critical vendors.

- The time frames stated in the act needs to be extended to be more realistic of the process. There needs to be a proper training and mentoring process for Junior BRPs to gain practical, hands on knowledge and experience

- Proper Investigation mechanism similar to a section 417 enquiry in Insolvency Act 24 of 1936 – It will enable the BRP to assess risks more effectively and increase the quality of information presented to funders and creditors - 2 BRPs suggested this factor