

A review of business rescue in South Africa since implementation of the Companies Act (71/2008)

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ABSTRACT

This study examined the new Companies Act (71/2008) with a specific focus on Chapter 6, business rescue. This rather controversial legislation was implemented in South African company law on the 1st of May 2011 and redefines how legislation can possibly save financially distressed companies from distress and ultimately liquidation proceedings.

The literature review has focused on the purpose of business rescue as set out by the new Companies Act. It has gone into much detail on the set processes, revealed the key stakeholders involved and their respective responsibilities set out by the new Act. The study touched on current international trends in saving distressed businesses. A published financial distress model was discussed and a link made about where best to initiate business rescue actions within this four-stage model.

In this study the empirical research adopts content analysis as a research method. An investigation was conducted on all business rescue applications received by the Companies and Intellectual Property Commission (CIPC). Additional analysis of a large creditor's portfolio of business rescue applications showed some initial success rates of this new legislation.

The mini-dissertation concludes with limitations and challenges faced during the study, followed by recommendations about how to excel in business rescue practice in years to come.

Keywords: Business Rescue; new Companies Act (71/2008); South Africa; financially distressed.

OPSOMMING

Hierdie studie bevat 'n ondersoek na die nuwe Maatskappyewet (71/2008) met 'n spesiale klem op Hoofstuk 6, besigheidsredding. Hierdie ietwat omstrede wetgewing is in Suid-Afrikaanse maatskappywetgewing geïmplementeer op 1 Mei 2011 en dit herdefinieer hoe wetgewing finansieel-bedreigde maatskappy kan red uit nood en uiteindelik ook likwidasie.

Die literatuuroorsig is gefokus op die doel van die besigheidsreddingsaksie soos uiteengesit in die nuwe Maatskappyewet. Daar word heelwat detail verskaf oor die prosesse soos uitgewys deur die sleutelbelanghebbendes en hulle onderskeie verantwoordelikhede soos uiteengesit in die nuwe Wet. Die studie verwys ook na huidige internasionale neigings wat gemik is daarop om maatskappye in nood te red. 'n Gepubliseerde finansiële-noodmodel is bespreek en 'n koppeling gemaak oor waar dit die beste sou wees om met besigheidsreddingspraktyke te begin binne die bestek van hierdie vier-stadium model.

In hierdie studie is daar in die empiriese ondersoek gebruik gemaak van inhoudsanalise as 'n navorsingsmetode. 'n Ondersoek is gedoen oor al die besigheidsreddingspraktyke ontvang deur die Maatskappye en Intellektuele Eiendomskommissie. Verdere analise is gedoen van 'n groot krediteur se portefeulje van besigheidsreddingsaansoeke wat 'n mate van sukses getoon het in terme van hierdie nuwe wetgewing.

Die skripsie sluit af met 'n aanduiding van beperkings en uitdagings wat in die loop van die studie na vore gekom het. Dit word gevolg deur aanbevelings oor hoe om goed te doen in besigheidsreddingspraktyke in die komende jare.

Sleutelwoorde: Besigheidsredding; nuwe Maatskappyewet (71/2008); Suid-Afrika; finansieel-bedreigde.

DECLARATION

I declare that this research report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Business Administration for the Potchefstroom Business School, North-West University. It has not been submitted before for any degree or examination at any other University.

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ABBREVIATIONS USED IN THE MINI-DISSERTATION

BR	-	Business Rescue
BRP	-	Business Rescue Practitioner
CIPC	-	Companies and Intellectual Property Commission
DTI	-	Department of Trade and Industries
SAA	-	South African Airways
SA	-	South Africa
SAPO	-	South African Post Office
SARS	-	South African Revenue Service
SITA	-	State Information Technology Agency
UK	-	United Kingdom
US	-	United States

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CHAPTER 1

NATURE AND SCOPE OF THE STUDY

1.1 Introduction

The Presidential signing of the long awaited new Companies Act in April 2009, became effective on the 1st of May 2011 (71/2008). It has fundamentally changed South African company law (Crotty, 2011a & Werkmans Attorneys, 2011:3).

In the new Act, business rescue is introduced in Chapter 6 which effectively replaces the judicial management provisions for insolvent debtors (Cox Yeats, 2011:17) with a modern business regime (Werkmans Attorneys, 2011:3).

A year has passed and mixed feelings remain as to what extent this new controversial regime has effectively assisted debtors and creditors.

Although it is still early days, and limited research has been done on the success Chapter 6 has had on the business environment, there are encouraging indications about its possible impact. Research has been done on the implementation of and amendments to the new Act but the question remains as to whether these formalised proceedings have made any difference in the outcome of insolvent debt and liquidations

1.2 Problem statement

Slatter and Lovett (1999:1) describe turnaround as the ability to produce a noticeable and durable improvement in performance, to turn around the trend of results from down to up, from not good enough to clearly better, from underachieving to acceptable, from losing to winning.

The above definition is well defined to apply to almost anything, from an individual's life, a small business around the corner to a multi-national corporation, a political

party to a government institution and even a country or continent. Throughout history corporate turnaround has given new life to major corporations. These include global corporations like IBM, Apple Inc., Chrysler, Ford and South African companies like South African Airways (SAA), Transnet, the South African Revenue Service (SARS), the SA Post Office (SAPO), Super Group and the State Information Technology Agency (SITA) to name a few. These businesses continue today with their operations due to some form of corporate turnaround strategy performed on them. Their existence continues to add to the economic performance of the countries they operate in, their shareholders and stakeholders; directly or indirectly towards global growth.

International trends towards formalised corporate turnaround strategies have had mixed successes. A recent South African legislative change with reference to corporate turnaround, called *business rescue* has been welcomed by many as contributing towards the saving of businesses in South Africa.

Business rescue proceedings intend to facilitate the rehabilitation of financial distressed companies by providing for the temporary supervision of the company and the management of its affairs, business, property, debt, liabilities and equity (Leppan & Yeates, 2010:17; Davies, 2012a). In essence the business rescue plan's objective is to maximise the likelihood for solvency and ongoing existence of the affected company and avoid liquidation (Rushworth, 2010:375; 71/2008).

There has always been a need in South Africa to align rescue regulations on distressed companies to international practices. The United States (US) has long had Chapter 11 for troubled companies. According to Bowles and Bruyns (2009:13) business rescue studies have revealed success rates in excess of 50% in the United Kingdom (UK). These business rescue practices are nothing new to international businesses.

This new regulations provide some space to breathe for troubled companies and give them the opportunity to restructure their businesses before liquidations proceedings are enforced (Makholwa, 2011:1).

Levenstein (2011a), however, has noted that many companies use business rescue as an attempt to delay their ultimate demise, when they can clearly not pay their

debts to creditors. Davies (2012b) further states that many smaller companies file for business rescue where recovering solvency is not possible. This has been an increasing trend in the first year from implementation. Levenstein added that with the new Act introduced to the South African judicial legislation, more companies are filing for business rescue and creditors are forced to delay any legal proceedings against distressed counterparties. Makholwa (2011:1) makes it clear that bankrupt companies should try and delay or avoid liquidation by filing for business rescue.

Rodrigues (2007:4) asked the question as to whether South African companies have embraced the new legislation as a tool to regain solvency or is this just another Act up for abuse to delay the inevitable.

As South Africa goes into the second year since implementation mixed views remain whether the new Act has indeed met its main objectives. Has Chapter 6 of the New Companies Act (71/2008) met its goals of enabling businesses to continue on a solvency basis?

1.3 The objectives of the study

The research will address a number of objectives.

1.3.1 Main objective

- The main objective is to determine whether business rescue, as part of the new Companies Act (71/2008), has achieved its main purpose in the early stages of acceptance.

1.3.2 Sub-objectives

- A theoretical study aims to investigate Chapter 6 of the new Companies Act; before

- analysing the national business rescue applications since implementation of the new Act; and
- determine the success recovery rates of business rescue applications for a large creditor's portfolio.

1.4 Scope of the study

Business rescue has had far-reaching effects on financial institutions and other stakeholders since implementation. With more than a year into these new regulations, some challenges continue to elude creditors, courts and rescue practitioners (Coetzee, 2012).

This literature study will attempt to investigate and analyse Chapter 6 of the new Companies Act (71/2008) and the implications it has had for stakeholders involved. As affected parties come to grips with Chapter 6 and an increasing number of businesses file for business rescue, this study will investigate the national population of business rescue applications within South Africa under the new Companies Act.

Information pertaining to detailed data on each company filling for business rescue application is centrally housed at the Companies and Intellectual Property Commission (CIPC). Statistical research focuses on the available data and establishes trends, specific tendencies and population characteristics.

By using a key focus area, the study attempts to establish the general success business rescue legislation has had the past year since implementation. This is done through content research analysis. Access to business rescue applications from a large creditor's portfolio has been obtained. Qualitative data on business rescue matters has been obtained and is presented quantitatively to determine whether the new Companies Act and business rescue have been successful in South Africa.

1.5 Research methodology

1.5.1 Theoretical study

A vast array of past studies has formed part of this academic investigation to establish perceptions, similarities and differences of opinion on the success business rescue had and will have in the future.

A high level of academic knowledge and practical experience on the research topic is required. For this reason theoretical research has been conducted to help understand Chapter 6 of the new Companies Act.

The research focused on the Act itself but is not limited to the legislation. Other literature, including published articles, newspapers, public presentations, books and newspaper articles, was used to obtain a good understanding and knowledge of the research topic.

1.5.2 Empirical study

The practical research follows a qualitative approach. Business rescue applications to the CIPC have been analysed and presented quantitatively to determine the success rates of business rescue in the first year since implementation.

The qualitative research data involves the complete population sample of business rescue submission within South Africa. This data includes the company applying for business rescue, business rescue practitioner, current status reports on the progress of proceedings or the success of implementing the business rescue plan, industry sector and company demographics. The intention of this research is to find common trends through statistical analysis which could potentially highlight the success rates of Chapter 6.

Another empirical avenue for establishing whether the new Act has reached its objective has been to focus on actual cases of corporates who filed for business

rescue, which are currently either in the application stage, have implemented their business rescue plans or have subsequently gone into liquidation.

A smaller sample of business rescue matters has been analysed and interpreted to establish the success rate of business rescue. This sample was sourced from a large creditor's portfolio which has been influenced by business rescue in the last year.

1.5.3 Data sources

The data for the empirical study was drawn from two sources. Public data on business rescue matters is available from the CIPC and Department of Trade and Industries ("DTI"). This includes the number of business practitioners, liquidation statistics and business rescue applications.

Another source of data was qualitative in nature. 78 business rescue cases have been obtained from one of the larger banks in South Africa. This data is on companies who filed for business rescue in the past year, whom owed the creditor debts. Detailed documentation, history and business rescue progress reports have been obtained on these cases.

The research and empirical study focuses on these two data sources to find information to answer the research questions defined.

1.6 Limitations to the study

The concept and principles of business rescue present a vast area of research possibilities. Considering this, there is a danger of casting the study too wide. This research document's intention is not to explore the new Companies Act, but rather to explore the aspects of Chapter 6, and to focus on those areas relevant to the past year's outcomes pertaining to the Chapter 6 and business rescue.

Although the new Act has been in existence for just over a year, specific theoretical research and practical empirical evidence are available to establish the success legislation had on the business environment and creditors specifically.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

According to Statistics South Africa (2012:7) unemployment remains a huge burden on government, the general economy, political and social environment. Renewed presidential focus intended to increase employment in the formal and informal sectors has come under pressure with unemployment increasing by 1.3 percentage points to 25.2% in the first quarter of 2012.

With the introduction of business rescue in the new Companies Act in 2011, corporate renewal and turnaround management have been positioned as a noble cause in saving failing businesses and rejuvenating ailing ones, protecting wealth, resources and saving jobs (Harvey, 2011:4). Although saving a dying business is not the only objective of business rescue, rescuing one has a huge ripple effect on connected stakeholders, shareholders, employees and the tax man.

According to Davies (2012a), business rescue expert in the Commercial banking sector, the essence of business rescue is to adopt proceedings with the best estimated benefits; for the affected company, employees, shareholders, suppliers, industry, financial institutions and banks; outweigh any calculated liquidation proceeds. This provides options to the parties affected to first try and save the company and/or, if unsuccessful, create a better outcome for all involved than to liquidate the business from the outset.

The Department of Trade Industries (DTI) describes the purpose of business rescue as being intended to provide for the efficient rescue and recovery of companies in financially distressed positions, in such a manner that balances the rights and interests of both debtor and creditor alike (CIPC, 2011b:8).

This chapter of the research report will review the new Companies Act, but focus specifically on Chapter 6, that is business rescue, and unpack these new regulations, the main objectives and the intended purpose of these formal proceedings. This

section also touches on the old Act and judicial management specifically, its applications and the problems encountered in dealing with this legislation. This chapter closes with a detailed summary of the process of business rescue, the stakeholders involved, the formal proceedings and timelines set out as per the new Act.

2.2 A creditor's friendly legislation – Pre-2011

According to Gewer (2011:71), South African companies have until recently had only three mechanisms for rejuvenating a failing business. They are:

1. The judicial management procedure provided for in section 427 of the Companies Act 61 of 1973 (the old Act);
2. An offer of compromise or scheme of arrangement as contemplated in section 311 of the old Act; and
3. An informal workout manner (an out-of-court arrangement between creditor and debtor) not under a statutory regime.

Gewer continues by stating that with reference to the latter two mechanisms they involve,

- 1) an offer of compromise or scheme of arrangement and informal workouts, which are costly and take time to enforce through an extended legal process which is often to the detriment of the distressed company; and
- 2) formal workouts, which involve close involvement of the company's financiers not under statutory procedures, were sometimes considered as a direct violation of section 424 of the old Act when workouts were unsuccessful and reckless trading could be proven.

These mechanisms were difficult to implement, did not meet their objectives of finding an economic benefit for all involved and until 2011 have only had various degrees of success.

Judicial management under the old Companies Act was designed to enable companies to avoid liquidation proceedings and will be a key focus in the next section.

2.2.1 Judicial management

Judicial management was introduced in the Companies Act of 1926, and remained relatively unchanged until recently. This was despite incisive academic criticism of the old Act, the absence of practicality, flexibility and effectiveness (Bradstreet, 2011:353).

Olver (1980:84) noted at the time that the success rate for companies using judicial management procedures in South Africa was dismal and that less than 20 percent avoided liquidation. At a later stage, Rajak and Henning (1999:265) concurred in this through providing statistics revealing low rates of judicial management success and recommended the ending of judicial management due to misuse and abuse.

To unpack judicial management, this section focuses on the old Companies Act (61/1973).

The old Act states very clearly the circumstances in which a company may be placed under judicial management. They are:

- 1) When any company by reason of mismanagement or for any other cause:
 - a) Is unable to pay its debt or is probably unable to meet its obligations; and
 - b) Has not become or is prevented from becoming a successful concern, and there is a reasonable probability that if it is placed under judicial management, it will be enabled to pay its debt or meet its obligations and become a successful concern. The Court may, if it appears just and equitable, grant a judicial management order in respect of the company.

- 2) An application to Court for a judicial management order in respect of any company may be made for the winding-up of a company and the provisions of section 346(4)(a) to the application for winding-up shall mutatis apply to an application for judicial management order.

- 3) When an application for the winding-up of a company is made to Court under this Act and it appears to the Court that if the company is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern and that the granting of a judicial management order would be just and equitable, the Court may grant such an order.

The involvement of the courts is clearly mentioned in the process of judicial management and in direct conflict with the circumstances of the affected business as court proceedings bring about a huge financial burden to the company under concern. Legal procedures are costly and remain a time-consuming process, two commodities that the financially distressed company do not have. The Act does not leave much flexibility within the proceedings.

The judicial management proceedings involve appointing a judicial manager who replaces the powers of directors in the company. These managers, usually liquidators or insolvency practitioners, often have little to no industry experience to manage the business (Gewer, 2011:72); they are unskilled in making strategic decisions for a dying company and have little to no training so save the business.

These are some of the main reasons why successful turnaround was almost non-existent pre-2011.

A market stigma was created with stakeholders, suppliers and customers alike. Companies under judicial management sustained irreparable damage with questionable credibility and were set up for doom in the market. According to Roodt (2011:1) judicial management turned out to be a “kiss of death” to companies going through these legal proceedings.

From the research conducted by Burdette (2004a:247) and others, several problems were identified within judicial management as a business rescue model. They were the following:

- a) Judicial management was seen as an extraordinary, lengthy and unusual measure. The option to go for a faster liquidation process was more desired considering time and certainty over outcomes.
- b) Judicial management proceedings followed only if there was a reasonable probability that the company would survive (Gewe, 2011:73). A huge burden is put on the applicant company to prove a reasonable probability. Something that was in general highly unlikely with the timelines given and the pressure creditors put on a closure of the matter raised.
- c) Judicial management depended heavily on costly court proceedings within an environment where funds were limited (Bradstreet, 2011:365). The South African legal system is to a degree also not geared for a quick legal process turnaround.
- d) The requirement was that the company should already be insolvent for the mechanism to be implemented (Burdette, 2011:134). According to Kloppers (2001:376) this contradicted the old Act's objective, which was to avoid insolvency.
- e) The wrong people were being used as judicial managers. Liquidators are not equipped to save companies (Rajak & Henning, 1999:269), and the reward to liquidators for liquidation was often higher than the money needed to rescue a company (Lamprecht, 2008:188).
- f) Small companies, including close corporations, partnerships and business trusts were excluded from judicial management. These entities represented a large proportion of active businesses in the market.

- g) There is a general stigma attached to judicial management which results in the deterioration of company goodwill in the market (Gewe, 2011:73). This was also confirmed by Roodt (2011:1).
- h) Requirements for terminating judicial management were only met after all debt had been paid (Burdette, 2011:134). No provision was made to release the company in the event of keeping to set arrangements and a substantial turnaround before all debt was fully paid.

The above issues were highlighted by Burdette and other authors in their research as the main problems with the judicial management procedures and why this became an unattractive option for effective business rescue in South Africa in the past.

From the above, judicial management can be summarised as creditor-friendly legislation, where the emphasis is on the financial interest of creditors and not on rescuing the failing business, which most likely ended up in liquidation as this was seen as the easier option and controlled by liquidators as judicial managers (Bradstreet, 2011:355).

As can be concluded from the above, and agreed by other researchers and commentators (Levenstein, 2008:12; Bowles & Bruyns, 2009:12 and Rajak & Henning, 1999:269), judicial management was a complete failure in the South African business environment. Smits (1999:85) called it a “spectacular failure”.

More leniently, some, including Loubser (2004:138) have argued that it at least needed a substantial reform.

2.3 Post-May 2011 – A debtor’s friendly legislation

Formal business rescue has received little academic attention in South Africa prior to the past decade (Loubser, 2004:138). Research interest in the topic judicial management and business rescue was revived after international successes in corporate turnaround management, the American “fresh start” approach or Chapter 11 (Levenstein, 2010:3), and changes in legislation became prominent features of

company law in England, Australia, Germany and France. These features and others were considered as building blocks in the drawing up of new South African business rescue proceedings (Loubser, 2004:137).

The next section of this research report focuses on the South African progress towards aligning to international trends in corporate renewal and turnaround management through business rescue as proclaimed in the new Companies Act which became effective in 2011.

2.3.1 The New Companies Act

A long anticipated new Companies Act No. 71 of 2008 (hereafter “the Act”) became effective on 1 May 2011 which has fundamentally rewritten existing South African company law in a number of ways (Cox Yeats, 2011:1).

While many within the business community argue that rewriting the entire Act was unnecessary, most of the legal commentators contended that the old Act was no longer fit to accommodate changes to the corporate landscape and that the Act was 10 years late (Crotty, 2011b).

The most profound change to the Act enhances the rights of employees and trade unions, who formerly had limited to no protection under company law. The new legislation promotes the Bill of Rights in the Constitution within a company context (Adams & Adams, 2011).

Other enhancements are the reduction in the number of steps in setting up a new company in South Africa. The new Act reduces costs involved in running a business, regulates the responsibilities and increases the accountability of directors of companies in South Africa (section 77 of 71/2008). International emphases on ethics and ethical behaviour among owners and decision-makers in a company have been well addressed in the new Act.

The inclusion of business rescue in the new Companies Act replaces judicial management. Adams and Adams (2011) have highlighted that judicial management was no longer a requirement and that companies now had the option to follow a

rescue proceedings plan if the company was in distress and needed assistance in saving it from insolvency and ultimately liquidation proceedings. Creditors are now under law limited to their loss recovery actions and need to follow a workout process before liquidation proceedings can be considered.

Audit firm Deloitte (2010) characterised the new Act as flexible; it has simplicity, transparency and improves corporate efficiency and regulatory certainty. Taken from publications, articles and interviews there is a general consensus that the new Companies Act has been welcomed from different avenues. With the Act still in its acceptance phase in South Africa, internationally proven amendments to the previous Act will at the very least have a profound impact on how business is conducted.

2.3.2 Business Rescue

2.3.2.1 Introduction

Globally, restructuring of financially distressed companies has been on the increase (Kar, *et al.* 2012). This view is supported by Levenstein (Werkmans, 2011:1) and Davies (2012b) as creditors doubtfully embrace these new proceedings in an attempt to save a dying business.

Until recently, financially distressed companies in South Africa had limited alternative to their disposal (Khaole, 2009:10). However, this has changed in the last year. Fading companies can now either:

1. commence with formal business rescue proceedings;
2. instigate an informal credit workout process (an out-of-court resolution or settlement); or
3. apply for voluntary liquidation.

In line with international trends, Chapter 6 of the new Companies Act, No. 71 of 2008 introduced business rescue for the South African business environment, a welcomed addition for most.

2.3.2.2 Renewed focus

In the past 20 years business rescue has been given much attention in global markets. Since the mid-1980s, South Africa has lagged behind most development associated with business turnaround and corporate recovery. Where developing jurisdictions moved towards a rescue-orientated approach, South Africa retained predominantly a liquidation culture (Burdette, 2004b:429).

According to Burdette (2011:131), pressure mounted from organised labour to align South Africa to international trends of renewed focus on corporate rescue and the movement towards a business rescue culture.

2.3.2.3 International trends

Although much of South African law has been promulgated via the English and Roman-Dutch systems, a business rescue system must be tailor-made for a country considering social and economic conditions (Burdette, 2004c:24). For this reason, South Africa can in no way adopt a rescue system of countries such as the United States (US), England, Australia, Canada, Germany or France. It is however important to understand the different international approaches and their successes to model a business rescue legislation to a specific country.

According to Burdette (2011:133), the US has the most debtor-friendly insolvency system compared to other legal systems. She argues that this system is most effective in preserving the value of distressed businesses. The very well-known Chapter 11 of the US Bankruptcy Code gives management of the business all powers to preserve and look after the businesses value. In some cases the court may appoint a trustee but whose role is to facilitate and not to control. This gives

management some flexibility in coming to grips with the current financial position of the business and finding the best way to save the business from bankruptcy.

The United Kingdom (UK) takes a more convoluted approach compared to the US. Several laws within UK legislation make provision for reorganisation. The so-called 'London approach' (Finch, 2005:727) or an informal credit workout approach can be accomplished outside formal court processes. Another would be the administrative procedure under the promulgated Enterprise Act of 2002 which involves an independent licensed insolvency practitioner taking control and performing the functions needed to save the company.

The Australian rescue system has been regarded as a fairly successful approach. Loubser (2007:167) has pointed out that the main goal of this rescue process was not to save the company itself but rather to maximise the value of the business and save employment and markets.

International principles focus on the rescue of a failing business, but also put emphasis on the interests of other affected stakeholders. Affected parties include employees, suppliers, customers and the revenue service all contributing to the larger economy.

As quoted by Alberts (2004:9) and accentuated by the World Bank (20011:7) and UN Guide (2003:24) this point is highlighted:

“The rescue of a business preserves jobs, provides creditors with a greater return based on higher going concern value of the enterprise, potentially produces a return for owners and obtains for the country the fruits of the rehabilitated enterprise. The rescue of a business should be promoted through formal and informal procedures.”

And

“Also, long-term economic benefit is more likely to be achieved through reorganization proceedings, since they encourage debtors to take action before their financial difficulties become severe. Lastly, there are social and political considerations that are served by the availability of reorganization proceedings which protect, for example, the employees of a troubled debtor.”

It was therefore important for a country like South Africa to take a new look at its current processes and procedures (both formal and informal) of assisting failing

business to not only saving the wealth of the entity but also protecting the greater economic gain.

South Africa has always had a creditor-friendly insolvency system. Creditors over the years have become accustomed to the powers they have to initiate liquidation actions against non-paying debtors leading to the rising of the liquidation culture in the South African insolvency environment. This creditor-friendly culture has been the main reason for the failure of judicial management since its inception (Burdette, 2011:134). Some commentary has called it a complete failure.

For these reasons, introducing new business rescue legislation would be challenging and difficult to implement (Burdette, 2011:134) and require government and business co-operation to make it work (van der Walt, 2011:31).

2.3.2.4 Business Rescue defined

In the South African context, business rescue is defined as the process of restructuring and reorganising financially distressed companies (Werkmans, 2011:2).

The introduction of an additional chapter in the new Companies Act no. 71 of 2008 lays out a well-mapped out business rescue procedure for companies not meeting current debt obligations. Section 128 of the new Act (71/2008) defines business rescue as the “proceedings to facilitate the rehabilitation of a company that is financially distressed”. Lamprecht (2008:186), as also defined in the Act, describes business rescue as a process to maximise the likelihood for an insolvent company to continue in existence, or if not in any way possible, will result in a greater return to the relevant creditors than if was to be liquidated immediately.

Loubser (2010:137) and KMG (2012) state that companies form an integrated part of the economy. When removed from the system, not only are management and their shareholders affected, but also the employees, suppliers, distributors, clients, and so the community at large (Loubser, 2007:154). For these reasons Loubser states that it makes sense to attempt to rescue failing businesses and assist them through their temporary setback if they have some potential at least of surviving when given time in overcoming their financial difficulties.

This realisation of economic sustainability has brought about a new business culture which in turn has resulted in widespread international changes to legal systems and special statutory provisions for business rescue.

2.3.2.5 Business Rescue – its purpose

The purpose of business rescue is to maximise the likelihood of continuous existence of the affected company. Business rescue is introduced to restore solvency and to save companies from bankruptcy (Werkmans, 2011:2).

An affected company, according to Levenstein (2011c:79), is where there are reasonable grounds to believe that a company is financially in distress. Business rescue is an option when there appears a reasonable prospect to save the company from bankruptcy.

According to section 161 of the new Act, directors could be held liable if they continue conducting their business under insolvent circumstances. It constitutes gross negligence if their intent is to defraud any affected person when trading under insolvent conditions. It is therefore expected that directors must consider liquidation or the passing of a resolution which places the company under supervision in terms of business rescue.

The New Companies Act, No. 71 of 2008 defines business rescue's purpose as to "provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders" (71/2008). The Act has introduced a balance between debtors and creditors.

Business rescue has three main intentions, according to Burdette (2004b:412) and Gootkin (2011:21):

- a) A successful business rescue;
- b) An agreement between the debtor and his creditors; and
- c) If business rescue failed and liquidation proceeds, a better realization of the debtor's assets is established.

Chapter 6 of the new Act introduces business rescue and aims at rehabilitating financially distressed companies by restructuring and enabling them to continue trading successfully (Levenstein, 2011b:29).

It is clear from the definitions above that change is bound to happen for any distressed company to move out of its current distressed state and for a successful turnaround to come about.

2.3.2.6 Periods to financial distress

With business rescue being defined above, financial distress and corporate decline in their own right deserve some discussion.

As businesses go through corporate life-cycles, periods of wealth creation are sometimes followed by periods of corporate decline. Many of these good and bad performances are linked to the economic environment, others are linked to management and managing the companies as a going concern. All companies follow phases of positive or negative growth over time (Van der Walt, 2011:40).

Research refers to the S-curve of corporate life-cycles and depending on where the business is management should seek new opportunities to ride the next wave or face extinction.

During stages of corporate decline, the financial position of the company worsens. The company loses its ability to attract funding assistance from its creditors. Externally, customer sales decline and/or suppliers stop supplying. Profit margins are squeezed and the company loses its ability to control cash. Management and staff leave, operations and processes fail and creditors start threatening with legal action. Costs increase and lawyers enter the business environment (Van der Walt, 2011:40). All these form part of a worsening of the financial position and shows warning signals about the health of a business.

Kahl (2002:136) has constructed a four-stage financial distress model. The model goes through the stages of corporate decline and the processes available and

actions that can be taken to move back to what he calls it, the health stage. The model of Kahl is illustrated and described below.

Table 2.1 Financial distress model

Timeline of financial distress				
Process	Informal turnaround process		Statutory process	
			New Company's Act of 2008 - Chapter 6	Insolvency Act
Stages	Emerging Problems	Acute and worsening problems		Insolvency
				Possible viability
Action	Management Correction	Informal credit workouts	Business rescue	
				Liquidation

(Source: Kahl, 2002:136)

The model describes the stages of financial distress and corporate decline. Each stage involves a different action to improve the state of the business at that point in time. The stages are described in detail below.

Stage 1: Emerging problems

Kahl (2002:136) describes the initial stage as a period where the company experiences emerging problems. This is when the company is moderately underperforming and a management-led correction can put the company back into a healthy situation.

This management-led approach is most ideal as it has the lowest cost and highest success rate. Management should recognise and act upon adverse trends in industry drivers. Proactive response to increasing forces against corporate performance must be addressed through continuous change and transformation. A continuous assessment of the performance of the business would best identify the problems and create adequate time for corrective actions.

Stage 2: Acute and worsening problems

As more acute and worsening problems emerge, severe underperformance of a company's output, people, systems and processes surface. This second stage brings about stress in cash flows and influences the repayment arrangements to creditors. Van der Walt (2011:41) elaborates the need for corrective action by management and lender participation in short-term funding or moratoriums (informal workouts) to address this stage. Workouts are managed by management but under the terms of the workout agreement. Early stage formal business rescue proceedings increase the survival rates of companies compared to later stage initiations. Van der Walt argues that business rescue would be a good option if failure of management-led corrections and informal workouts becomes apparent.

Stage 3: Solvency in question

For the insolvent stage or the third stage of Kahl's four stages of financial distress, business rescue is the only option for a possible successful recovery if viability is still foreseen. UK success rates in this stage of corporate turnaround were found to be less than 47% with research done by Frisby (2006:18).

Business rescue allows the company to remain in the economic stream, protect jobs, continues creating employment and pay taxes (Van der Walt, 2011:44). The process is, however, costly and dealing with the tough cases after previous failures to rectify the status quo may turn out to be very difficult.

Stage 4: Insolvent state

The last and final stage of the stages of financial distress is insolvency with very little likelihood of viability. Liquidation proceedings are the only outcome at this stage. Company assets are sold and proceeds are distributed to creditors. The company is ultimately removed from the economic stream.

For each stage of the model, different actions as discussed are available. Van der Walt (2011:46) has noted that businesses in South Africa should be allowed to initiate business rescue as early as six months prior to commercial and technical insolvency to increase the change of rescue success. According to Van der Walt, the earlier the turnaround starts, the higher the success rate is, the lower the costs and the higher management control over the proceedings is.

It is apparent that the above model benefits creditors learning about the distressed company's economic viability (Outecheva, 2007:59). If management correction fails, informal workouts become the next best option to save the failing business. If problems worsen and workouts become wrapped around complicated processes and legal jargon, business rescue may be the only saving grace for the troubled company before creditors salvage the drained balance sheet under liquidation proceedings.

In the previous section, business rescue was defined and the purpose of these proceedings was discussed in detail. Companies have been given some room to breathe during periods of financial distress while the business rescue plan is produced and implemented to increase the change of saving the business affected.

This next section will focus on the business rescue process, the stakeholders involved and the proceedings that follow for successful recovery of an affected company.

2.3.2.7 The process of business rescue

When a distressed company's management believes that the business and its operations remain economically viable even when it's financially distressed, business rescue will typically be the preferred next step.

According to Levenstein (2011b:29) a business rescue plan is formulated, usually assisted by a turnaround practitioner, who is licensed by the Companies and Intellectual Property Commission (CIPC). The plan is presented to a court (in the case of formal proceedings) or the company's creditors (in the case of informal proceedings) for approval (Corporate Renewal Solutions, 2007).

The rescue plan normally involves additional short-term finance to cover trade obligations, to pay for incurred costs within the turnaround plan and to restore the distressed company's balance sheet to a state of solvency (Corporate Renewal Solutions, 2007). Additional credit will normally come from existing creditors to ease cash flows and to implement the rescue plan.

With new legislation, the board of directors is bound to pass a resolution to place the company under business rescue if there are reasonable grounds to believe that the company is financially distressed and that there are prospects of rescuing it under Chapter 6 of the new Companies Act (71/2008). If the grounds for a reasonable turnaround cannot be met, management should put the company under liquidation and inform the affected stakeholders.

A business rescue practitioner (BRP) is appointed to facilitate the business rescue resolution. The CIPC has to be notified of the resolution and a copy of the notice must be sent to every affected person (Levenstein, 2011:79). This happens within five working days of appointing a BRP.

Levenstein (2011:79) adds that the resolution binds all affected persons to the proceedings of business rescue until the lapsing of the resolution or the termination of the business rescue proceedings. The filing of business rescue is not bound by any liquidation process (so liquidation is temporary postponed). The filing of business rescue is not limited to the directors of a company. Any affected person can apply to the court to place the business under business rescue at any time.

During rescue proceedings management and directors must attend to the requests of the BRP (Rushworth, 2010:389). The board is involved by assisting in all administration of the company. The plan must be submitted within 25 working days from the day the business rescue practitioner was appointed (Section 150 of 71/2008).

Financial assistance may be provided to the affected company during business rescue. Funds may be secured and will receive preference in the order in which these loans were acquired over all unsecured claims against the company.

A temporary suspension of the entire, partial or conditional obligations of the company can arise for the duration of the business rescue plan. Any suspension of agreements should be included in the business rescue plan for voting and approval by the affected stakeholders (section 136 of 71/2008). Under law, the BPR has the power to place moratoriums on all payments due by the affected company. This is, however, short term and excludes salaries to employees and the fees to the practitioner. Putting payments on hold have a positive effect on business cash flows.

Persons with a legal, accounting or business background may be appointed as a BRP. This is subject to the regulations by a regulatory authority or licensed by the CIPC. This person must act with integrity, fairness, objectivity and should by no means have any relationship with the affected company (section 136 of 71/2008).

After being appointed as the BRP, he or she should determine the financial position of the company. The BRP should investigate the company's affairs, business and property and determine if there is any reasonable prospect for the company to be rescued. The powers and duties of the BRP are comprehensive, challenging and often very difficult (Levenstein, 2010:3). The BRP's remuneration is prescribed in the regulations, and consists of an hourly tariff.

The BRP has to consult with all creditors and other affected persons, including management of the company. He or she needs to prepare a BR plan which needs to be presented at a general meeting with all affected stakeholders for consideration and possible approval. The BR plan is divided into three parts and covers the background, proposals and assumptions made, and conditions of the BR plan. All information provided in the plan must be accurate, complete, and up to date and all forecasts, projections and assumptions made must be in good faith on the basis of factual information. The BRP must verify all information to avoid future comebacks on the part of a liquidator if the plan failed and the company goes into liquidation (section 130 of 71/2008).

According to section 150 of the new Act (71/2008) the BR plan must be submitted within 25 days of appointment or such longer time set by the court, on application by the company or the majority voting members. A meeting of creditors is held within 10 days after the publishing of the BR plan. The BRP plays a pivotal role in advising and informing the meeting as to whether there is a reasonable chance for the affected company to be rescued. Timelines under the Act are exactly the same for all businesses under business rescue.

A vote is called at the meeting for either amending the proposed plan or for approval of the plan. A 75% majority vote of creditors would mean a supportive vote. For a 50% independent creditors' vote the same will apply (section 152 of 71/2008).

Adopting the BR plan makes it binding on the company, to all creditors of the company and any holder of the company securities. As laid out by the BR plan, the company must take all necessary steps to attempt to satisfy the conditions within the plan and implement the BR plan as adopted (section 152 of 71/2008).

A notice of substantial implementation must be filed when the plan has been substantially implemented. At this stage the company will be released from the status of being under business rescue and be allowed to operate normally (71/2008).

To summarise, a BRP is appointed; who has 10 working days to set up the first meeting. This is followed by the publishing of a business rescue plan by the company within 25 days. A creditors' meeting is held within 10 days after the plan is published, where a vote on the implementation thereof is decided. A 75% majority vote is needed for the any decision to be made. A voters' decline of the business plan could lead to amendments to the proposed plan or to a total termination of the business rescue process.

According to Flack (2011:51) there are four factors involved in a successful rescue:

- Leadership: strong strategic leadership is preferred.
- A strategic plan: The leadership must have a mapped plan, documented on paper and should be transparent and strategically focused towards a set goal.
- Action plan: The action plan should be divisible into smaller pieces, and achievable goals that are measurable.
- Management team: Management should be coherent, cohesive and motivated to contribute to the strategic plan and take responsibility for the implementation of action plans.

In the case where the business practitioner cannot find a reasonable prospect to save the company, liquidation proceedings will be the immediate next step. Legislation provides for this.

As seen from the above summary of the business rescue proceedings, stakeholders, the business rescue plan and practitioners all have key roles to play in this rather

complex process undertaking. According to Levenstein (2011:84), the real challenge for South African companies, liquidators and business rescue specialists will be the implementation of these new provisions. The BRP will need to require the technical skill set and the courts will need to embrace the new legislation by being open and transparent under the terms and proposals set out under the business rescue plan. Companies opting to file for business rescue should consider the implications of their decision and show openness and transparency in finding the best solution for the business to continue trading.

The ultimate purpose is to save companies from bankruptcy and to assist the affected company in trading out of financial distress. This can only be achieved with the participation of all affected stakeholders.

2.3.2.8 Choosing a business rescue practitioner

As highlighted in the previous section, business rescue practitioners play a leadership role in almost all aspects of the business rescue proceedings. It makes sense to choose the correct individual who will play a central role in all actions and decisions made during business rescue. This decision should not be taken lightly by the business opting to go under temporary supervision.

The Act (71/2008) makes provision for the appointing a business rescue practitioner. An individual qualified to be appointed as practitioners is classified in three groups:

- 1) “Senior practitioners” are persons who have actively engaged in business turnaround practices or have acted as a business rescue practitioner in terms of the Act for a combined period of 10 years. This person must be qualified to be appointed as a BRP in terms of section 138 (1).

- 2) “Experienced practitioners” are persons with a combined period of at least 5 years’ experience in the respective field. This person must be qualified to be appointed as a BRP in terms of section 138 (1).

- 3) “Junior practitioners” are persons who qualify to be appointed as BRP in terms of section 138 (1) of the Act and who,
- a. Have not previously engaged in business turnaround practice before the implementation of the Act; or
 - b. Has engaged in turnaround practice before the implementation of the Act and / or have acted as a business rescue practitioner in terms of the Act for a combined period of less than 5 years.

A junior practitioner is limited to small companies (as defined by the Act) and may not be appointed as a practitioner for medium, large or state-owned companies unless assisted by an experienced or senior practitioner. An experienced practitioner is limited to small and medium companies unless assisted by a senior practitioner.

Skills are a critical success factor in business rescue. Levenstein (2012) concurs that without suitable skills and experience, government’s efforts to save failing companies instead of destroying them may falter. The business rescue practitioner’s role is proactive and considerably more complex when compared to the until recently appointed liquidators who secured the best possible recovery for creditors of a failed company being liquidated.

According to Pelser (2012:1) there are 97 accredited rescue practitioners in South Africa and according to CIPC 196 businesses are currently under business rescue. Pelser (2012:1) mentioned that Peter Van den Steen, senior business rescue practitioner, believes it’s still early days for South Africa and much segmentation still needs to happen before business rescue can really get going.

Van der Steen continues to say that each business rescue case is a full-time job. Strict timelines for submitting business rescue plans make complex cases so much more difficult.

Steenekamp (2012:1) has recommended a four-step process in finding the right business rescue practitioner after taking all circumstances into account.

- 1) Considering a rescue practitioner, it is important that applicants are complying with the requirements stated by the Act;
- 2) Management should assist if the factors which led to the company's financial hardship were legal or business related. Business rescue practitioners in both these professions have very different areas of knowledge and skill.
- 3) Having experience in the same or similar industry would give the company the best possible chance of being rescued; and
- 4) The company and/or the court should ensure that the business rescue practitioner has the legal knowledge to assist in the development of the law and foundation of future business rescue applications.

The industry will evolve over time, segmenting itself towards rescue specialists within specific industries and larger firms having rescue practitioner teams dealing with large and complex matters (Pelser, 2012:1). Until then, management opting to apply for business rescue would be wise to be circumspect and to choose the right practitioner.

2.3.2.8 Business Rescue in practice

Apart from the empirical study included in chapter 3, some additional practical research was sourced from actual cases. The emphasis is on some of the key considerations in the process of business rescue. It is important to follow the due processes and in doing so increasing the success rate of this well-intended legislation.

In a recent case, *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 (Pty) Ltd* 2012 2 SA 423 (WCC) par[3], it was found to be inevitable that the provisions for business rescue should be carefully scrutinised as this legislation is open to abuse.

Section 131 of the new Act (71/2008) provides that a court may make an order placing a company under supervision and commencing business rescue proceedings if it is satisfied that:

- a) the company is financially distressed;
- b) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment-related matters; or
- c) it is otherwise just and equitable to do so for financial reasons; and
- d) there is a reasonable prospect for rescuing the company.

If the court is not satisfied, it may dismiss the application and can place the company under liquidation.

In this case, Southern Palace Investments applying for business rescue failed in their application to give full details of the reasons for the company's downfall and did not provide a concrete solution that had a reasonable prospect of success.

According to Ferguson (2012) the application should have some concrete and objective details that go beyond speculation of:

- 1) the costs of running the core business of the company;
- 2) the likelihood of having available cash to run the daily business expenses;
- 3) the details on loans and other facilities currently assisting the operations and their repayment terms;
- 4) the availability of other resources including raw materials and human capital; and
- 5) valid arguments as to why the company suggests that the proposed business plan would have a reasonable prospect of success.

In the case Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 (Pty) Ltd 2012 2 SA 423 (WCC) par[23], the business rescue plan was not concrete, and according to the court vague and not detailed. For this reason no

reasonable prospect for the business could have been established and provision for business rescue was denied.

In another case a plan was brought forward to save the grounded airline company Velvet Sky. It was put under provisional liquidation after the company tried filing for business rescue with empty promises of intervening investors trying to save the company from bankruptcy. The Pietermaritzburg High Court dismissed the application early in May 2012 after the business did not provide enough detail in the application and created false hope to postpone provisional liquidations (Corporate Author, 2012).

Pinnacle Point Property Company was the first JSE-listed company to successfully file for business rescue in terms of the new Companies Act in July 2011 (Muller, 2011). Since positioning its business rescue plan which involved a key asset project in Lagos in Nigeria, liquidators have since said that the company has run out of cash and that it was impossible to complete the deal which was estimated to generate R500m in three years (Ndzamela, 2012). The business rescue practitioner was unable to generate additional money to the huge amount of debt. The company has since been put under liquidation.

According to Visser (2012), only a handful of JSE-listed companies have tried filing for business rescue since its introduction into South African company law in May 2011. Directors of listed companies have greater responsibility over the decisions they make and are answerable to a large number of shareholders.

JSE listed Construction company, Sanyati Holdings [JSE:SAN] is in the process of being liquidated due to corruption and incompetence in provincial, municipal and government departments, said a report by SAPA (2012:1). The now resigned CEO, Malcolm Lobban said the company had not been paid by the Free State, KwaZulu-Natal and Limpopo government departments for work done in 2011 and this was the reason why the termination of business rescue was filed in July 2012 (Sanyati, 2012a). 96% of creditors voted against the proposed business rescue plan (Sanyati, 2012b).

The above examples of business rescue matters have shown how new legislation can shake up business environments, companies, shareholders, stakeholders, courts and creditors through complex legalities and additional requirements.

In the past year, abuse has been seen on numerous cases where directors and boards postpone ultimate liquidation. It is important that applications for business rescue be carefully scrutinised so as to ensure that it entails a genuine attempt to achieve the aims and purpose of business rescue (Braatvedt, 2012).

2.4 Chapter summary

The new Companies Act, and specifically Chapter 6, brings South Africa in line with international sovereignties such as the United Kingdom and the United States. The purpose of these jurisdictions is to achieve the rescuing of financially distressed companies and by doing so maximise the returns of creditors' returns, saving jobs, continuance of the affected company and continuous employment within the saved corporate. The benefits of economic wealth and goodwill are achieved.

When considering past legislation, the success rates and bad stigma connected to judicial management, South Africa was in dire need of change towards a workable system to enable the tools to maximise the possibility of successful recovery of companies trading in financial difficulty or financially stressed. It is clear the new business rescue proceedings provide for a radical different process from the previous one under section 427 to 440 of the old companies Act of 1973, that is judicial management (Rushworth, 2010:408).

Harris (2012) mentioned that liquidations have declined year on year largely in the financing, insurance, real estate and business services (78 fewer), wholesale and retail trade, catering and accommodation (68 fewer), community, social and personal services (25 fewer). He added that liquidations for the three months to February 2012 have showed a 30.3% decrease compared to the three months to February 2011. Liquidations for the year to February 2012 registered a huge 49.9% decline. He concluded that there was no doubt that the decline was in part due to the

implementation of the new business rescue process. This was supported by the number of voluntary liquidations declining by 53.6%.

The new legislation is clearly positioned to rehabilitate companies, or to ensure a higher return in dividend recovery during liquidation.

International rescue cultures have achieved their objectives and there is no reason why the same should not happen within the South African context. Stakeholder acceptance and buy-in are required and the previous liquidation culture should be reversed to achieve renewed commitment in rescuing companies in distress.

From the literature study all conclusions lead to a radical change in corporate rescue legislation in 2011. Previous legislation showed little success and most corporate stakeholders welcome this formal approach to corporate turnaround and renewal proceedings.

CHAPTER 3

EMPIRICAL STUDY

3.1 Introduction

In the previous chapter Chapter 6 of the new Companies Act was discussed. The research described South Africa's journey towards business rescue in line with the new Companies Act and how international influences and successes have brought about change towards creating a debtor-friendly legislation post-May 2011.

This chapter focuses on the main objective of this research topic, to determine whether business rescue has achieved its main purpose. The purpose of business rescue has been defined by many and all these come to the same broad conclusion.

The purpose of business rescue is to:

- increase the survival probability of a failing business;
- restore solvency and keep businesses economically active in the market;
- ensure level playing fields for both debtors and creditors; and
- if solvency cannot be restored and liquidation proceedings follow, a better debt recovery realisation is achieved for creditors.

Business rescue is a fairly new concept in company law. It's been part of normal business for just over a year. This chapter will now focus on the population of business rescue applications since May 2011. Out of the population a smaller sample will be selected to investigate the elements surrounding the business rescue matter and how the applications panned out.

The empirical study will determine whether data can conclude on the initial purpose and objective of business rescue in South African company law as summarised above.

3.2 Research method and design

Cooper and Schindler (2003:13) maintain that good research produces trustworthy data. This is derived from either professional investigation practices or reliable sources. The researcher used these criteria of systematic design, defining a detailed research process and keeping transparency and high ethical standards in presenting the findings unambiguously.

From the literature study and initial contact with industry experts it became evident that data has been available on business rescue matters since the inception of the new Act. The data is mostly qualitative in nature.

Welman, *et al.* (2010:221) describe content analysis as a quantitative analysis of qualitative data. For this reason the researcher adopted a content research analysis approach by collecting documents, spreadsheets and information (qualitative in nature) and describing it through quantitative data analysis.

Interviews with business rescue practitioners and industry experts would be the general or preferred approach to this research problem, but this is prone to bias towards both positive and negative sentiments depending on the respondents at this early stage of the new legislation.

For this reason, a content analysis approach would be more appropriate in identifying the successes of business rescue. An investigation into completed business rescue matters should at a minimum establish some initial success level of business rescue.

Cooper *et al.* (2007:67) describe the strengths and weaknesses of content analysis in the next table. The researcher took due cognizant of the above in making a final decision on the research method.

Table 3.1 Strengths and weaknesses of content analysis

Strengths	Weaknesses
Collecting data and empirical content is relatively easy.	The selection of data is up to the researcher which may take away the objectivity.
Content analysis is inexpensive.	This research method does not measure people's behaviour and feelings about a research topic.
Reliability of data is normally produced	This method may be time-consuming if the data collection process involves data from numerous sources.

Source: Cooper, *et al.* (2007:67)

A stratified convenience sample of business rescue matters was considered. This sample represents a smaller portion of the total population of business rescue applications. The sample was obtained from a large creditor who was affected by this new legislation. The success of business rescues within the South African context could be revealed within this smaller sample and be a fair representation of the larger population of business rescue matters.

This research strategy was chosen due to the availability of data. The sample size is of such a nature that one can make some assumptions and conclusions about the population of completed business rescue matters.

This data was consolidated and key characteristics of this stratified sample were identified and reported on in the sections to follow. The researcher has drawn conclusions and observations from the data set in the concluding chapter to follow.

The research methodology followed a stage approach. First the researcher explored the current applications filed for business rescue in South Africa (defined as the population). This gives some general understanding of the business profile of companies filing for business rescue in the first year since implementation. Further to

that, a sample of business rescue applications was obtained from a reliable data source. This sample contained more detail on each case which was used to conclude on the success of business rescue on the overall population. A checklist is cited in Annexure A as part of the phased process.

3.3 The population

While South African companies, creditors and affected stakeholders come to grips with the recently implemented legislation, a fair number of applications were filed for the commencement of business rescue. The Companies and Intellectual Property Commission (CIPC) has reported 280 businesses filing for business rescue rather than liquidations for the period leading to 31 December 2011.

Some initial analysis was done on the population. This was thought necessary to understand the dynamics of companies who go into business rescue, to compare the sample dataset with the larger population and to give comfort that the final selected sample represents the larger group.

The section to follow defines the population of business rescue applications within a specific period. Some initial understanding on the profile of businesses applying for business rescue is considered after which a smaller sample of business rescue applications will be selected from the population to further the aims of the empirical analysis.

3.3.1 The population defined

280 business rescue applications have been filed to the CIPC since the implementation of the new Act up to 31 December 2011. This section of the empirical study analyses these applications by investigating some of their characteristics before the sample is identified.

3.3.1.1 Analysing the population

According to the check list cited in Annexure A the number of business rescue applications has slowly grown since the implementation of the new Act in May 2011.

The table below gives a breakdown of the number of applications received for the months leading to 31 December.

Table 3.2 BR applications (per month)

Month filed	Number of Applications received
May-11	8
Jun-11	29
Jul-11	19
Aug-11	40
Sep-11	85
Oct-11	24
Nov-11	45
Dec-11	30
	280

There has been a steady inflow of business rescue application over the first eight months since implementation. The earlier months showed that an initial acceptance period of lower volumes was followed by an increase since August.

As mentioned earlier, an understanding of the dynamics of business filing of business rescue was seen as crucial. Some analysis was conducted on the 280 applications as part of profiling the population. The following characteristics were included in the section below:

- 1) the business type (that is public, private or closed corporation);

- 2) Age of business filing for business rescue; and

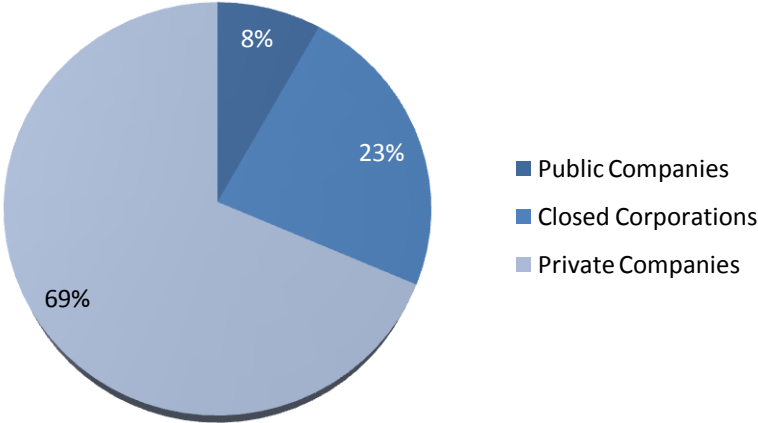
- 3) Industry sectors most affected.

3.3.2 Profile of businesses filing for business rescue

Business type

Business rescue was implemented for all business types, may they be privately or publicly owned as well as closed corporations. The figure below breaks down the applications by business type for the population.

Figure 3.1 Business rescue applications (Type of entity)



The breakdown of business rescue applications into business types shows a significant trend. Private companies were the majority of applications (almost 70%). Closed Corporations, being typically smaller in size, represent 64 applications or 23% of the 280 applications. Public companies totalled 22 applications over the period. Trusts are currently excluded from this legislation, as well as sole proprietors of which individuals are protected by the Consumer Act.

Age of businesses

Businesses go through stages over time, young start-ups have a higher probability of failure than more established businesses. Comparing age of businesses filing for business rescue may show the same trends. The 280 business rescue notifications were aged by business established date and tabled below.

Table 3.3 BR applications (age of business)

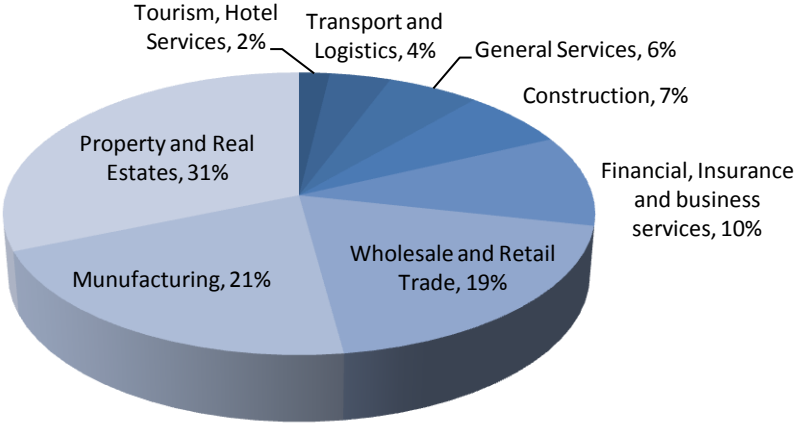
Business Age	Number of Applications received
1-5 years	56
6-10 years	114
11-15 years	68
16-20 years	20
21-25 years	7
26-30 years	5
31-35 years	2
36-40 years	0
41-45 years	2
46-50 years	1
50 + years	3
Age not available	2
	280

The average age of businesses filing for business rescue is 13 years. This shows that the majority of applications received are from businesses that have been in business for some time but include a number of start-up businesses filing for business rescue.

Industry sector

Industries generally seen as volatile have been most affected by the economic downturn in the past few years. It is these industry sectors that took most advantage of a change in legislation to save a dying company from financial distress. In the figure below the population of 280 applications is split into the major industry segmentations.

Figure 3.2 Business rescue applications (Type of industry)



Some industries were more affected by the decline in economic activity. Consumer spending declined late from 2008 through 2009 and 2010 and this is reason why sectors in property, manufacturing of goods and trade have showed more applications for business rescue.

The new Companies Act No. 71 of 2008 has now passed its first year since implementation on the 1st of May 2011. Over the past 12 months financially distressed companies have had the opportunity to file for business rescue under the new Act or face possible liquidation and foreclosure. On the other side, creditors have been faced with new processes governed by law and were forced to follow a rescue culture rather than closing down the defaulting debtor and writing off irrecoverable debt.

As supported by data in this section, a substantial number of businesses have filed notice for the business rescue. This raises some conclusion that business rescue has been for many a last resort.

The above analysis proves that businesses from different ages, types and industries are affected by business declining and to those who chose to take the business rescue process as last resort.

In the next section a sample was chosen, defined and analysed as part of the second phase of the empirical study.

3.4 The sample

A stratified sample was obtained from one of the large South African banks dealing with business rescue applications on a daily basis. It comprises of 78 business rescue applications from the initial population of 280.

The smaller sample is of a workable size and contains additional information on the specifics of each BR matter. The next section will go into more detail on the selected applications in the sample.

3.4.1 Business rescue applications from a large creditor

The success rate of business rescue applications in the last year is now the obvious question and the link in finding an answer to the initial research question.

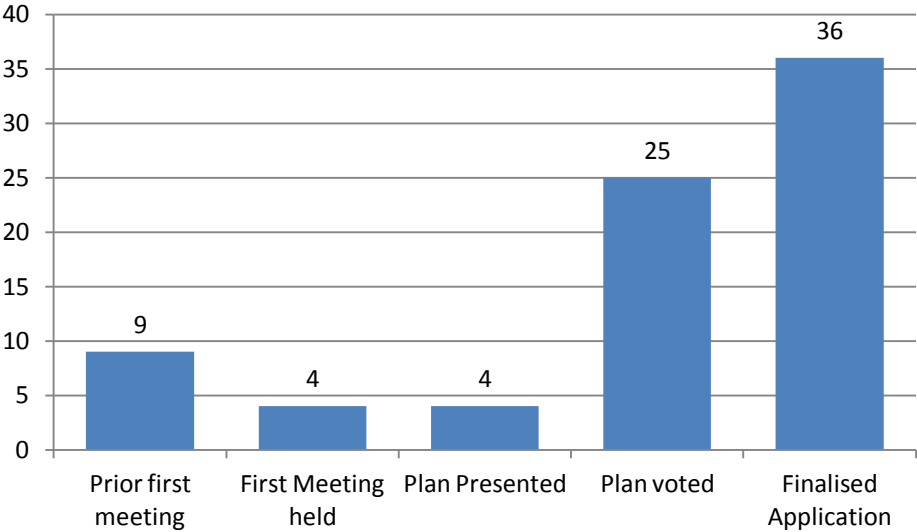
3.4.1.1 The sample defined

A total of 78 notifications for business rescue were received by the large creditor over the same period as defined in the population. These applications are a smaller sample of the initial 280 applications of which more information and data is available to analyse.

As highlighted in chapter 2 of this report, the business rescue process follows the five stages. Each stage involves specific actions within a set time. From the sample of 78 applications, the majority of business rescue matters have reached the final stage, which is the finalisation stage or a result (either successful or unsuccessful) have been reached.

As summarised in Annexure A, each BR application was classified into their respective stages of business rescue. Data, information and documents were reviewed to determine the current status of each business rescue matter and shown below.

Figure 3.3 BR applications and their statuses as at 30 June 2012



The applications in the four stages before finalisation were classified as pre-finalisation matters. These applications will conclude an outcome in the next few months. The finalised matters have reached a stage where business rescue was initiated.

The content analysis will now focus on the above 78 applications by dividing the sample into:

- The 42 pre-finalisation business rescue matters; and
- The 36 finalised applications where a result was reached on the business rescue applications.

3.4.1.2 Pre-finalised applications

Content analysis was conducted on the 42 applications currently in the pre-finalisation stages of the business rescue process. Annexure B provides additional information on each application, their progress into business rescue and a possible outcome to business recovery based on the information available at the time.

Some significant observations were observed in the data and summarised below.

- 1) At least six business rescue plans involved selling property to increase cash flow and repay debt.
- 2) Approved plans by creditors have a high probability of resulting in a favourable repayment arrangement for creditors.
- 3) A large proportion of applications have an uncertain outcome for creditors and affected business.
- 4) In three applications some creditors were never notified of the proceedings.
- 5) The proportion is fairly even in favour of and against the business rescue plan.
- 6) A number of business plans were amended before creditors approved it.
- 7) Of the 42 applications, at least six businesses will in all likelihood not have a successful recovery from their current financial position.
- 8) At least five businesses were classified as possible turnaround companies.
- 9) One business rescue practitioner was replaced and two applications fell short of meeting timelines between stages.

The above analysis as cited in Annexure B shows some initial prospects for at least five businesses. These businesses have a high probability to regain solvency. Another five applications have an uncertain business recovery but a positive outcome on recovery of debt for the creditor.

The success of these applications will be known in the months to come.

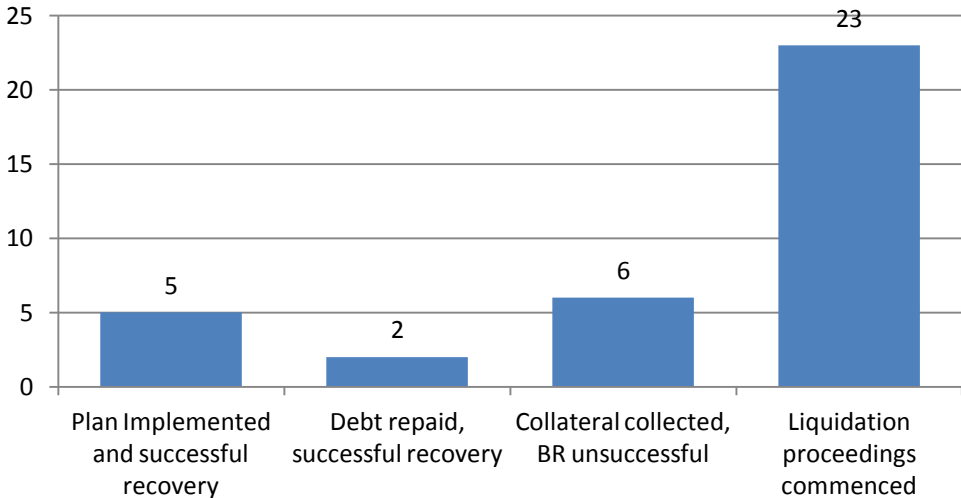
3.4.1.3 Finalised applications

36 business rescue applications within the creditor’s portfolio were finalised by the end of 30 June 2012. The research now turns to their outcomes in determining a success rate. The outcome of this should solve the initial research problem stated in chapter 1.

If one assumes all stakeholders in the business rescue process are following the process to meet the objectives of the new Companies Act and all was done to explore all avenues in saving the dying business, then by studying the 36 BR finalised applications one can draw some conclusions and the individual challenges and issues incorporated in these matters.

Given below in figure 3.4 is the status the finalised BR applications.

Figure 1.4 Finalised BR applications and their statuses as at 30 June 2012



The figure above summarises the outcomes of the 36 finalised BR applications within the creditor’s business rescue portfolio. All applications filed for business rescue via the CIPC. A BRP was appointed and a plan drawn up for voting at the creditors’ meeting. A concluding status was identified for each application by the end of June 2012. Refer to Annexure C for the finalised BR statuses for the 36 applications and additional comments.

From the data and information available, the researcher grouped the 36 completed matters into four completed statuses (as per the figure), that is

- 1) Business rescue plan implemented and successful recovery achieved;
- 2) Debt was repaid and business recovered;
- 3) Business rescue was unsuccessful, creditor collected a portion of the debt; and
- 4) A business rescue application was received; but the business has subsequently gone into liquidation proceedings.

The following points were observed within under the 36 finalised applications:

- The number of successful matters (ones who followed the legislation process of presenting a business plan, creditors voting in favour thereof and where the plan was executed properly) remains very low, in fact only five instances could be classified into this category.
- More focus is put on larger exposed matters. More detail on larger companies was available for analysis.
- Industry sectors (construction, business and consumer services) were the highest contributors of business rescue matters.
- Numerous practitioners are not skilled at managing the rescue process. A number of rescue matters involved replacing the BRPs due to inability to manage the process.
- In at least three matters the creditor was never informed of business rescue proceedings, or was not invited to the initial creditors' meeting. It was only after presenting of the rescue plan that all parties knew about the notifications and proceedings.
- Where the creditor voted against the business rescue plan, the outcome was in most cases liquidation.

- In general the implementation of business rescue was too late for many of these matters. This creates a smaller possibility for successful recovery of the business.
- By far the majority of matters that go into business rescue are intended to delay the unavoidable outcome, which is liquidation.

From the above sample it is concluded that the majority of business applications end up in liquidation. Seven finalised matters were classified as successful, which represents a success rate of 19%.

3.5 Chapter summary

From the national business rescue applications received by the Companies and Intellectual Property Commission (CIPC) it can be concluded that this new legislation has been used by a number of businesses. 280 businesses filed for business rescue in the first eight months to 31 December 2011.

The number of matters is increasing as stakeholders become familiar with the new legislation.

It was noted that some industries utilised this new business rescue proceedings more than other sectors. The data sample presented the fact that smaller businesses were less successful in business recovery and this is partly due to less focus from creditors in supplying resources to recover low debt levels.

Skilled business rescue practitioners are crucial to manage the business rescue process from the start of business rescue to the implementation of the proposed and voted plan.

The success rates of business recovery in the completed rescue matters were rather low compared to international levels. The data sample showed a 19% successful recovery of the business rescue plan and the repayment of debt to the creditors.

Although these levels are rather disappointing, each company saved in the economy is a win for all stakeholders involved. BR is, however, in the early stages of acceptance and experience and skills in the industry is developing.

The empirical research does not rule out abuse of the Act as a delaying tactic by many of the businesses filing for business rescue. Businesses wait too long to ask for assistance. This lowers the recovery probability.

CHAPTER 4

Conclusions and recommendations

4.1 Introduction

This study specifically focused on business rescue, which is new legislation within the new Companies Act which has now been part of legislation for just over a year. Business rescue was implemented to bring transformation within company law. A previous creditors' friendly business environment is now a more level playing field between debt collectors and dying companies looking for salvation.

The research problem was defined in chapter 1 – which was to measure the success of business rescue's main objectives. Chapter 2 reviewed much of the new Companies Act, focussing on Chapter 6, that is business rescue and the process and stakeholders involved. Chapter 3 focused on the actual businesses that filed for business rescue in the first 8 months since May 2011. A population involving 280 matters was collected and some initial demographic analysis was done to understand the type of business opting to use business rescue as a last resort. From the population 78 applications were collected from a large creditor. The sample included data and information on the individual applications. The research design and methodology used content analysis to turn qualitative data into quantitative information. The sample was then segmented into the five stages of the business rescue process. For business rescue applications within the pre-finalisation stage additional observations were noted. This was followed by an analysis of the remaining 36 finalised matters and their outcome of the business rescue process.

The success rate of business rescue in terms of these 36 finalised matters was concluded at 19%, which was rather disappointing considering international trends and publications.

According to Pelser (2011:3) only one-third of business rescue plans in the US are approved, but 75% of those are successful. A slightly different picture is seen in

Canada where business rescue commencements are high (75% acceptance), with higher quality matters achieving a success rate of 80%.

4.2 Limitations and challenges

This study has some limitations that should be brought to the attention of the reader who may or may not make certain assumptions on the empirical results documented above.

New legislation goes through an acceptance phase which involves the industry, the courts, stakeholders and affected businesses to learn from experience and adjust to change in new processes and procedures. This research study was conducted in a time where uncertainty was still high on the processes and outcomes of specific actions and this may have influenced the results presented.

The study only considers one period, that is the finalised applications for the period 1 May 2011 to 30 June 2012. The presented findings may change over time. Therefore, further research in future may bring additional conclusions on the success business rescue has brought to the South African business environment.

The study has concluded on the outcome of business rescue applications from a large creditor. There is a possibility that the sample may be different for other creditors.

Despite the above limitations, this study investigated the success rate of business rescue in a range of industries. The sample is of such a size that the outcome may very well represent the current standing of business rescue Act.

4.3 Recommendation

From the above the research one could conclude that although the intentions of Chapter 6, business rescue, are to provide for the efficient rescue and recovery of companies in financially distressed positions, a number of pitfalls in the processes leading to the actual drafting of a business plan have to be addressed. Many of the

obvious hurdles must be met for the dying business to have some chance of survival. These include:

- 1) Management of a failing business should seek advice much earlier in the process. Identifying acute and worsening problems in the business brings to the fore the question of solvency and the decision as to the best time to consult with business rescue experts. If management's intentions are to save the company, following a rescue process earlier would increase the likelihood of survival and turnaround.
- 2) The number of senior business rescue practitioners with successful track records is low. National training within this newly-formed industry is crucial for the Act to serve its purpose.
- 3) Post-commencement funding to ease cash flow problems will ease some of the initial implementation issues.
- 4) Management should play a pivotal role in keeping to timelines, setting up a business plan, implementing agreed strategies and keeping to terms and conditions as set out by the agreed plan.
- 5) Failing businesses must understand that business rescue proceedings involve expensive legal proceedings. Insolvent companies not able to pay expenses like salaries should seriously reconsider playing the delaying game by abusing this newly-implemented company law.

As more businesses file for business rescue, the courts will have to play an important part in identifying system abuse and businesses playing a delaying tactic. The commencement of business rescue should focus on matters which have a "reasonable prospect" of recovery and rescue.

To date a low number of business rescue notices have followed the full process from submitting a business plan, having the creditors' meeting and implementation thereof. From the empirical study initial expectations by Van Rooyen (2012:39) was confirmed. South Africa's initial success rate has been low. This study confirmed this

with only 19% of business rescue notifications been successful, much lower than some international trends.

It is, however, important to note that saving businesses can have a direct impact on the market. A trading company pays taxes and employees are paid salaries. All these and those participating in the value and supply chain of smaller economies play a huge part in the overall South African economy.

It is management's responsibility to reassess business performance on a frequent basis and identify risks and signs pointing to financial stress and the possibility of going onto business rescue earlier rather than later to improve the chances of successfully rescuing the business.

In South Africa, 438 business rescue applications were reported to the CIPC by June 2012. Braatvedt (2012), Rodrigues (2007:4), Rajak and Henning (1999:265) all warned that abuse is possible within the new business rescue process. Insolvent companies may be desperate to delay the inevitable. This research study does not rule out that some of the investigated matters may have used this legislation as delaying tactics.

Van der Walt (2012) concludes but that business rescue can work well. It may initially be controversial for most but will ultimately add more value to the business environment. The pros will ultimately outweigh the cons.

4.3 Conclusion

This research study had four objectives. The study included a comprehensive literature review of business rescue within the new Companies Act (71/2008). An analysis was completed on the national business rescue applications and a detailed empirical study was completed on applications received via a large credit provider. This resulted in deriving the success rate of business rescue in South Africa in the first year since implementation.

Business Rescue and the new Companies Act are still fairly new to company law. Initial acceptance of new procedures in assisting financially distressed businesses have been seen with the gradual increase in the number of applications received.

From the research study which included reviewing legislation, published articles, books, papers and consulting experts, one can conclude that this new legislation is a step in the right direction. Financially distressed businesses have the opportunity to reassess their affairs and find a solution before liquidating the company becomes the only available option.

This rather controversial culture of saving a dying company has positive spinoffs for not only the business affected, but also all stakeholders directly or indirectly linked to the business.

It is, however, a collective effort from business management, the chosen practitioner and creditors for business rescue to meet its objectives. Some additional awareness and training is needed for practitioners to best manage and follow the processes as set out in.

There is no doubt that time will bring experience and learning to the industry. This will ultimately improve initial success rates of business rescue and have a profound impact on the economy where businesses are saved to continue their economic activity in the market.

4.4 Chapter summary

This chapter concludes the research project on a positive note. It highlights the steps followed in solving the research problem and meeting the main objectives set out in chapter 1.

It also describes the limitations and challenges experienced in concluding this study and concludes with recommendations for the industry as to how to collectively find ways of assisting failing businesses and prevent them from exiting the economy.

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Annexure A: Empirical research check list

	Phase	Check list item:	Source	Type of data	Value	Comment	Reason for item
Population	P1	Defining the population	CIPC	Quantitative	280	Number of business applying for BR in the first eight months since implementation	First step in identifying an appropriate sample.
	P2	Applications per month	Population	Quantitative	Noticeable Increasing month on month	Number of applications per month and the relative increase observed	To identify if the Act is being accepted.
	P3	Identifying the characteristics of businesses filing for business rescue	Population	Qualitative & Quantitative	By business type, age and industry sectors	Specific businesses are more pruned to file for business rescue.	Get an understanding of the population before identifying the data sample
	P4	- By Business Type	Population	Quantitative	Refer to Figure 3.1	Private Companies are more likely to file for business rescue.	Understanding the population distribution
	P5	- By Business Age	Population	Quantitative	Refer to Table 3.3	Younger businesses a more pruned to file for business rescue	Understanding the population distribution
	P6	- By industry Sector	Population	Quantitative	Refer to Figure 3.2	Volatile industries are utilising business rescue	Understanding the population distribution
Sample	S1	Defining the sample	Large Creditor	Quantitative	78	The sample is stratified in nature, conveniently chosen from a reliable source.	Selecting a sample of applications from the larger population
	S2	Identify the statuses of each application within the sample	Sample	Qualitative	N/A	Understand where each applications is in the BR process	Segmentation of applications
	S3	- Tag all applications that have not had the first meeting	Sample	Quantitative	9	This was done by reviewing documentation (refer to Annexure B)	Segmentation of applications
	S4	- Tag all applications that had the first meeting	Sample	Quantitative	4	This was done by reviewing documentation (refer to Annexure B)	Segmentation of applications

S5	- Tag all applications where the plan was presented	Sample	Quantitative	4	This was done by reviewing documentation (refer to Annexure B)	Segmentation of applications
S6	- Tag all applications where the committee voted for or against the proposed plan	Sample	Quantitative	25	This was done by reviewing documentation (refer to Annexure B)	Segmentation of applications
S7	- Identify finalised business rescue matters	Sample	Quantitative	36	This was done by reviewing documentation (refer to Annexure B)	Segmentation of applications
S8	Segment above statuses into finalised and pre-finalisation matters	Sample	Qualitative	Finalised - 36; Pre-Finalised = 42	Segmenting the tagged applications, refer to Annexure B and C	Identify application needed to determine a business rescue success rate
S9	Segment the finalised applications into four groups	Sample	Quantitative		This was done by reviewing documentation (refer to Annexure C)	Calculate success rate of business rescue
S10	- Tag finalised applications where collateral was collected but remaining debt still outstanding with no plan to pay this back	Finalised Application Sample	Quantitative	6	This was done by reviewing documentation (refer to Annexure C)	Segmentation of finalised applications
S11	- Tag finalised applications where plan was successfully implemented and business recovered from financial distress	Finalised Application Sample	Quantitative	5	This was done by reviewing documentation (refer to Annexure C)	Segmentation of finalised applications
S12	- Tag finalised applications that has gone into liquidation	Finalised Application Sample	Quantitative	23	This was done by reviewing documentation (refer to Annexure C)	Segmentation of finalised applications
S13	- Tag finalised applications that repaid debt and successfully recovered from financial distress	Finalised Application Sample	Quantitative	2	This was done by reviewing documentation (refer to Annexure C)	Segmentation of finalised applications
S14	Calculate the success rate	Sample	Qualitative	19%	Applications where the business was saved and / or creditor recovered debt owing	Solve the research problem.

Annexure B: Non finalised business rescue matters

Non-Finalised Application	Agree to plan	Possible outcome	Recovery of business	Action	Comments	Status
NF App1	No	Negative	No	Sale of business		Plan voted
NF App2	Pending	Uncertain	Uncertain	Uncertain		Plan voted
NF App3	Pending	Uncertain	Uncertain	Uncertain		Plan Presented
NF App4	No	Negative	No	Losses certain	3rd BPR appointed	Plan voted
NF App5	Pending	Uncertain	Uncertain	Uncertain		Prior first meeting
NF App6	Pending	Uncertain	Uncertain	Uncertain		Prior first meeting
NF App7	Pending	Positive	Most likely	Repayment by new owners	Selling of business	Plan voted
NF App8	Pending	Uncertain	Uncertain	Uncertain		Prior first meeting
NF App9	Pending	Uncertain	Uncertain	Repayment of debt		Prior first meeting
NF App10	Pending	Uncertain	Uncertain	Uncertain		Plan Presented
NF App11	Pending	Uncertain	Uncertain	Uncertain		Prior first meeting
NF App12	No	Negative	Uncertain	Uncertain	Unsustainable business	Plan voted
NF App13	Pending	Uncertain	Uncertain	Uncertain		First Meeting held
NF App14	Pending	Negative	Uncertain	Uncertain	Partial repayment expected	Plan voted
NF App15	Pending	Uncertain	Uncertain	Uncertain		Plan voted
NF App16	No	Uncertain	Uncertain	Repayment of debt	Surety should have the funds to settle debt	First Meeting held
NF App17	Pending	Uncertain	Uncertain	Uncertain		First Meeting held
NF App18	Yes	Positive	Uncertain	Repayment of debt		Prior first meeting
NF App19	Yes	Positive	Most likely	Sale of property to settle debt and improve cash flow		Prior first meeting
NF App20	Yes	Uncertain	Uncertain	Plan up for vote	Creditor was not advised of the BR applications	Prior first meeting
NF App21	Yes	Positive	Uncertain	Repayment of debt		Plan Presented
NF App22	Yes	Positive	Most likely	Repayment of debt	Creditor was not advised of the BR applications	First Meeting held
NF App23	Pending	Uncertain	Uncertain	No plan yet		Plan voted
NF App24	Yes	Positive	Most likely	Sale of property to settle debt and improve cash flow	Repayment of debt possible	Prior first meeting
NF App25	Yes	Positive	Uncertain	Sale of property to settle debt and improve cash flow	Repayment of debt possible	Plan voted
NF App26	Yes	Positive	Uncertain	Sale of property to settle debt and improve cash flow	Repayment of debt possible	Plan voted
NF App27	Yes	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App28	No	Liquidation	No	Partial payment of debt	Liquidations proceedings to start	Plan Presented
NF App29	Yes	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App30	Yes	Uncertain	No	Sale of property to settle debt and improve cash flow		Plan voted
NF App31	Yes	Positive	Uncertain	Repayment of debt		Plan voted
NF App32	No	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App33	No	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App34	No	Positive	Most likely	Sale of property to settle debt and improve cash flow	Business should not have filed for business rescue	Plan voted
NF App35	No	Negative	Uncertain	Partial payment of debt		Plan voted
NF App36	No	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App37	No	Negative	Uncertain	Uncertain		Plan voted
NF App38	No	Liquidation	No	Creditors to initiate Liquidation	Creditor was not advised of the BR applications	Plan voted
NF App39	No	Liquidation	No	Repayment of debt	Practitioner removed, out of timelines	Plan voted
NF App40	Pending	Uncertain	Uncertain	Repayment of debt		Plan voted
NF App41	Pending	Uncertain	Uncertain	Uncertain		Plan voted
NF App42	Pending	Uncertain	Uncertain	Uncertain	Customer and BRP outside of timelines	Plan voted

Annexure C: Finalised business rescue matters

Finalised Application	Collateral collected, BR unsuccessful	Plan Implemented and successful recovery	Liquidation proceedings commenced	Debt repaid, successful recovery	Comments
F APP1			X		Liquidation, losses expected
F APP2			X		Liquidation, losses uncertain
F APP3			X		Liquidation, losses uncertain
F APP4			X		Liquidation, losses uncertain
F APP5		X			Successful Business rescue recovery, all debt repaid
F APP6			X		Liquidation, losses expected
F APP7			X		Liquidation, losses uncertain
F APP8			X		Liquidation, no loss expected
F APP9			X		Liquidation, losses expected
F APP10			X		Liquidation, losses expected
F APP11			X		Liquidation, no loss expected
F APP12		X			Successful Business rescue recovery, all debt repaid
F APP13			X		Liquidation, losses expected
F APP14			X		Liquidation, losses expected
F APP15		X			Successful Business rescue recovery, all debt repaid
F APP16			X		Liquidation, losses expected
F APP17			X		Liquidation, losses uncertain
F APP18			X		Liquidation, losses uncertain
F APP19			X		Liquidation, losses uncertain
F APP20	X				Large loss expected for Creditor. Debtor unable to repay commitments
F APP21	X				Business rescue plan was overturned. Legal proceedings against the company are filed.
F APP22	X				Repayment of debt unsuccessful. Assets will be sold to settle outstanding debt.
F APP23			X		Liquidation, no loss expected
F APP24			X		Liquidation, losses uncertain
F APP25			X		Liquidation, losses uncertain
F APP26		X			Successful Business rescue recovery, all debt repaid
F APP27				X	Full recovery expected, business recovery
F APP28			X		Liquidation, losses uncertain
F APP29	X				Creditor faces losses. Plan was terminated. Proceedings against business
F APP30			X		Liquidation, losses expected
F APP31	X				Partial repayment of debt, legal proceedings to commence for the remaining debt
F APP32				X	Full recovery expected, business recovery
F APP33			X		Liquidation, losses uncertain
F APP34	X				Partial repayment of debt, legal proceedings to commence for the remaining debt
F APP35		X			Successful Business rescue recovery, all debt repaid
F APP36			X		Liquidation, losses uncertain