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ADDRESSING PRINCIPAL-AGENT CONFLICT IN BUSINESS RESCUE

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ABSTRACT

Within the principal-agent dilemma there exists conflict between business rescue practitioners (BRPs) and banks (often the determinant creditor) about process, outcomes and remuneration. Details about the issues, liabilities and solutions to overcome the relationship liabilities during a rescue can guide the development of a conflict framework to improve the success of the industry. BRPs (as agents) must satisfy creditors (as principals) who vote for the plan that BRPs present. Banks are often the largest creditors with “swinging” voting powers. Further, banks are involved with distressed businesses before filing for rescue and potentially after voting on the plan with larger exposure and risks. Perceptual differences (principal-agent dilemma) exist between BRPs and banks about how to go about rescue, if it is considered. Much blame and disagreement exist currently that negatively impacts the relationship and consequently rescue success rates. The main research question is: What are the causes and issues that underlie the conflict between BRPs and banks. A structured “dialectic inquiry” process was applied to elicit key “pain points”, its consequences and potential solutions with the South African population of BRPs who have been conditionally licensed and bank officials that were purposively sampled. The responses were firstly collected through structured narratives written by subjects in attendance. Thereafter, focus groups addressed opposing parties about issues followed by “reality checks”. Subjects who readily attended the conversation were purposely selected for their knowledge and experience, their job functions and decision making powers and finally their willingness to address the issues as they have vested interests and serious consequences exist for both parties. The research methodology applied succeeded in both involving participants as well as reducing tensions (aggression and anger) during the process. Especially the incorporated “reality check” acted as an “eye-opener” to opposing parties. Evaluating the triangulated data sources, 13 issues of relevance to be considered by all parties to a rescue proceeding were identified. A conceptual framework about the forces underlying the principal-agent dilemma is proposed which highlights reasonable prospect, goal foundation, navigational competencies and intention as key factors to understand the conflict. A unique variant of the principal-agent dilemma was observed. The study firstly addresses a universal liability of conflict and specifically within the rescue industry namely creditor-BRP conflict. Secondly, it improves understanding of the unique characteristics of the principal-agent dilemma in the business rescue context. Thirdly, it provides the regulatory authorities (and BRPs) in this newly instituted regime with a mechanism to address conflict and thereby enhance collaboration and successful rescues. The practical value is found mainly in the direct contributions of “opposing” parties at the “coal face” to find practical solutions while it adds a variant of theory to the principal-agent dilemma. The findings led to improved understanding, contextualizing the issues underlying the conflict and through interpretation, gave structure and meaning to the possible solutions to overcome the liabilities.

Key words: Business rescue, conflict, liabilities.

INTRODUCTION

A Chinese proverb states: He who rides a tiger can never get off. Turnaround professionals and business rescue practitioners (BRPs) mount such tigers when they accept appointments to save business as the associated reputational damage of “getting off” means a definitive end to their careers. BRportal (2014) reported the competence of BRPs and the reputation of business rescue as a critical scenario driver as it appears to dictate the overall rescue industry future. Selecting someone to lead a rescue of a distressed venture, therefore, is an immensely important decision because of the effects their choices may have on creditors, shareholders and employees (Midanek, 2012). Practice already shows high levels of conflict between BRPs and financiers about processes, outcomes, fees and more. Much blame is dished out both ways – its nature often vague and even based on hearsay.

The cornerstone of the principal-agent dilemma is the assumption that the interests of the principal and the agent diverge (Hill & Jones, 1992:132). Conflict in the relationship persist even in the face of contracting thereof to govern agency costs, The conflict arises fundamentally from self-interested behaviour, bounded rationality and risk aversion (Eisenhardt, 1989:59) that underlie the human assumptions resulting in goal conflict. It appears that the principal-agent dilemma manifests uniquely as a result of the legal parameters when the principals change from directors to creditors.

Under Chapter 6 of the Companies Act 71 of 2008 (Hereafter “the Act”), the business rescue practitioner is a relatively new phenomenon and as yet a young profession. Such BRPs and turnaround managers face

complex assignments (tigers). While Chapter 6 does acknowledge, and indeed addresses, the need to balance the *interests* of affected parties, the practitioners are left to deal with any problems that arise in relation to the conflicting interests at play when they take management and financial control of the distressed business. Bradstreet, Pretorius and Mindlin, (2014) confirms this when they state that the legislature, instead of dealing with these problems in the text of Chapter 6, has instead dumped them onto the office of the practitioner resulting in the BRP and Bank to become opposing parties. The Acts attempt to balance powers has resulted in conflict becoming a reality with rescue success an uncertainty.

Baird and Lorence (2012:21) postulate that within the general turnaround industry there are currently no broadly accepted tools, systems and processes to predict the success of turnaround practitioners. Such absence of method aggravates the blame and issues driving conflict for lack of standard performance measures. The questions that arise include: What is the conflict about? what underlies the conflict? and, what possible solutions can be applied to address the conflict?

Du Preez (2012:74) reports that banks often base their post commencement financing decisions on who is appointed as the BRP. Fuelling the conflict, this holds serious consequences for the industry as their reasoning and decisions with regard to how competence is assessed are not accessible to anyone outside the bank. Bradstreet et al., (2014), further state that "without the support of creditors – particularly where the bank is as a majority or significant pre-commencement creditor with security – any attempt by the practitioner to mediate between all affected parties could become futile where such creditors lack faith in either the BRP or the procedure itself. It would, of course, be unreasonable to expect a creditor to have faith in a dubious business rescue application, or BRP appointment, but where other affected persons, or a debtor company in particular, makes a bona fide rescue attempt, it would be a shame for uncertainty to be the impediment to creditor co-operation".

While the need for a conflict framework is obvious, several stakeholders could benefit from this research. Those directly involved in the conflict (BRPs and banks) may benefit most followed by the Regulator who is inundated with complaints (informal and formal) originating from the conflict. The Regulator requires the framework to address the conflict. The Companies and Intellectual Property Commission (CIPC) as this regulatory authority (in terms of Chapter 6 of the Companies Act) do **license** "qualified" persons **to act as practitioners** after a filing business requests a specific person for the assignment. At this point, the CIPC has no distinct guidelines for conflict resolution other than the expensive and time consuming court processes. It is important as the rescue industry is just over three years old following the new legislation since Chapter 6 of Act 71 of 2008 as amended came into effect on 1st of May 2011. It is also important to recognise that despite similar goals and underlying principles, business rescue in Chapter 6 is significantly different in process to that of Chapter 11 in the US despite some process overlaps. Last but not least are distressed businesses who want to file for rescue and future applicants who want to enter the rescue profession. Finally, educators may benefit from having a framework.

The qualitative method used for this research is based on a dialectic conversation involving BRPs and bank decision makers who are experiencing the conflict regularly in their daily work environment. The aim is to better understand the relevant issues and thereafter propose solutions.

This paper briefly summarises the relevant aspects of the new Act and its prescriptions and requirements as boundary conditions. Secondly, it reports concisely on the relevant key aspects associated with the principal-agent dilemma for BRPs and creditors. It then presents the methodology of this research that aims to expand current and thereafter build new theory for this phenomenon. Fourthly, it reports the findings and, finally, proposes a conceptual framework for addressing the conflict. The proposed framework describes the interrelations between four conflict drivers identified in the research. The resulting framework can be used to direct the industry and to trigger discussion for overcoming conflict and improve processes based on its findings. Recommendations for different role players are then proposed.

RESEARCH QUESTIONS

The CIPC as regulator of the rescue industry currently receives numerous complaints from both banks and BRPs about each other. Much blame about reputational damage to industry is laid before the doors of the opposing party. This conflict hampers progress of rescues especially as it requires time (to avoid potential legal action) which is not readily available during rescue. The detailed research questions are thus:

What are the conflicts between BRPs and banks within business rescue?

What underlies (issues, assumptions and perceptions) the conflict between BRPs and banks within business rescue?

What are the potential solutions that can be pursued?

BACKGROUND TO RESCUE, RESCUE PRACTITIONERS AND CREDITORS

This paper aims to both build theory and address practical problems in a young industry. This section briefly summarises the context of business rescue for the reader and introduces how conflict developed and contextualise the rescue industry leading to the research questions.

In May 2011, Chapter 6 of the Companies Act 71 of 2008 as amended (henceforth: the Act) came into effect. This allowed for a rescue procedure vaguely comparable to Chapter 11 in the USA (Balovich, 2002) and administration in the UK (Parliament of the United Kingdom, 2006). However, the underlying approaches are inherently different as succinctly described by Mindlin (2013) when he contrasts the regime differences for US Chapter 11 and South Africa Chapter 6.

Chapter 6 of the Act states that firms must be financially distressed to file for business rescue. The meaning of financially distressed as defined in Section 128(1)(f) includes the scenario where the company is unable to pay creditors or where the company will become unable to pay creditors in the next six months. Rescue proceedings follow a much more legal and process-driven approach with stigma-ridden consequences.

Currently, BRPs are licensed conditionally for a specific rescue project after being nominated by the relevant distressed company. The CIPC, as the Regulator, to date received several formal complaints (documented and processed) and many informal complaints (telephonic reports not supported by documentation) that arose within the “new” system. This study, therefore, aims to ultimately provide directives for solving the reported problems through better understanding of the exact issues, perceptions underlying the conflict and, secondly, to find potential strategy drivers as solutions to be pursued.

Creditors are categorized with affected persons that include shareholders, employees and unions (S 128(1)(a)) with a voting interest (S128(1)(j)). This vote gives creditors the power to support (or not) the rescue plan compiled by the BRP. The powers associated with this vote have proven to contribute to the conflict between BRPs and Banks. The conflict is explored now.

BACKGROUND DESCRIPTION OF THE CONFLICT

Distressed businesses (also courts) appoint BRPs as agents according to the Act. The BRP is instructed (by the Act) to take control of the business, investigate its affairs, prepare a rescue plan and if the plan is supported by the creditors (by formal vote), the BRP must implement the plan. The BRP is required to bring business management skills to the business. As an officer (agent) of the court, the BRP has the responsibilities, duties and liabilities of a director of the company, as set out in sections 75 (financial interests), 76 (conduct) and 77 (liabilities) of the Act. All the above takes place within the supreme task of compliance with the Act and its procedures (Pretorius, 2013). The BRPs has total control (management and financial) until s/he presents the plan to the creditors where they have the powers through their votes. The BRP is further dependent on the finance of the distressed business or PCF for his remuneration and costs in rescuing the business.

In order to “sell” a successful plan to the creditors, the BRP, in most cases, are required to access financial injection to bridge the financial distress that brought the business to file in the first place. Complicating matters is that BRPs have had no previous involvement (barring pre-assessment) with the business, putting them on the back foot right from the start.

Banks (including alternative financiers but not trade creditors) often hold secured investments in distressed ventures at the time of filing. Banks are rightly seen as the main creditors as their shareholding in the claims are mostly such that they have a controlling vote. A controlling vote in business rescue needs only 25% as a rescue plan is only accepted if it obtains 75% of the vote.

At the time of filing for rescue, banks have often exhausted alternative financial restructuring strategies, suggesting they have an established history with business. The Act gives creditors several powers including objecting to the appointment (S 130(1)), the removal of the BRP (S 139(2)), voting on the plan (S 145(2)) and participating (S 145(3)) of the Act.

Banks are generally powerful role players with significant financial resources and backing. They have financial knowledge (or access to) and systems more advanced than that available to the BRPs. They cannot get involved in management decision making of the business rescue as this falls outside their mandate and capabilities to be independent– that which the BRP must deal with.

At the time of filing, the banks argue that the business has gone past the point of no return unless new finance is granted and which they are not willing to do. They refer to it as the “first cut is the last cut” as they don’t want to throw new (good) money after old (bad) money. At this point, BRPs still have to investigate the affairs with the belief they may still turn the business around. The BRP appears stalling the process as he tries to come to grips with the affairs. Potentially banks understand the operations which the BRPs have not grasped yet. However, the opposite may also be true when skilled BRPs enter the business.

STATUS QUO OF BRP SCENARIO – THE FIRST THREE YEARS

During the first 34 months of the Act’s existence, 166 practitioners were licensed, 1526 businesses filed for rescue. Appropriate case law on business rescue is still limited (and often contradictory) but is on the increase (Lotheringen, 2014 pers comm). Typically, BRPs appointed to date, originate from the business, legal, accounting, banking and liquidation professions as guided by the Act. The BRP’s main goal should be to navigate the financially distressed business through reorganising procedures to normal operations or, alternatively, to construct a solution for creditors and shareholders that would result in a better return than normal liquidation.

In their investigation, Pretorius and Du Preez (2013) highlight the importance of post commencement finance in turnaround and rescue of distressed business. Also, they state, PCF from private sector is almost non-existing if compared to the availability in US and UK. Currently banks are the existing financiers, often the main creditor and the sole source of such funding under Chapter 6. Banks are also mostly secured creditors and as lenders of “public” money subject to stringent regulation governing their processes. It is, therefore, obvious that banks have decision making powers that can be construed by those in need of finance as “unwilling” to participate or support the spirit of business rescue. This leads to conflict in views, assumptions, needs and goals between the parties.

Practice research shows that banks respond to early warning signals long before directors and institute measures (mainly financial restructuring) early in decline. When BRPs are appointed, most avenues to access any potential “slack” have often been exhausted. BRP expectations for potential PCF then exceed what is perceived by banks as complying with the risk:value relationship condition set by bank policy.

This study responds to the need for research to develop insights and conceptualise the underlying issues associated with the conflict between BRPs and banks – thus addressing the principal-agent dilemma within business rescue.

PRINCIPAL-AGENT DILEMMA (AGENCY) IN THEORY

The principal-agent dilemma is an established theory, shortly described in this paper to benefit the reader. An agency relationship is a contract order where one or more persons (principals) engage another person (agent) to perform some service on their behalf, which involves delegating some decision making authority to the agent (Jensen and Meckling 1976:5). A relationship (contract) is constituted as a result. Agency theory added the “Agency problem” which occurs when cooperating parties to the relationship have different goals and different divisions of labour (Eisenhardt 1989:58a, Kulik 2005: 349). If both parties are utility maximisers, there is good reason to believe that the agent will not always act in the best interests of the principal (Jensen and Meckling 1976:5, Lui 2011:50). The theory suggests potential for “mischief” when the interests of the principals and agents differ (Nyberg, Fulmer, Gerhart & Carpenter 2010: 1029, Lui 2011: 50).

Principal-agent theory attempts to address two problems, conflicting goals of the principals and agents as well as the difficulty for the principal to verify or authenticate the agent’s actions (Eisenhardt 1989a: 58). The Agency problems occur because the agent is not risk neutral (Mehrotra 2011:4). Imperfect information (hidden action) and misaligned incentives (hidden information) result in the fear that agents will pursue their own interests (Lui 2011:50). Hence in the face of these risks which agents face, there will be conflicting desires and it will be difficult to verify the actions of the agent as to whether they were in the best interests of the company. The principal agent theory is useful for determining the most efficient contracts to align the interests of the principals and the agents (Lui 2011:50).

Agency theory is supported by three underlying assumptions namely: People are selfish, have restricted rationality and risk aversion. Secondly, there are goal conflicts among the stakeholders of the organisation and finally information is a commodity which can be purchased. (Eisenhardt 1989a:58, Mehrotra 2011:3).

The agency problem of inducing the “agent” to behave as if he was maximising the “principals” welfare, is quite general, it exists in all organisations and in all cooperative efforts (Jensen & Meckling 1976:6).

PRINCIPAL-AGENT DILEMMA AS IT APPEARS IN BUSINESS RESCUE

In a general Principal-Agent relationship, the decision making process is in the hands of the professional manager whose interests are not identical to those of residual claimants (Fama & Jensen 1983:327). In business rescue, a BRP is empowered by the Act and held responsible for all the decisions to be made in the organisation. Ownership is not transferred to the BRP, only custodianship. Hence the separation of “ownership” and “control” more precisely the separation of residual risk bearing from decision making functions. The BRP as officer of the court makes the decisions but does not bear direct financial risk in the event of the company closing down. The BRP’s costs rank priority before claims of all secured and unsecured creditors (S 141 (2)(a)) if reorganisation fails and the end result is liquidation. Thus in the event of the company being liquidated, the BRP’s costs get paid first. BRPs do however face reputational risk of their image being tarnished in the event of disagreements and removal by any “affected part”. This may result in loss of future appointments. Failure to implement the proposed business plan may further tarnish relationships with key players in the industry such as SARS, banks, suppliers, customers and investors among others. In separation of ownership and control, the agency problem is controlled by decision systems that separate management (initiation and implementation) and control (ratification and monitoring) of important decisions at all levels of the organisations (Fama & Jensen 1983:331). How can the principals (which are really the banks as creditors and not the appointing directors) control the agency problem in the business rescue scenario?

For this study the BRP, at the time of the vote, is clearly the agent with assigned powers from the Act while the bank as key creditor who becomes the considered principal based on its powers bestowed (based on the vote) by the Act. In practice, the BRP may even remove the directors (who appointed him in the first place) under S 140(1)(c). In itself then, the main principal-agent relationship is now established between the creditor and BRP compared at appointment where it was between the directors (potentially the court) and the BRP. The consequences of this variation on the principal agent dilemma now become pertinent to this research.

METHODOLOGY

The main methodology is action research as it addresses a practical problem within the business rescue industry and attempts to address it. It aims to make sense (Berniker & McNabb, 2011) and propose a framework of conflict and liabilities that will lead to improved understanding and proposed solutions within the business rescue industry. It therefore involves identification and description (of issues), understanding (relationships) but mainly sense-making and interpreting the data collected from subjects. Table 1 directs the thinking behind the research.

TABLE 1: Research design components based on the adapted design description of Yin (2003, p. 21).

Component	Description
Problem	High levels of conflict between banks and BRPs is reported and experienced.
Research questions	What are the conflicts between BRPs and banks within business rescue What underlies (issues, liabilities and assumptions) the conflict between BRPs and banks within business rescue? 3. What are the potential solutions that can be pursued?
Context	Business rescue regime that is young and developing
Propositions*	The conflicts are identifiable Factors underlying conflicts between BRPs and banks can be identified. If so: The issues are mutual to both parties. If not: The assumptions driving the perceptions are reference point based.
Phenomenon investigated	Primary — Conflict issues, liabilities and assumptions (underlying conflict) Secondary — solution drivers
Unit of observation	BRPs Bankers working with business rescue in their organisations
Methodology	Structured dialectic inquiry with a Devil’s Advocacy approach
Logic linking the data to the propositions	BRPs and bankers are directly involved in the conflict. They use conscious and unconscious cognitive arguments to pursue their goals. Sense making through the research of their lived experiences could lead to a conceptual framework to address the conflict and derive solutions.
Criteria for interpreting the findings	Factors and their relationships as identified through application of the enquiry process. Solutions supported by both parties Proposed strategies
* the propositions were set to structure the research process and support the research question.	

Research design

In attempting to answer the research questions, the researcher was aware of his own methodological values, beliefs and philosophical assumptions. These assumptions could influence how the research was conducted and are stated in order to understand the 'intellectual climate' in which the research was conducted. The theory of knowledge (epistemology) of the researcher describes how one can discover underlying principles about social phenomena and how one can demonstrate knowledge. The researcher's personal experience with critiquing strategies for businesses and taking the role of devil's advocate when doing so, the research process came naturally. At the same time, as an academic and experienced turnaround consultant, he has a preference for factual directives. Aware of potential observer-participant bias that may limit objectivity in the data collection and interpretation; he mitigated these by applying a structured data-gathering method (Structured Dialectic Inquiry (SDI)) to capture the issues, perceptions and experiences of the subjects during their evaluations to establish the liabilities for the rescue industry.

The researcher's ontological position comprises his view on the very nature and essence of the research reality. The researcher is an objective realist who believes that knowledge comes from facts associated with real-life cases and their context. Thus, proper research methodology is crucial for eliciting such facts. While every individual conflict has its own context, when the researcher found repeated mentions of issues and causes, he could "generalise" from them. His interest was mainly to identify directives to guide conflict resolution between BRPs and banks as banks are often the key creditors in rescue – thus holding majority voting powers.

The Roots of the Dialectic Inquiry (DI)

The research applied a dialectic enquiry to identify the issues, liabilities and assumptions (including causes and perceptions) associated with conflict in the business rescue industry. Seligman, (2012) postulated that the DI process can report experiences of subjects while Berniker and McNabb (2011) suggest it useful for sense-making in "messy" environments. DI is ideally suited for conflict conversations. Matter of fact, Lunenburg (2012:7) describes a process to create opposing groups (homogeneous within groups and heterogeneous between groups) to meet separately, take positions for and against plans or feasibility of alternatives. The subjects, as "homogenous groups" are bearers of valid and precious "know how" and viewpoints. Typically, such interviews are carried out during interviews guided by a protocol. Schwenk (1984:154) even reports the introduction of conflict to enhance the process while Schweiger (1984:336) reports on its value under experimental conditions.

The intent of the DI technique is to collect first-hand the lived experiences, perceptions and views of the relevant issues associated with a situation that is investigated. It is from this perspective that the adapted process is described. This primary data collection was done to access BRPs and banks directly, in one session rather than in consecutive individual interviews. To execute this successfully, the SDI process was administered to groups of BRPs and bank representatives in three sessions, using slides to post the specific instructions while each subject responded by writing the responses personally.

I chose the SDI for its ability to focus responses from the subject's own experiences. It also contains a form of "anonymity" and "neutrality" while the focus is on the subject's own reality while it forces the subjects to reflect on what they experienced in practice to compile the rumour narratives. DI was thus developed and structured in the SDI to address this specific problem based on the author's experiences as consultant when executing conflict resolution in a business environment.

For the subjects, it was an opportunity to reflect on and progressively enrich the image of key problems associated with their own work. The process of data collection thus constituted an opportunity for the subjects to expand their possibility of acting in the world. The research was initiated by the CIPC in response to requests from the banks and BRPs to address the conflict and its associated negative consequences. The SDI process was revealed to be useful both to capture experience and to enrich it through reflection, challenging underlying issues and reality checking.

Sample

A purposive sampling strategy was used. Senior BRPs were purposely selected for participation based on their reputation. Key bank officials working in restructuring divisions and having responsibility for business rescue were purposely invited to participate. The final sample consisted of 30 BRPs from a population of 165 (at the time) previously licensed at least once. The four major banks were represented by 27 officials in the three regions where the process was administered. While biographic data for each BRP was available from CIPC it was not accessed for this research. The process was administered once with the top 10 subjects in

each category and thereafter repeated twice at two different regional locations. Therefore, different BRPs and representatives from the same major banks were accessed.

Data collection procedures

Firstly, Chapter 6 of the Act relating to task prescriptions of BRPs and relevant sections associated with creditors, post commencement finance and processes was studied to guide the process development. Secondly, a structured dialectic inquiry (SDI) process was applied to invited subjects during a workshop setting to collect primary data (narratives) and secondarily through the particular structured conversation. The ultimate output of the full study was to set a framework for addressing the conflict directly.

The phenomena investigated were initially the issues underlying the conflict between BRPs and banks in the business rescue process. Using the SDI process required the subjects firstly to include their perspectives, views and decision making priorities, and secondly their experiences of real-life cases that they encountered within their specific contexts. The boundaries between the subjects and the practice contexts were not clear, as they had prior involvement with their own experiences (rescues performed or judged for finance or not). This meant that the researcher could pursue all angles of evidence to seek convergence and divergence. In addition, because their experiences were recent, there was sufficient access to short-term memory and associated learning from their practical experience.

Subjects were invited by the regulating authority (CIPC) to attend the workshops. They were informed of the intent of the meetings. After formalities describing the purpose and *status quo*, a structured process was introduced by the researcher where subjects were asked to 1) write a one page structured narrative (as per instruction), 2) execute a group assignment and report back, 3) Listen to the reports of the “opposing” group, 4) execute a reality check and give feedback, 5) identify key issues to be addressed and finally 6) propose solutions to the issues they have identified.

Subjects attended and participated voluntarily. It was found that they were relaxed during involvement as shown by them asking clarification questions and even bantering about the stories. It is believed that these positive conditions led to evenhanded sharing and meaningful contributions drawn from the prompting of their perceptions and experience. During parts 3 and 4 of the research process, some antagonism arose among members of the “opposing” parties at one session. As this was foreseen by the researcher, during the introduction session guidelines and values were set as how to address such situations. By use of sense-making and prompting, the facilitator used the antagonizing points to extract thicker descriptions of the issues at hand.

Data collection process for the SDI in this research

After formalities and session guidelines, two examples (slides) were shown of a narrative rumour, one each for a BRP and bank perspective respectively. The detailed process is described to enhance trustworthiness and transparency of the process.

Step 1: An instruction was displayed requesting subjects to write a specific narrative rumour from their individual experiences containing the relevant elements that could make up the narrative, the exact content of the instruction as follows:

Instruction: Based on the examples shown to you, write in less than a page such a narrative of actions in the opposing party (see Figure 1 for additional guidelines). Thereafter, subjects were given the opportunity to complete the narratives and were invited to write a second if they so wish – few did. Sufficient time was allowed for all to complete this task. After writing, the narratives were collected and put away for content analysis.

Step 2: The subjects were then divided into their homogenous groups as either bank subjects or BRP subjects. Each was given a different and group specific written instruction that read as follows:

- 1) State the concerns that banks have with BRPs (vice versa for BRPs).
- 2) Why is this so?

Thereafter, groups were given 30 minutes to discuss and give feedback. They requested and were allocated more time as much discussion took place. The researcher and an assistant individually rotated between groups to give guidance and answer clarification questions. Feedback was collected on flip charts and researcher notes were taken. Opposing groups were allowed to ask clarification questions only.

Figure 1 Precise instruction shown to subjects for writing the rumour narrative

Instructions (1) – Own thought

<ul style="list-style-type: none"> • Based on the examples shown to you, write in less than a page such a narrative of actions in the opposing party: <ol style="list-style-type: none"> 1. Rumor has it that 2. The consequence is 3. The remedy is 	<ul style="list-style-type: none"> • Story guidelines: <ol style="list-style-type: none"> 1. Complete the story (typically less than a page) but no limitation. 2. Refer to real cases/experiences but without personal details. 3. Address actions, non-actions, approaches, - so tell what happened etc. and then follow it by giving the consequences thereof. - No need to state that the person is incompetent, only give what happened and consequence. Suggest a remedy if you want to. See examples below. 4. Give details and specifics to support the reality of the "story". 5. If you are a bank representative, refer to the BRP actions. If you are a BRP, refer to the bank actions. If you are an attorney, tell me any side of the conflict's story. 6. You can write/send different stories but please keep them separated. PLEASE DO!!! 7. Please send directly to me only (in word document) to ensure confidentiality. I undertake not to expose any individual either way. Its rumor anyway. 8. Preferably, do not discuss with anyone else.
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Step 3: After the feedback was heard and noted, groups retired to their small focus rooms to prepare a response termed “reality check” to the other group about their understanding of the real issues. They were instructed to evaluate the accuracy of the opposing report, what was missed and then state the “reality” as they perceive it to the opposing group. A spokesperson gave feedback that was again captured on flip charts and researcher notes.

Step 4: After feedback was obtained, new smaller groups of four (with two representatives of each side) were instructed to identify the key issues that hampered progress and to be addressed as solutions. Each group had to identify drivers and motivators behind the issues. Feedback was again collected on flipcharts and notes.

Strategies for ensuring quality data and interpretation

There was only one source of evidence (subjects). The research applied methodological triangulation by collecting three different sets of data to ensure a thick description (Henning, 2011 Book Source) namely:

- Individual written rumour narratives analysed by the researcher
- Groups explanations of the opposing party’s issues, perceptions and viewpoints
- Groups giving feedback to “check the reality” of the explanations and stating their own concerns.
- Researcher notes during the group processes

As the focus of this study was mainly exploratory (asking what and why), the SDI process also elicited “how” phenomena were perceived as the subjects described them, thus using “explanation building” to improve internal validity (Yin, 2003:34). Subjects wrote their own narratives individually, participated in homogenous groups and presented their focused opinions.

As there was only one researcher, he depended on several readings of the narratives. Based on his experience in rescue and extensive preparation, meaningful themes and categories could be constructed after coding. Once themes were obtained, each was divided into categories to confirm the specific theme to which it was allocated. This led to the developing themes being challenged and occasionally re-categorizations took place during iterations until saturation point was reached.

Data analysis

The subjects’ cognitive experiences and knowledge of the conflict in business rescue was the main source of data. After word-for-word transfer of the narratives to an Excel spreadsheet, the key issues were identified for the rumour, the consequence and the possible solutions. It was coded, categorised, recoded and re-categorised to extract the facts, essence and spirit of the narrative. Coding and categorizations were then

done by the researcher. The iteration process was repeated at least five times until a point was reached where additional iterations would have no material bearing on the category outcomes. From insights gained through both inductive and deductive reasoning, relevant components were identified and a framework proposed that indicated what to address to ultimately find solutions for the conflict.

Once these were identified, a separate and independent evaluation of the narrative was arranged. This led to themes based on frequencies of mentions. The result concurred with that of the researcher. Though there was only one key source of evidence (the subjects), the researcher applied 'grounded theory principles' (Corbin & Strauss, 1990) to extract as much richness as possible. The 43 subjects supplied 151 codes, 13 categories and seven themes that were interpretable by the researcher.

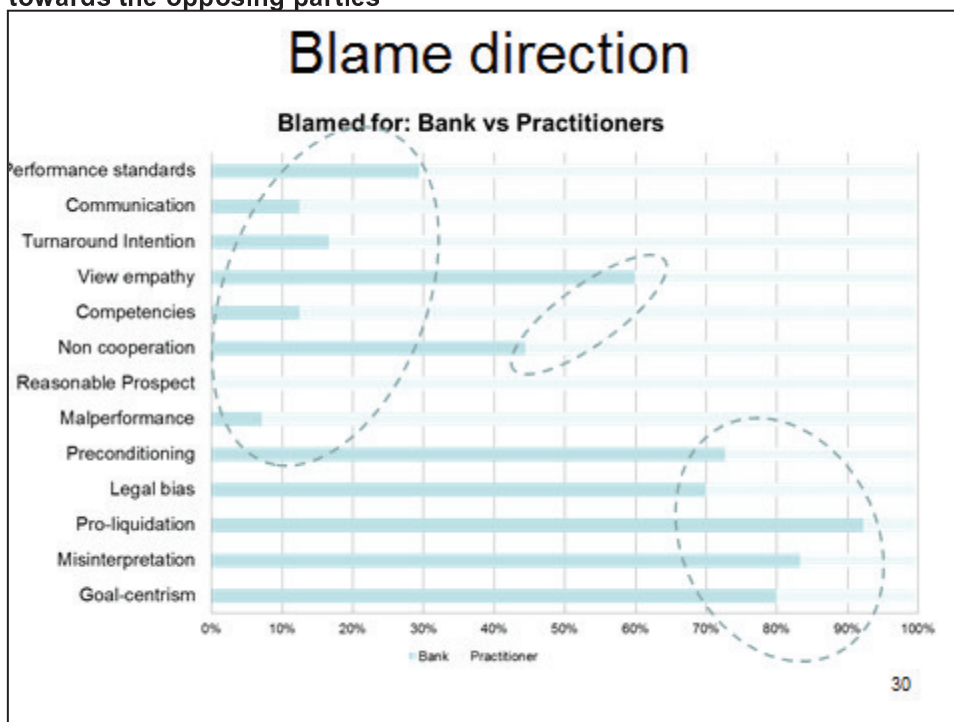
Each narrative component was coded for collective categories that were identified as they were read, interpreted and reread several times. Categories appeared and themes were refined, concluding in four final categories (See also Figure 3). Each category was measured based on the number of times mentioned and a percentage could be calculated. Four main drivers were identified and formed the focus of narrative discussion. Interrelationships among contributors were also identified and reported in the discussion of the findings. The group statements of issues and especially the reality check informed the narrative results identifying the key "pain points" that then informed the conceptual model describing the causes of the conflict.

The research style was exploratory, to identify and describe the issues and how they operate and influence the conflict. Eventually, after understanding how components relate to the conflict, the themes were interpreted based on the principal-agent dilemma theory. Based on the overall insights gained, I conceptualized and proposed a framework for the dilemma to guide discussion and understanding.

FINDINGS

Rumours as a basis for the investigation served the research well. Writing the rumour narratives allowed subjects to express their most recent and urgent issues that they grapple with. They could write from their biased perspectives not requiring a neutral stance at this stage. Being a "rumour", subjects were not required to take responsibility or accountability for the "truthfulness" of what they wrote. This allowed for reporting of their lived experiences in real time.

Figure 2 Themes derived at from rumour narratives showing the spread and direction of blame towards the opposing parties



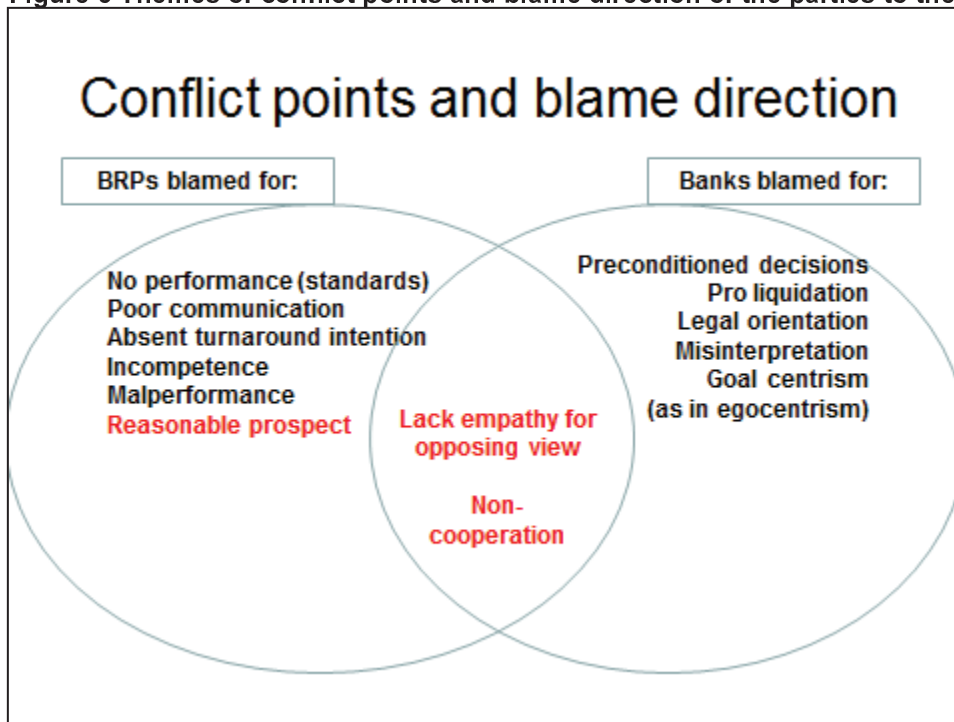
(Own compilation)

Figure 2 shows what the opposing party was blamed for from the opposite party's perspective. The number of mentions of each item and assigned responsibility for the conflict was then used to categorise the conflict

points and blame direction as shown as a Venn Diagram in Figure 3. The Venn diagram indicates that some conflict points were assigned only to one party while two were shared. Both parties equally blamed each other for not cooperating and lacking empathy for the others' view. Both themes were allocated between 40 to 60% blame thus lacking unique direction. Six of the themes were issues blamed mainly on the BRPs and five were blamed mainly on the banks. While conflict points were identified and their dominance assessed to observe relative importance, Figure 4 presents a holistic framework of the principal-agent dilemma in rescue success with identified antecedents and conflict drivers. Gaining insights from the group sessions, I constructed narratives in a dialectical style to provide rich descriptions of the of the conflict points in the principal-agent relationship. Within each narrative, I use exemplary quotes from the different subjects to support the sense-making.

Propositions 1 that the factors underlying the conflict can be identified is therefore supported but Proposition 2 that the issues are mutual is not supported despite limited overlap between the perceived reasons for the conflict

Figure 3 Themes of conflict points and blame direction of the parties to the conflict



(Own compilation)

While the analysis detected the conflict points, their dominance were assessed to observe “importance”, the eventual framework focused on gaining insights from the group sessions that informed the narratives’ interpretation. This improved the sense-making. At this early junction, Figure 4 is presented to guide interpretations of the overall findings and support the narrative elements. The BRPs and bank subjects reported opposing views for the drivers and antecedents of the dilemma. These are highlighted in the sections that follow as I write the findings as narratives of the principal and agent separately and use quotes (actual data) from different subjects to support the interpretations.

The principal’s narrative

Disagreement between principals (banks) and agents (BRPs) generally originates from whether a reasonable prospect exists to save (or not) the distressed business at filing. Banks blame BRPs for not being able to assess reasonable prospect in a distressed business.

Banks typically by virtue of their historic involvement believe and argue that at filing, they already exhausted all possible remedies to save the distressed business and thereby the last resort to achieve solvency is to infuse post commencement finance. Previous management could not address the business problems, “so what makes the newly appointed BRP think s/he can do it anyway”. As this will probably raise the bank’s risk and exposure and thereby opposes their “goal foundation”, is the main concern. Goal foundation rests on the overall organisational goals associated with risk: return ratios – after all, “banks are businesses too”. “BRPs therefore blame us (the banks) for being pro liquidation and entering the rescue with predetermined goals”

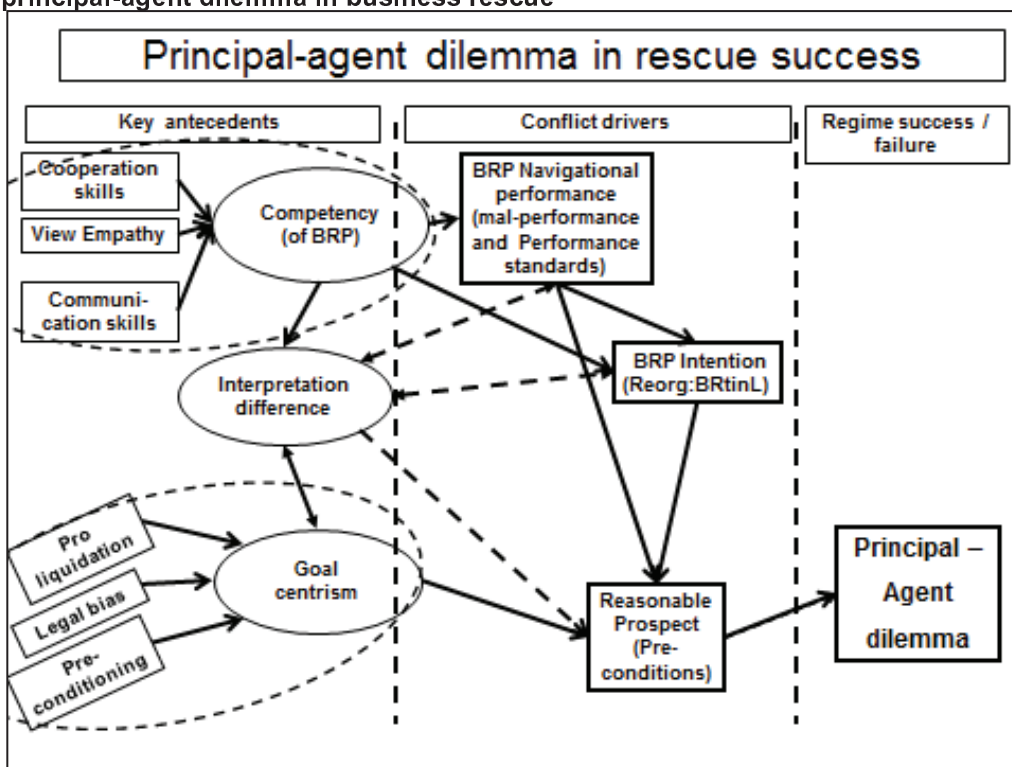
(preconditioning). Also, as banks appear to have unlimited resources, they prefer the legal route (legal orientation) to curb BRP actions, banks are seen as forcing the BRP into the “underdog” position, disempowering the agent’s freedom in decision making and thereby “manipulating” the intended agent role.

As there is a large divide in interpretation and determination of reasonable prospect, banks typically perceive the BRP ability to navigate a successful reorganisation as suspect, asking “how long will he take to see there is no prospect”. This perception of incompetence is infused by a BRP’s time constraints, access to information and so-called “calling” (hope) to rescue the business. Subjects from banks specifically highlighted the BRP’s inability to cooperate, communicate and absence of empathy for the opposing view, as aggravating the perception of being incompetent.

Competence requirements to perform the navigation assignment of a BRP give some insight to the perception differences between principals and agents. The BRP is required to determine the “best future position” for the distressed business to pursue. After investigating the affairs of the business, the BRP needs to determine what this is, include it in the rescue plan, and obtain a majority vote (75%+) by the creditors. If there is disagreement on the reasonable prospect, this is hardly possible and therefore seems at the heart of the conflict. No easy and generalizable measures exist and are agreed on as different banks and BRPs claim these as their potential competitive advantages.

If not perceived as incompetent, subjects from banks suggested that the intention of the BRP is doubtful and questionable. If there is no prospect, the only possible reason for not pursuing liquidation must be that the BRPs are “writing fees” as long as they could. Bank subjects feel that BRPs know there is no prospect (because banks know it) but act unethically in pursuing the so called better return alternative allowed for in the Act. BRP remuneration is a contentious issue as bank subjects indicate this as the main malpractice of BRPs who extend periods in the process. The “longer the rescue goes on; the less the securities of the banks are protected”. BRP fees (remuneration) and costs incurred during rescue have a priority above the secured claims in the eventual liquidation.

Figure 4. The interrelationships between the conflict drivers and antecedents underlying the principal-agent dilemma in business rescue



(Own compilation).

The agent’s narrative

The BRP “takes the underdog position” in this relationship as the “banks are notified of new filings before anybody else”. On top they have access to all the information which they don’t share under the “excuse of confidential information protected by bank-client privilege contract”. Thus, the BRP faces the liability of information confidentiality. This further puts the bank into the power position. “Banks demand information”

from BRPs while they have more than we have and it takes time to gather sufficient data to make a decision on the reasonable prospect. At the same time we need to spend additional time answering their queries and then are blamed for “inflated fees”.

The power of the banks is described as disproportionate to that of the BRP. The banks close all facilities immediately after filing or alter conditions such as factoring collections to benefit them – thus leaving us (BRPs) “powerless without cash to continue basic operations”. If they advance any monies, they consider it as PCF thereby changing old credit to PCF which has a higher priority in rescue.

BRP subjects report that banks prefer liquidation as it is “best for the bank’s securities”. Alternatively, they want to see a rescue plan that ensures their assets are protected. Often, BRP subjects state that “banks are over-secured most of the time anyway” by a factor of three. Banks come to the creditor meetings and inform us that they will vote against the plan (preconditioning) besides – so what is the use?

Rumours also included that banks negate on their promises and agreements about post commencement finance (PCF) and support. They do so by extending periods and altering recoveries to benefit factoring etc. Cases where bank negate on supporting the rescue plan as they arrive at the second creditors meeting despite supporting it during negotiations have been reported.

BRPs depend on their reputation for future appointments. Therefore they will do most anything to protect their “name in the industry”. To pursue a better return than in liquidation as an alternative to reorganisation is an option that is easier to pursue, and even incompetent BRPs can do so by pursuing simple extended debt restructuring plans by selling assets similar to liquidation. Thus, this absence of a turnaround intention is strongly considered by banks. Thus, bank subjects equate the choice to pursue better return rather than reorganisation to BRP incompetence and lack of turnaround intention – despite being an alternative within the Act. This issue relates to BRPs being blamed for mal-performance and not performing at the required standard which in itself is a vague issue. BRPs ask why this is so?

The consequence of the dilemma

The consequence of the principal-agent dilemma is the conflict that initiated this research. Associated with this conflict, if not solved, is declining trust, more blame, more opposition to the other party, installing systems to block opposing decisions, legal challenges and more – worst for the BRP is no support at the vote. The banks are in the better position and growing in power over the process as they have resources much more than the BRPs to do so. The consequences of the conflicts and actions are interwoven within the discussion of the findings that follow.

DISCUSSION OF FINDINGS, KEY THEORETICAL COMPONENTS AND INSIGHTS FROM OF THE STUDY

To enhance meaningful coverage of the findings, this section deliberates each aspect of the findings as they appeared during the analysis process. The findings, the first in this field, are then elaborated and explored for improved understanding to guide the proposal of a framework of conflict between BRPs and banks, shedding some light on the unique elements of the principal-agent relationship.

Responding to the research question of what the conflicts between BRPs and banks within business rescue are, the results clearly identify the issues of contention, who blames who for what but more so, the underlying relations among these issues. Figure 3 shows the themes of the conflict points as determined by the participating subjects. It further enlightens the directions of blame associated with each contributor. It is clear that blame is categorised with interrelated themes.

Figure 4 then gives value to the identified issues when proposing them as drivers and antecedents underlying the conflict that exists within business rescue. It allows for sense making within the complexity of the interrelations.

This conflict in business rescue between BRPs and banks can be explained by general agency theory. However, the specific context created by the Act, describes the principal-agent dilemma as having some unique elements to consider. The three conflict drivers and three antecedents proposed in the framework (see Figure 4) suggest a myriad of interrelations that can contribute (or not) depending on the specific context that is relevant at the time within a rescue. The conflict drivers and antecedents are unpacked now.

Reasonable prospect as driver

Reasonable prospect, in this research, appeared as “the” contentious issue and the origin element of the conflict. How it is perceived depends on the BRP intention and navigational performance firstly and thereafter goal centrism and interpretation differences. As described in both the principal's and the agent's narratives, it is at the origin of the conflict. Banks have an advantage due to their pre-involvement. The judgment of whether reasonable prospect exists depends heavily on next two conflict drivers.

BRP navigational performance as driver

Navigation towards the new “best” position is the ultimate assignment of the BRP appointment. It is the main challenge of the BRP and involves the competency of sense-making, described by Pretorius (2014). However, the perception of what the new best position for the distressed firm is varies significantly between BRPs and banks. These differences in judgments of what the right best future position is, is influenced mainly by goal-centrism differences. It is also the origin of much of the blame by parties.

BRP intention to rescue by reorganising as driver

The perceived intention of the BRP to save the distressed firm by reorganisation appeared as a key to obtain support from the banks. Banks look for true intent as they see wind downs (better return than in liquidation) and debt restructurings as ways of BRP self-enrichment as no other creditors really benefit from this more than in liquidation. It appears almost contradictory as banks want either reorganisation (if they support it) or immediate liquidation but not pursuing better return. The banks underlying goal-centrism is closely associated with this intention as it influences the interpretation differences.

Goal-centrism as antecedent

Fundamental to the differences in goals as described in the principals' and agents' narratives, is what I coin as goal-centrism. Like egocentrism (I, me, mine) in individuals, goal-centrism refers to the organisation goals (Us, we and ours as based on the organisation). Banks are governed by risk minimising conventions associated with being “pro liquidations, pre-conditioned and legally biased” which they are blamed for. These are institutionalised goals founded and governed by strict processes and policies (pre-conditioned decisions). As goal-centrism can be explained as a party's that is characterized by preoccupation with its own internal interest, it is relevant for both the principal and the agent. The data however, shows an overweight of responses towards the banks as a result of pre-conditioning, legal bias and pro-liquidation. Goal-centrism drives interpretation differences.

Competency as antecedent

Collaboration as a competency of the BRP is well explored by Pretorius (2014) as the “mediating” competency bringing together sense making, decision-making and integration as the supra-competencies to successfully navigate to the best future position. The data contained many references to the associated skills of cooperation, empathy for the opposing view and basic communication skills that were identified lacking especially with BRPs. BRPs were mainly judged as incompetent in the skills required to rescue a business. However, to pursue the better than in liquidation options, required minimal skill as it is equated to that of a liquidator.

Interpretation differences as antecedent

Principal-agent theory pre-empts this antecedent reporting it as the basis for divergence in views. Interpretation differences stem from both competency and goal centrism while it affects navigational performance (best future position), reasonable prospect, decision to reorganise or pursue better return option, performance standards, strategy and more. Interpretation requires higher-level perceptual capacity to understand factual and intuitive data and knowledge, seeing the unseen patterns leading to rapid judgements referred to as System 1 thinking by Kahneman (2011:59). In business rescue, it means divergent insight into causes of distress (Pretorius, 2009), product demand, capacities, economic models, cash-flow effects, fatal flaws and constraints, financial ratios and comparisons as judged by principals and agents.

While techniques are reported by BRPs to improve interpretation and evaluation, interpretation and sense-making underlies the feasibility and viability analysis activities. Boyd (2011:37) proposes that the leader of a reorganisation analyse market perceptions to explain the plight of the business. Again, the lack of generally accepted methods and tools to set requirements for especially reasonable prospect is highlighted.

Interpretation may involve the use of decision-making heuristics such as verifier determinants (Pretorius & Holtzhausen, 2013) and intuitive biases (Kahneman, 2011).

IMPLICATIONS AND RECOMMENDATIONS TO INDUSTRY

Firstly, this study's results highlight specifically the issue of reasonable prospect to save a distressed venture. Loubser (2010:505) also alludes to this as a contentious issue. It is clear that there is no standard process or measure to evaluate reasonable prospect which underlies the core liability of conflict. This is a call for the development or agreements on a standardised evaluation process to establish whether reasonable prospect exists or not.

The practical value of the research was found when answering the question: What are the potential solutions that can be pursued to address the conflict? Subjects proposed precise solutions to their specific rumour they reported. These were interpreted to propose generic solutions for the industry. The different actor groupings were identified to improve the principal-agent dilemma.

What BRPs can do? – Firstly they should focus on enhanced collaboration – and especially so when dealing with banks. Much of the conflict issues identified hinge on the clarity of BRP intentions to reorganise rather than finding a better return than in liquidation. Collaboration is a key competency required by the BRP (Pretorius, 2014). Secondly, and related to collaboration, would be to forge close relations with banks when establishing reasonable prospect. This may also enhance access to information for the BRP. The importance of enhancing skill levels through training for BRPs was also suggested by banks.

What banks can do? – Banks have the dominant power in the reorganising strategies available to BRPs. Matter of fact; banks mostly hold all the “aces” in a rescue. If banks can find ways to assist the BRPs to overcome the BRP's “liability of confidentiality” and the “liability of information access”, this could have a dramatic effect on reducing time to investigate the firm's affairs and conclude on the status of reasonable prospect. Banks appear not to see/understand the tasks of the BRP related to its complexity, number of tasks, time limitations as described by Pretorius (2013). etc. Their focus of banks is their investment in the business, limiting their ability to cooperate (vested interests) with the BRP despite the Act making provision for the functioning of a creditors committee.

What the Regulator can do? – Firstly, the Regulator could investigate amendments to the Act that may alter the exclusive powers of secured creditors in business rescue. This research exposed the debilitating powers of banks especially in the vote at the second creditors meeting where the plan must be supported (or not) for implementation. Secondly, the accreditation of BRPs based on competencies needs to be addressed urgently. In agency theory, the assumption is that of equal information availability by the principal and the agent. However, appears not to be the case in business rescue and leads to the difference in reasonable prospect judgments and timing thereof. The regulator could therefore consider investigating requirements for the creditors to enhance the business process. One of the suggestions put forward was for the Regulator to create a litigation fund for BRPs to challenge bank actions and thereby test certain principles and create case law. Finally, banks blamed also the Regulator for licensing incompetent practitioners. There is thus a need for an improved accreditation process by the Regulator with some research in this field been reported by Jacobs (2012) and Pretorius (2013).

IMPLICATIONS FOR THEORY – A RESEARCHER OBSERVATION

Finally the research exposed a variant of the principal-agent dilemma when the context is business rescue. Compared to a board-manager or firm-consultant relationship where the principals and agents are clearly identified and stable with clear hazards and costs, the rescue context transforms this standard relationship. In business rescue the unique situation occurs where the directors as principals agree, select, appoint and contract with the BRP as agent. Immediately after appoint the Act empowers the BRP to take full management control and decision making that include the decision making powers over the directors as the initial principals, Their principal powers, however, diminish almost completely barring the power of their potential vote as shareholder-creditors.

In business rescue, at appointment of the BRP, a “new” principal appears namely the creditor body – mostly driven and controlled by banks as the primary creditor. This body's powers are prescribed in the Act and functions amongst others, mainly through the voting power they have on the plan. While the BRP can effectively do almost anything (the fear of the bank) until presenting the rescue plan that he must propose, the outcome which depends solely on the support of this new principal. Thus, the bank can indirectly control the actions of the BRP through the threat of removal.

Contrarily, the alternative view might be that the bank becomes a “pseudo agent” which can moderate the formal agent (BRP) powers of decision making – actually controlling and even “manipulation” the proposed plan, strategies and outcomes – A daunting thought to say the least.

LIMITATIONS AND FUTURE RESEARCH

Despite the data being directly obtained from the primary source, namely BRPs and bank subjects, the main limitation of this research is my potential bias during both the data analysis and interpretation of results phases. I therefore pursued data source triangulation by using narratives, dialectic conversations and reality checks to ensure trustworthiness. Secondly, potential subject bias has also been pointed out and therefore the results should serve as guideline insights rather than absolute facts. The use of the rumour principle addressed this extensively. Member checking also supported the findings and interpretations. The proposed recommendations should be considered by the Regulator as a starting point to address this potential debilitating conflict. The results must therefore be evaluated with this in mind as other interpretations might have been overlooked.

Understanding the interrelations is only the starting point in this complex web of issues. Future research should seek specifically for mechanisms to evaluate and quantify “reasonable prospect” for standardised evaluation of the concept. Specific techniques and models applied by banks that make them evaluate differently may be of great value to practitioners and educators alike. If research can direct the choice for or against reorganisation, extensive progress can be expected.

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DECLARATION

The author declares that he has no financial or personal relationship(s) which may have inappropriately influenced him in writing this paper.

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