

Gordon Institute of Business Science

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An Evaluation of Business Rescue Plans based on Business Rescue Principles and Guidelines to Determine Leading Indicators of Business Rescue Outcomes

A research project submitted to the Gordon Institute of Business Science, University of Pretoria
in partial fulfilment of the requirement for the degree of Masters of Business Administration

Submitted by : Virginia Mmule Lebeloane
Email Address : 16390475@mygibs.co.za
Cellphone : 073 5464 776
Student Number : 16390475
Date : 18 January 2017

Declaration

I declare that this research project is my own work. It is submitted in partial fulfilment of the requirements for the degree of Master of Business Administration at the Gordon Institute of Business Science, University of Pretoria. It has not been submitted before for any degree or examination in any other University. I further declare that I have obtained the necessary authorisation and consent to carry out this research.

Virginia Mmule Lebeloane

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Dedications

This research report is dedicated to my beloved daughter Phola Priscilla Lebeloane whom I barely spent time with while I was studying towards my MBA and my mother who sacrificed her business opportunities to look after my daughter during this time. I will forever be thankful to them for affording me the time I needed to complete this report.

Abstract

The low success rate of business rescue in South Africa has been presented as the research problem in the study. This is because since the inception of Chapter 6 of the Companies Act, No. 78 of 2008 in 2011, there has been an average success rate of nine percent. This is fairly low compared to countries like the United Kingdom and the United States of America whose regimes inspired the development of this Chapter 6. As a result, the study focuses on evaluating business rescue plans of past experiences based on the principles and guidelines stated in Chapter 6. The archival research compares what companies that came out of business rescue successfully did as opposed to those that were not successful. This assessment focused on finding any unique leading indicators of business rescue; and if compliance to the principles and guidelines of Chapter 6 is crucial for the outcome of business rescue and if there is material difference between business rescue plans of listed companies and unlisted companies. The objective of this study is to identify what makes strong and effective business rescue plans and what pitfalls need to be avoided when developing future business rescue plans.

In order to meet this objective, the study was guided by the stakeholder theory since the South African business rescue regime is creditor friendly and aims to observe the rights of affected parties in business rescue. Anchoring the study on this theory then guided the literature review to focus on the Act as the main source of literature to establish the structure of a typical business rescue plan, to know who the affected parties are, their ranking and why the principles and guidelines stated in Chapter 6 are important. Further literature review focused on articles from local and international law; change management; and business management journals.

The research methodology applied was qualitative in nature so that the reasons for rescue success and failure can be explored. The findings were further validated by interviewing business rescue practitioners. The research findings indicated that all business rescue plans are uniform in structure but there are common strategies that are applied in the business rescue practice to restore companies back to being going concerns. Compliance with Chapter 6 is ideal but not crucial for success and that listed companies provide the BRPs with more data to work with. This then results in more detailed plans that are effective. One of the findings that was of significance is that business rescue outcome is also affected by the conduct of the professionals in the practice.

Keywords

Affected parties, BRP, business rescue, business rescue proceedings, Chapter 6, creditors, guidelines, principles, stakeholders, shareholders, the Act.

Abbreviations

AO	Administration Order
BRiL	Better Returns than in Liquidation
BRP	Business Rescue Practitioner
CIPC	Companies and Intellectual Property Commission
CVA	Company Voluntary Agreement
JSE	Johannesburg Stock Exchange
PCF	Post Commencement Finance
UK	United Kingdom
USA	United States of America

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Chapter 1

1. Introduction

1.1 Introduction and Definition of the Research Problem

The *Business Rescue and Compromise with Creditors*, Chapter 6 of the South African Companies Act No. 71 of 2008 (hereafter referred to as Chapter 6) which essentially replaced the judicial management procedure of the old Companies Act No. 61 of 1973, came into effect in May 2011 (Lamprecht, 2008). Business rescue is a set of actions aimed at resuscitating companies in financial distress (Companies Act, No. 71 of 2008, 2009).

The objective of Chapter 6 was to give eligible companies in financial distress an opportunity to reorganize their businesses, properties, equity, and liabilities to improve their chances of survival and profitability as well as to avoid liquidation (Rosslyn-Smith, 2014). Pretorius & Du Preez (2013) as well as Prior (2014) suggest that Chapter 6 does not only outline business rescue processes for companies under financial distress, it also supports government with its macroeconomic objective of growing the economy and reducing unemployment (South African Government, 2016).

Financial distress is defined as a state where a company is unable to meet its financial obligations as they become due within the ensuing six months. The inability of a company to meet its financial obligations within this period is deemed an indication that such a company would become insolvent in that period (Pretorius, 2015).

According to the Commission (2015), the company's board of directors can pass a resolution to file for business rescue and apply to the court when they believe that their company is in financial distress. Those affected by the company such as creditors, shareholders, employees or trade unions can also submit an application for business rescue to the court should they consider the company to be financially distressed (Werkmans Attorneys, 2011).

Rescuing such company entails temporary management of the affairs of the company by a business rescue practitioner (BRP), temporary suspension of creditor claims, and the

development and implementation of a business rescue plan (hereafter referred to as a plan) that is intended to enable the company to continue operating with reasonable prospects of returning to profitability (Companies Act, No. 71 of 2008, 2009). According to Ndweni (2015), business rescue plans are instrumental for a compromise between the creditors and a company. Furthermore, a plan needs to prove that if a company were to be rescued, it would generate better returns through business rescue for its affected parties than if it were to go through liquidation.

Business rescue is a formalised inclusive and consultative process conducted by qualified and certified BRPs who are supposed come up with remedies that will bring the businesses back to profitability. The development of a rescue plan is the revelation of the competence of the BRP (Rosslyn-Smith, 2014). Rescue plans are approved by affected parties and get published. If approved, the BRP can help rearrange the company's structure, equity, assets and liabilities to maximize its chances of improving its solvency and liquidity status as well as better payouts for its creditors and shareholders should the company not be able to continue to operate (Werkmans Attorneys, 2011).

Loubser (2007) states that the introduction of black economic empowerment in 2003, in identified transformation sectors, was meant to increase participation of historically disadvantaged people in all levels of the economy. This has, consequently, resulted in many South Africans entering the formal business sphere for the first time without the necessary and relevant business, management and entrepreneurial skills and training.

According to the Commission (2015), since Chapter 6 came into effect in May 2011 until 30 June 2015, 1756 companies had come under business rescue processes. The majority of these companies were private companies (63%) and with 53% of taking place in the Gauteng province. The sectors most impacted were wholesale and retail trade, repair of motor vehicles and motorcycles (all combined accounted for 15%), construction (13%), manufacturing (10%), mining and quarrying (8%)

In his study, Prior (2014) highlights that the success rate of business rescues in South Africa has been low and that undermines the value that business rescue is supposed to bring. The average success rate so far has been 9.4% since 2011. This is considerably low compared to the number of businesses that have filed for business rescue (Ndweni, 2015). With South

Africa's high unemployment rates, the chance of companies going through rescue proceedings gives the government and those affected hope, although the success rate of business rescue actions in South Africa is not as good as other countries around the world (Conradie & Lamprecht, 2015). A 90% rescue failure rate demands interrogation to establish difficulties encountered particularly given the potential economic contribution and employment growth.

Loubser (2007) indicates that if business rescues are effective, they can be advantageous for any country and such advantages are more impactful in developing countries where safeguarding jobs is a crucial concern. Given the focus on the macroeconomic objective of reducing unemployment, it is worth noting that the multiplier effect of jobs (each job holder supporting up to six people with their income) in South Africa is extensive and therefore business rescue is a better option for affected citizens than liquidation (Ndweni, 2015).

With such a robust process, it is troubling and alarming that the success rate of business rescues remains low resulting in companies that are not rescued going into liquidation, a threat that was meant to be avoided through the introduction of Chapter 6. The problem this research seeks to address is why there is such a low success rate of business rescue in South Africa when there are principles and guidelines that states how business rescue plans need to be developed and executed.

1.2 Purpose of Business Rescue Plans in the South African Context

Loubser (2007) suggests that the introduction of Chapter 6 that seeks to facilitate compromises between financially ailing companies and their creditors provides evidence that the South African insolvency law is creditor friendly. These compromises tend to pay better returns than in liquidation (BRiL) (Companies Act, No. 71 of 2008, 2009). Classens (2012) adds that the provisions of Chapter 6 should focus on the value of saving companies as going concerns so that they can ultimately serve the interests of all stakeholders than just focusing on the interests of creditors.

A plan is instrumental in demonstrating if business rescue is a better option to liquidation for a company, if that company can sustainably come through business rescue or if the company will yield to its creditors and shareholder BRiL. It is a collaborative instrument that can enable the BRP to deliver on the objectives that were signed for by all affected parties. This stated

collaboration means that all parties need to work together for the success of the business rescue (Pretorius & Rosslyn-Smith, 2014). The plan outlines a proposed strategy of rescue and usually stipulates how employees, suppliers, partners and creditors will be affected by business rescue proceedings and its outcome. The development of a plan follows the principles and guidelines set out in Chapter 6 in order to contain enough information that will enable the affected parties to be convinced and trusting in it. Affected parties would want to be assured that the plan will transform the company to a healthy going concern before they approve it or that the reorganization of the business will yield better returns. The publishing of the plan enhances the transparency of actions that will be carried out during business rescue. Furthermore, once approved, a rescue plan becomes the means to bind all affected persons to the terms and conditions contained in it. It stipulates roles, rights and responsibilities of all affected parties, defines contractual subordination, clarifies relations and list penalties that may result from breach of contract. It is also used to attract and convince financiers to extend post-commencement funding (PCF) to the company. To some extent, it is instrumental for communicating to affected parties (Rosslyn-Smith, 2014).

According to Garrido (2012), a plan has to consider changes in the company's business, its debt, and financial structure and has to enable the company to restructure its business activities, obtain funding to relief its liquidity problem and be able to adjust its cashflows to match the maturity of the company's debt. In this plan, it may be demonstrated that there may be some benefit to the company if its financial creditors can consider loosening some financial constraints in order to give the company a breather. Overall, the rescue plan may make provisions on how to restructure the business or the debt.

1.3 Research Motivation and Rationale

Given the low success rate of business rescue in South Africa, the Companies and Intellectual Property Commission (CIPC) appointed the University of Pretoria to conduct research on the process of business rescue actions to establish how it could be made more workable, effective and successful. The report, entitled the *Business Rescue Status Quo*, was released in June 2015 (Ndweni, 2015). In the report, Pretorius (2015) cautions that the business rescue industry may have a lot of restraining factors working against it that could range from complexities of the Act, to business rescue plans to availability of PCF.

The rationale for conducting this study is to compare and analyse the plans of companies whose rescues were successful and those whose rescues were unsuccessful based on the principles and guidelines set out in Chapter 6 to determine material differences that may identify indicators of successful or unsuccessful outcomes. The analysis is based on the principles and guidelines because they provide the structure for the plans and help the BRPs to defend their rescue strategies.

Conradie & Lamprecht (2015) indicate that there is a need for further research on the evaluation of plans based on the principles and guidelines provided in Chapter 6 in the Companies Act No. 71 of 2008 (hereafter referred to as the Act). This need and the importance of business rescue on the South African economy strongly informs the focus and the objectives of this research. The study was conducted with the aim of adding more value to Chapter 6 which serves as a guideline to drive towards workable, effective and successful business rescue plans.

1.4 Research Objective

The objective of this study is to identify what makes strong and effective business rescue plans and what pitfalls need to be avoided when developing such plans. The outcome of the study will assist the CIPC, BRPs as well as future affected companies and parties to know and circumvent the possible pitfalls in business rescue. Consequently, successful rescue actions will enable the country to work positively towards attaining its objectives of preserving and creating employment (South African Government, 2016).

1.5 Scope of Research

The success or failure of business rescue proceedings lies mainly in the excellence and wholeness of plans in relation to the ailments of the respective companies. Therefore, the scope of this study will focus on evaluating the details contained in the plans in line with the principles and guidelines set out in Chapter 6 to determine possible leading indicators of weakness or success in the outcome of rescue proceedings. This evaluation will be made possible by comparing plans of companies that came out of business rescue successfully and those that failed completely. Furthermore, the evaluation will also include a contrast between listed and unlisted companies. The companies that will form part of the study are those that entered business rescue between May 2011 and December 2015. The companies chosen will be from

various economic sectors and industries. This comparison will enable the researcher to evaluate the different characteristics that sets success and failure apart in business rescue proceedings.

1.6 Conclusion

This research report focuses on evaluating business rescue plans of past rescue proceedings in line with the principles and guideline set out in Chapter 6 of the Act. The literature review is also guided by those principles and guidelines as a foundation of influencing the development of effective plans. The report further states the methodology followed to address the research problem and questions. Subsequent chapters then report on findings, analysis of findings and conclude with recommendations for future studies.

Overall, this study seeks to assist all affected parties to know what constitutes effective rescue plans. Since there is no prescribed framework (except the principles and guidelines set out by Chapter 6) for drawing up rescue plans, it is anticipated that this study will highlight additional guidelines that can be used to cultivate a framework for developing effective business rescue plans.

This study relies on stakeholder theory as its foundation as it enables the researcher to review the extent to which the rights of stakeholders are represented in successful and unsuccessful business rescue plans.

Chapter 2

2. Theoretical Framework and Literature Review

2.1 Introduction

Shaughnessy & Harrigan (2009) categorize distressed companies into different classes. These classes include: companies that can no longer benefit from rescue efforts; those likely to respond quicker to rescue efforts with minimal effort; and those that are likely to benefit from business rescue efforts from comprehensive rescue efforts. The Cynefin Framework developed by Dave Snowden, can enable companies, the CIPC and BRPs to use the domains of the framework as lenses to understand the causes and effects of their companies' distress. By so doing, they will be able to identify if the causes and effects are obvious, complicated, complex, or chaotic. By having this understanding, then categorization stated above can be done.

As highlighted in the three classifications made by Shaughnessy & Harrigan (2009), Snowden (2005) noted that some companies may display visible order which can be addressed through best practice whereas others may have hidden order which may require expert analysis and knowledge to address them. From the above, it can be deduced that responses to each situation are unique and therefore business rescue cannot be a blanket solution for all companies in distress. By classifying and knowing what orders prevail within companies, informed decisions can be made on whether to file for rescue or to accept when the situation is hopeless.

The objectives of the South African business rescue regulations are equivalent to the latter class of distressed companies as outlined by Shaughnessy & Harrigan (2009). Although the feasibility of rescue differs and therefore requires that each business rescue candidate be thoroughly investigated to avoid tackling hopeless cases. This class, comprised of companies requiring comprehensive business rescue efforts, is said to be worth pursuing through turnaround management.

According to Loubser (2004), American and European legal systems regard financial distress as one of the risks that businesses in capitalist economies stand to face and that should not be

regarded as an offence. Accordingly, businesses should not be punished but rather be assisted from possible bankruptcy and be afforded a new beginning through business rescue. Such a culture did not exist in South Africa prior to the enactment of Chapter 6. Thus the South African legal system considered businesses that ran into financial distress as not worth the effort to help them survive (Lamprecht, 2008).

Pretorius (2013) states that going into business rescue may pose a status risk to the company and could lead to loss of confidence in the company even after it had been successfully rescued. There is still a deep stigma that can affect the business negatively by making it undesirable to conduct business with or to work for. Loubser (2007) suggests that the stigmatization associated with businesses in financial distress has rubbed off onto business rescue.

2.2 Business Rescue Defined

Pretorius (2013) advises that the business rescue practice is a relatively new profession in South Africa which is also complex with no universal methodologies that are industry specific. It is a legal process that is conducted by a qualified BRP who is an officer of the law (Pretorius, 2013). A company in business rescue will depend heavily on the management and strategic competencies of the BRP, team support and to a lesser extent on his bookkeeping and legal skills (Pretorius & Holtzhausen, 2008). BRPs may be removed for incompetence by the CIPC, failure to perform or to exercise care in performing their duties, or due to illegal conduct, conflict of interests, lack of dependence or long term incapacity.

Pretorius (2013) suggests that the objectives of the South African business rescue are two-fold and both involve the engagement of a qualified BRP. Pretorius (2013) says the primary concern of business rescue efforts in South Africa is to restore the ailing business back to good financial health. Should this be unsuccessful, the secondary objective is for the BRP to seek the best returns for creditors and shareholders.

A business BRP is a licensed or conditionally licensed professional who is in good standing from the field of law, accounting or business management appointed by the board of directors or the court to oversee business rescue proceedings of a company. Directors may be distrustful of BRPs, as they may see BRP's main objective as satisfying the banks rather than rescuing the

company (Finch, 2005). However Section 142 of the Act has enacted more responsibilities on the company directors in order for them to participate in business rescue and help the BRP in compiling the plan. According to this section, each of the directors must ensure that the BRP is provided with all records and books that are in their possession and relate to the business of the company. If such items are not in their possession, and they know their whereabouts, they have to inform the BRP as to where they are. The section further states that the submission of such items to the BRP need to happen within five business days after the business has been formally in business rescue. Over and above, the directors of the company need to provide the BRP with a statement of business affairs minimally covering the following areas:

- (a) Any material transactions involved the company or the assets of the company and happening in twelve months before the start of business rescue;
- (b) Any court or arbitration proceeding involving the company;
- (c) All assets including accounts receivables and liabilities as well as a list of accounts payables of the company; and
- (d) The number of personnel in the employ of the company as well as related rights and bargaining arrangements (Companies Act, No. 71 of 2008, 2009).

BRPs are responsible for drawing up rescue plans that enable companies to be better off following rescue proceedings than they would have been if liquidated. Pretorius (2014) argues that the preparation of a business rescue plan is a key and central deliverable for a BRP.

BRP is instrumental to the survival of a company and very powerful. This power is demonstrated by supervising the management, affairs and business of the company to a better position (the Commission, 2015; Companies Act, No. 71 of 2008, 2009). However, Pretorius (2013) argues that the diversity of BRPs' qualifications (accounting, law and business) may pose a challenge given the complexities of rescuing businesses. This is exacerbated by the fact that business rescue is an option that is usually considered when the business is on the verge of failing.

The process followed by a BPR in the relation to rescuing a financially distressed company includes filing the right statutory papers, developing and implementing a plan to rescue the company under financial distress.

2.2.1 Benefits of business rescue vs liquidation

Garridon (2012) urges that should the business not be feasible, it would be better to liquidate it as soon as that discovery has been made so that it ceases to exist as a business rescue consideration will only delay the inevitable and do more damage. If there is indecision about the route the company should take, Garridon (2012) suggests that reorganization through business rescue will be a better option. While Museta (2012) points out that although there are temporary reliefs enjoyed by the company when in business rescue, including a stay on some business contracts, there is an exception in terms of Section 133 (1) (f) of the Act on legal proceedings by governing authorities such as the South African Revenue Services for due taxes (Republic of South Africa, 2009 & Du Toit, 2014).

2.3 Definition Purpose and Guidelines of a Business Rescue Plan

Balgobin & Pandit's (2001) view is that a rescue plan envisions the desired end results and states in it what will be required to enable the company to reach that vision. Museta (2012) refers to a plan as a creative tool to help businesses avoid liquidation if prevailing conditions permit whereas Pretorius (2014) and Rosslyn-Smith (2014) regard it as an instrument through which the BRP communicates; certifies the feasibility of a rescue process to be embarked on; demonstrates transparency of proceedings; enforces contractual responsibilities; and attracts PCF.

Le Roux & Duncan (2013) point out that the plan has to indicate the amount and nature of the finance that will be needed by the business to effect the rescue. Le Roux & Duncan (2013) further states that a business rescue plan resembles a business plan submitted for a new business to be considered for financial sponsorship or allocation for venture capital. However, what differentiate a rescue plan from a business plan are technical factors such as liquidation value of the business and the existence of liabilities.

The plan includes background of the company's assets, list of creditors, company issued securities, probable returns that creditors will receive should the company be liquidated, remuneration of the appointed BRP and well as details of any settlement proposals suggested by creditors (Companies Act, No. 71 of 2008, 2009). Rosslyn-Smith (2014) also believes that the plan need not only comply with the guidelines of the Act but also aim to please the creditors and gain their votes.

According to Pretorius (2014) banks are not easily convinced by BRPs because they come in as outsiders, take very little time to familiarize themselves with the challenges at hand and draw up rescue plans that banks believe will not necessarily be successful given their own history with the respective companies. As there is usually an inherent conflict between main creditors and BRPs, rescue plans have to be mindful of such potential conflicts and be presented in ways palatable to all stakeholders (Pretorius, 2015). Pretorius (2014) notes that generally, the company could encounter challenges in finding PCF needed to carry out the rescue plan. Garrido (2012) adds that extending such risky financial assistance to a distressed company may come with additional compensation to the lenders or optional inter creditor agreements. However, BRPs are expected to raise bridging finance to alleviate the financial distress that the businesses may be encountering. Given that the BRP joins in as an outsider and has no previous dealing with the company, raising funding becomes a challenge (Pretorius, 2014).

Chapter 6 gives a directive on the principles that would make good rescue plans as well as a list of guidelines that the BRP needs to follow in developing a comprehensive plan. The Act emphasizes that the development of a business rescue plan is a consultative process. This process includes consultation during preparation, development, and publication for consideration by affected parties as well as the adoption of the plan (Companies Act, No. 71 of 2008, 2009).

2.3.1 Part A: Background Information that Affects Business Rescue Approval

Loubser (2010) states that, in addition to stating the reasons why a company is in rescue, background information has to contain a detailed plan of action that will convince affected parties of the efficacy of the plan to gain their confidence. Information that is not reasonably sufficient and convincing, could be detrimental to the approval of the plan and the rescue initiative (Loubser, 2010). There are reflections that need to be outwardly listed in the rescue plan that may affect the company's success in being considered to go into business rescue and also to come out successfully (Werkmans Attorneys, 2011). Garrido (2012) points out that such considerations need to be communicated in an integrated and coherent manner. Background information includes the following sections:

2.3.1.1 *Material assets of a company*

Museta (2012) asserts that listing material assets of a company is a critical disclosure as it indicates the real financial state of the company and determines the direction of the rescue plan. However, Loubser (2010) highlights that even though the Act prescribes that the BRP has to list all significant assets of the company, it does not say anything about having those assets valued independently by a professional valuer. Loubser (2010), however, indicates that, it would be sensible for the BRP to do some sort of value estimation in order for affected parties to be able to assess if the company stands a likelihood of surviving or not. Similarly, Garrido (2012) concedes that the law should allow financially distressed companies to sell the assets in order to raise finance for continuing other lines of business or to sell some assets of part of their businesses that have proved to be a liability to the company. The profitable assets and business units should be left to continue operating. Such anticipated sales have to be well documented in the rescue plan and in their fair value. If assets are of significant worth, the service of an independent valuer has to be sought.

2.3.1.2 Creditors of the company in terms of laws of insolvency

Chapter 6 requires that a comprehensive list of the company's creditors and their classification, in terms of the insolvency law, be provided at the beginning of rescue proceedings. Even though the insolvency law is unclear on the ranking of such debt, Chapter 6 ranks them as preferred unsecured creditors (Loubser, 2010). Creditors have extensive rights in business rescue proceedings including the right to vote for or against the proposed rescue plan and their decisions are binding to all stakeholders while the business is under rescue and can overrule anything that is unfavorable during rescue by approaching the court (Le Roux & Duncan, 2013). Given these rights, when approving or disapproving the rescue plan, the court has to take into account stipulation by creditors if most of them have indicated their intended unfavourable votes towards the rescue plan. It is therefore imperative for the court not to undertake a fruitless exercise of sorting out contentions when the fate of company is already evident by the votes of creditors (Loubser, 2010). Nonetheless, listing who the creditors are is an exercise that also helps to prove claims for the time when payments are to be made (Museta, 2012).

2.3.1.3 Secured creditors

Le Roux & Duncan (2013) claim that the largest creditors of companies in financial distress are usually banks who have their interests secured and backed up by some form of collateral.

Banks and financiers have, consequently, a great influence on the company's fate regarding business rescue as they are secured creditors. Hart (2000) suggests that when there is value to be divided among creditors, the payment will follow absolute priority of claimants. Secured creditors get paid first and receive reasonable returns (Hart, 2000). However, Pretorius (2015) suggests that secured creditors tend to oppose the search BRiL as they perceive such a pursuit as an abuse of proceedings and rather a prolonged way taken by the BRP to liquidation.

2.3.1.4 Concurrent creditors

Unlike secured creditors, unsecured creditor are treated as concurrent creditors before a business enters rescue but their claims are ranked low on the priority list once the business is in rescue (Le Roux & Duncan, 2013). Consideration has to be made because by being last in line, unsecured creditors usually prefer reorganization over everything else because they are last in line whether the company opts for BRiL or liquidation. If the company gets reorganized, they can wait for the company to start making money and get paid their outstanding receivables. Given their size, they too depend on the company to make it out alive so that its existence can also keep them in business (Pretorius, 2015).

2.3.1.5 Proved claims

The development of a plan has to be a consultative process and as such the BRP makes announcements so that all affected parties can come forward and prove their claims (Companies Act, No. 71 of 2008, 2009). Only proved and verified claims are recognized when it is time for payment (Museta, 2012; Loubser, 2010).

2.3.1.6 Payout of creditors in liquidation

The BRP has to conduct thorough calculations to give projections of how much dividends creditors in various classes will get should the company go into liquidation. In doing such calculations the Act states that the BRP may require the services of professionals such as accountants although such services will add to rescue costs (Loubser, 2010). Museta (2012) adds that the proposed dividend is a paramount issue as it serves as the return creditors will receive and it will ultimately determine how long the payout process will take as well as how much money they will receive as their payment.

2.3.1.7 Company issued securities

The Act requires that the BRP compile a complete list of holders of company issued securities and state what their classes are and explain how holders of each class will be affected (Loubser, 2010). These security holders would ideally want to know that their interests in the company are secured. The plan has to be explicit about that (Museta, 2012). Holders of debentures are not entitled to double voting but are regarded as creditors and will be treated accordingly. The fact that the Act requires that they be described within the categorization of security holders does not extend additional voting chances (Loubser, 2010).

Loubser (2010) perceives the list to be cumbersome and unnecessary. This list may not be exhaustive as it does not only include shareholders but holders of derivatives, bonds and debentures. Unlike shareholders, the rights of derivatives, bonds and debentures holders will not be affected by the rescue plan. However, Museta (2012) points out that this listing allows holders of such securities to take part in the business rescue proceedings.

Should the plan be approved, it will be binding on all holders of the issued securities of the company even if such holders were absent or voted against the plan (Moodley vs On Digital Media (Pty) Ltd, 2014). Furthermore, Jijana, Chetty & Karodia (2016) state that even though the shareholders have the same rights as creditors and employees, the BRP does not have to consult them as they are seen as being subordinated to creditors and employees. Should the company be liquidated the company shares will be worthless. In this instance, a reorganization will suit shareholders better as they stand to gain when the value of their shares improves. The agency problem reduces the shareholders' value to zero if a company goes to liquidation (Weber, 1994), however as one of the affected parties in business rescue, the stakeholder theory ensures that their value is recognized and they get BRiL (Crane & Ruebbutton, 2012). This indicates the difference and significance of having good plans so there is balance and that all company parties get something from the company they invested in (Hart, 2000 & Loubser 2010).

2.3.1.8 Remuneration of a BRP

Museta (2012) highlights that the remuneration of the BRP is tantamount to his motivation to accept the responsibilities that comes with rescue proceedings. This motivation is nonetheless a cost to the company. Moreover, the remuneration has to be reflective of the BRP's capacity, credibility, knowledge, skills and track record as well as the liability of representing all stakeholders in business rescue (Pretorius & Holtzhausen, 2008). The BRP's compensation is also determined by his grading in the rescue profession (Werkmans Attorneys, 2011). The cost is shared indirectly by affected parties and it is essential that there is a written contract regarding the BRP's compensation but not for his expenses related to business rescue (Le Roux & Duncan, 2013). The BRP charges a regulated fee to the company by the hour for the duration of business rescue whereas the liquidator takes ten percent of the proceeds of assets sold as commission. Additionally, the liquidator charges value added tax. The BRP may suggest and motivate for more fees from the company should he attain certain milestones and deliverables. This agreement needs to be approved by majority of impartial creditors with majority value of secured, unsecured claims and shareholders who stand to share the residual value of the company when it winds up. This approval has to take place at a voting meeting held for this reason. Creditors and shareholders who voted against this agreement can approach the court to set aside this decision by others if it appears to be inconsiderably disproportionate to the company's financial condition (Loubser, 2010).

2.3.1.9 Settlement proposal by creditors

The BRP must ensure that there is a statement in the rescue plan that mentions all proposals made casually by creditors. Such proposals are recognized before and during the drafting of the rescue plan as they may recommend a revision or alternatives to the plan should the original one not be accepted by creditors at large (Levenstein, 2008). Pretorius (2014) notes that in order for a rescue plan to be accepted, it requires seventy five percent of votes which is usually made up of secured creditors such as banks. Loubser (2010) sees this prerequisite as somewhat incomprehensible as the Act requires the BRP to consult all creditors before preparing the rescue plan as such proposals would be made (Loubser, 2010). Shleifer (2003) notes that the court will objectively evaluate and enforce a plan that is in the best interest of all creditors.

2.3.2 Part B: Proposals by the Business BRP through a Business Rescue Plan

Part B of the business rescue plan describes all recommended strategies that will help a company to resolve its challenges and how to cope with its debts (Levenstein, 2008). Loubser (2010) notes that this part of the rescue plan highlights the benefits of adopting the plan as opposed to supporting liquidation. According to Section 150 (2) (b) (i) of the Act, the BRP has to stipulate the nature and the duration of the moratorium required by the company (Companies Act, No. 71 of 2008, 2009). This part of the plan has the following subsections:

2.3.2.1 Imposed moratorium

The Act requires that the BRP describe the type and duration of the moratorium that the company requires in order to get its affairs in order (Companies Act, No. 71 of 2008, 2009). This moratorium is a suspension of claims by creditors for the duration of rescue proceedings without putting too much strain on creditors (Conradie & Lamprecht, 2015). Museta (2012) indicates that there must be some sort of balance between resuscitating the company and paying the company's dues to its creditors while executing ongoing contracts. The Act however, does not make it obvious that creditors of the same class be considered the same (Loubser, 2010). In addition, Classens (2012) states that the business rescue provisions should generally recognize value in rescuing the company as a going concern in order for it to benefit its stakeholders by accommodating a wider variety of interests of affected parties and the business itself and diverge from largely concentrating on creditors.

2.3.2.2 Release from debts and conversions

The Act also requires that the plan be clear about what degree the company will be released from its obligations or if any of the debts will be converted to equity in the affected company or another related company. Section 154 (1) of the Act states that if the plan has been implemented according to its terms and conditions, any creditors that have accepted to release their debts in full or partially, will lose their right to enforce payment of the debt or part of it (Companies Act, No. 71 of 2008, 2009). Conversions to equity are considered if there is residual value on all assets that remains after settlement of all liabilities (Pretorius & Rosslyn-Smith, 2014). Museta (2012) indicates that residual value is an indication of what will be left for investors and creditors should the rescue fail and the business go into liquidation. Reorganization enables the BRP to end contracts that are heavy on the company and the approval of such approach will be binding to all minority creditors even if they were opposing

such option. Furthermore, debt can be swapped for equity instruments or creditors be given opportunities to buy other securities or even buying out other creditors (Le Roux & Duncan, 2013). Garrido (2012) suggests that the BRP should persuade creditors to take haircuts.

2.3.2.3 Trading and existing agreements

Loubser (2010) points out that licenses that enable the company to operate have to be kept by maintaining the company's operations as a going concern through completing projects; collecting on due debts; and honouring contracts. Museta (2012) asserts that the actions taken regarding current contracts and the management of agreements give an indication of how business will be carried out during rescue and which business relationships will be prioritised. Debts that are due to the company have to be collected without any commission being billed or owed. Loubser (2010) adds that it is the BRP's prerogative to cancel or freeze any agreements entirely or in part during business rescue without subjecting to any approval by creditors.

2.3.2.4 Availing property to use as payment of creditor claims

According to Loubser (2010) the Act requires that the BRP lists all the available property to be used for payment of creditors. This listing gives creditors an indication of which assets will be alienated and which ones will not. Museta (2012) notes that employees will be instrumental in guiding the BRP on which assets will be needed to enable the company to productively continue with its business. Balgobin & Pandit (2001) suggest that assets that are easy to sell are most resourceful for business recovery.

Garrido (2012) indicates that another way the BRP can isolate assets from potential claims could be by housing them in a special purpose vehicle where creditors hold shares. According to Garrido (2012), such a strategy is a viable option when the company is suffering from predecessor debts that prevent it from operating efficiently.

2.3.2.5 Rank of creditors and entitlement to payouts

Museta (2012) emphasizes that ranking the order of repaying creditors is important and indicates that when all creditors are satisfied with the proposal, they will effectively work

together to ensure that the business rescue proceedings are successful. Loubser (2010) points out the order in which creditors are to be paid:

Table 1: Order of Creditor Priority

Priority	Name of Creditors
First	BRP's remuneration and costs are first in line.
Second	Employees of the company follow afterwards as they are regarded as creditors and will be instrumental in enabling the company to function. As such they are placed at the top of the payment list after the BRP's remuneration.
Third	Secured creditors become next in line in the order in which their debts were incurred by the company and their payments are usually in line with the underlying securities as well as the extent of their fulfillment.
Fourth	Following secured creditors are unsecured creditors who have extended post commencement funding to the company after going through business rescue.
Fifth	Preferent creditors ensue afterwards.
Sixth	Lastly concurrent creditors who are usually unlikely to be paid. Such creditors rely on rescue proceedings to be successful in order to be considered.

Employees are paid for providing services on a current basis post commencement of business rescue. Should the company not be able to honour such payments then it is not regarded as fit to continue operating and has to be liquidated (Le Roux & Duncan, 2013). In contrast, Loubser, (2010) argue that even though the order of paying creditors follows the specifications of the solvency law, that order is unlikely to be upheld by the plan because the provisions made for post commencement funding and the rights of employees have substantially changed the prescribed order from the solvency law. As a result, this requires that the BRP follow the latter said provisions.

2.3.3 Part C: Assumptions and Conditions to be made in a Business Rescue Plan

Section 150 (2) (c) (i) of the Act requires that a statement of assumptions and conditions that details what has to be fulfilled for the business rescue to come into effect be given in the plan (Companies Act, No. 71 of 2008, 2009). Such assumptions and conditions are predetermined by the BRP and affected parties with the aim of ensuring that all obligations are carried out before, during and after business rescue (Jijana, Chetty, & Karodia, 2016). This part has the following sections:

2.3.3.1 Conditions to be satisfied

The commencement of business rescue, its success or the approval of its plan may depend on several conditions, such as securing PCF, which need to be satisfied. Such conditions have to be listed in the plan (Loubser, 2010). Museta (2012) adds that these are predefined conditions by the BRP and affected parties stipulate which conditions will apply to which mandates before, during and after business rescue proceedings.

2.3.3.2 Effect on employees terms and conditions

The effects of business rescue on employees should not be undermined as the approval of the plan depends on the employment terms and conditions laid out in the plan (Museta, 2012). The BRP becomes fully in charge and the executives completely lose management control. Smith & Graves (2005) suggest that the confidence in business rescue rises if those that were responsible for the company's distress are removed from their positions and get replaced with more competent management. The only people not affected are ordinary employees who retain their terms and conditions of employment. This works to the advantage of the company as skills are retained to enable the continuous running of the business. Should there be a mention of retrenchment in the plan, they will only be effective if executed following the procedures set by the Labour Relations Act (Loubser, 2010).

2.3.3.3 Circumstances for ending business rescue

It is anticipated that in this section of the rescue plan, the BRP will state the conditions of when the business will come out of rescue. This exit may depend on various conditions and circumstances that may be positive or negative such as reached targets or the satisfaction of certain requirements (Loubser, 2010). Such conditions can take the company to recovery or may, if not carefully considered, drag the company back into rehabilitation (Museta, 2012).

2.3.3.4 The need for projected financials

The Act requires that the BRP project three year balance sheets and income statements based on the assumptions made in the plan. These projections need to detail any substantial assumptions on which the projections were made. The Act does not limit the BRP to project one

scenario. He may base several projections of different assumptions and contingencies. The projection of the financial statements requires care as some of the influencing elements may be unpredictable (Pretorius & Holtzhausen, 2013). This is the outcome that requires someone with relevant expertise. It is therefore left to the BRP to source such experts (Companies Act, No. 71 of 2008, 2009). Given that the projections are supposed to cover a period of three years, they are therefore made with the assumption that the company will not be sold immediately or go under liquidation (Loubser, 2010). Projections will help place all interested parties at ease as, the three year period will illustrate the maintenance of assets in the balance sheet and the continuity of a successful concern in the income statements (Museta, 2012).

2.4 Theoretical Framework

The literature reveals that stakeholders are important for any business which in turn is important for its economic impact (Crane & Ruebbutton, 2012). Stakeholders contribute resources to a business in one way or another and by so doing gain a legitimate right to have claims against the company (Phillips, 2003). Such rights are protected by the introduction of business rescue through Chapter 6. This Chapter not only addresses business rescue but concessions with creditors (Werkmans Attorneys, 2011) and other stakeholders

According to Verbeke & Tung (2012), the company would not exist without valuable resources from stakeholders. Phillips (2003) indicates that companies have constituencies made of various stakeholders whose legitimacy, prioritization order, management and legal obligations the company should understand as its success depends on them. Phillips (2003) suggests that this is important as the economic transactional roles that stakeholders play in a company are cohesive and can lead to claims, mobilization and actions against the company.

The Act recognizes the normative identity of stakeholders and encourages their fair treatment in terms of the claims they have against the company. These claims entitle them, primarily creditors and shareholders who have the final say, to voting in favour of or against a plan (Companies Act, No. 71 of 2008, 2009).

The instrumental definition in stakeholder management theory recognizes affected people as capital with legitimate power and claims (Phillips, 2003). These affected people are from different groups of stakeholders and have different sense of urgency and priorities (Republic

of South Africa, 2009; Crane & Ruebutter, 2012). Stakeholder theory speaks to the aims of Chapter 6. This Chapter focuses on reaching compromises with affected parties during a rescue process. Such affected parties include stakeholders that provide capital, credit, supplies, business and labour (Phillips, 2003).

Agency theory explains business relationships and highlights problems that can exist between agents and their principals. There is usually conflict between the desires of agents who are primarily executives and principals (shareholders) whose interests they are supposed to represent (Weber, 1994). Furthermore Weber (1994) suggests that executives tend to take decisions likely to benefit the company in the short run, which tends to maximize their personal wealth and privileges that come with their positions while such decisions are not in the best interest of their principals.

Weber (2014) sees the guidelines set out in Chapter 6 as a tool of regulating an agency problem that may arise from interests of BRPs while they are taking companies through business rescue. The BRPs effectively step in the shoes of executives. Because the plan gets approved by affected parties, it means such parties believe and rely on BRPs to turnaround the company back to financial health or to ensure better payouts using their specialized skills that is required by their profession. In contrast Rosslyn-Smith (2014) interprets the guidelines contained in the Act as a set of basic expectations by the creditors.

For companies to be in financial distress, it is in most cases from the decisions or lack of same by the executives and that is why proceedings such as business rescue look at the interests of affected parties. Such parties include the shareholders (Kow, 2004).

2.5 Financial Distress/Bankruptcy Stigma

Nombembe (2016) asserts that the backbone and success of any institution should be grounded in good financial management. Nombembe (2016) further asserts that good financial management is not only reliant on management decisions but is a myriad of processes, policies and systems as well as the effects of external elements. Combined, these could either be a good combination or include management errors and negative external factors leading to company failure which can come in various forms such as disastrous start-up, ambitious growth,

blinded companies or sluggish established companies. Ooghe & De Prijcker (2008) assert that companies that fail become stigmatised.

2.6 International Comparisons

Literature indicates that there are various regimens of business rescue worldwide. Those most recognized are Chapter 11 of the United States of America (USA) and the Insolvency Regime of the United Kingdom (UK) which are regarded as debtor friendly channels (Rosslyn-Smith, 2014; Conradie & Lamprecht, 2015) unlike South Africa's Chapter 6 which is primarily creditor friendly (Loubser, 2007).

2.6.1 Use of Chapter 11 in the United States of America and Turnaround Plan

Chapter 11 of Title 11 of the United States of America Bankruptcy Code is mainly used by companies that want to restructure their debts and preserve their going concern status (Gibson, 2012). Unlike Chapter 6 of South Africa, Chapter 11 permits the current management to continue running the company and implement their plans. The bankruptcy court approved debt restructuring plan thereafter the company enjoys an automatic stay of creditor claims (Rosslyn-Smith, 2014). Rosslyn-Smith (2014) adds that expectations of the reorganization plan are set out by the creditors and the court who are the approving parties of the plan.

Pretorius (2013) points out that Chapter 11 provides for informal arrangements for rescue processes which are mainly used to reverse the company's declining performance by the same managers who led the company to its decline. However, Rosslyn-Smith (2014) points out that any major decisions by management need to be approved by the bankruptcy court which is a dedicated court to dealing with bankruptcy cases, unlike in South Africa where there is no dedicated court (Bharath, Panchapagesan, & Werner 2014).

The American Bankruptcy Code is divided into eight chapters of which some apply to all bankruptcies, while others only apply to certain entities or types of relief. Chapter 7 deals with liquidation for both corporate and individual debtors, while Chapter 11 contains the provisions for reorganisation, mainly for debtors engaged in business, whether as individuals, partnerships or corporations. As a result of its wide application, Chapter 11 had to be relatively informal and not heavily regulated (Gibson, 2012). Loubser (2007) suggests that this has given rise to a

strong perception that Chapter 11 is often abused given the ease with which debtors sometimes invoke the protection of Chapter 11 of the Bankruptcy Code.

2.6.2 The United Kingdom Insolvency Regime and Plan

Unlike South Africa's Chapter 6, the United Kingdom's Insolvency Regime of the Insolvency Act of 1986 provides a number of useful instruments that are flexible, progressive and regenerative for financially distressed companies that have their headquarters in the UK (Fletcher, 2004). A Company Voluntary Agreement (CVA) is a company friendly procedure from the Insolvency Act that is intended to assist companies going through a prolonged but temporary financial distress and have the potential to be profitable in the long run (Fletcher, 2004).

A CVA allows companies to be rehabilitated and preserves them by giving them a chance to reorganize their affairs or develop arrangement plans while enjoying moratoria on creditor claims. In addition to the CVA, the UK also has an Administration Order (AO) which gives the court, the company directors or secured creditors permission to appoint an administrator to oversee the affairs of the company. As qualifying prerequisites, the company has to prove that it is in a going concern state and if the company were to sell its assets, it would be for the benefit of all its creditors. AO procedure is limited to a year and this is deemed to be enough time for the company to decide to file for rescue through a CVA, negotiate with creditors or to liquidate (Conradie & Lamprecht, 2015).

Unlike in South Africa where business rescue is a legal process (Pretorius & Du Preez, 2013), a CVA does not involve any legal processes although it is conducted through the supervision of a licensed insolvency BRP who does not replace the management of the company. However, the BPR is entitled to recommend and ensure that the capacity of management be augmented (Fletcher, 2004).

2.6.3 International Principles for Business Rescue Plans

The USA and UK's insolvency regimes have greatly influenced the development of South Africa's Chapter 6 (Loubser 2007). Even though focus on stakeholders is different and the

executors of the reorganization plan are different to the South African regime, in this case being the BRP, the principles of the plans are the same. (Rosslyn-Smith, 2014).

As the first principle, the plan need to confirm if the business rescue will be worthwhile and outline a strategy that will ensure that the company is successfully reorganized, operationally in order or offer affected parties BRiL. This confirmation need to be based on facts, current circumstances, various scenarios and practical suppositions. The plan also outlines the resources that will be required in order to carry out the rescue strategy successfully (Balgobin & Pandit, 2001).

The second principle requires that the plan serve as a medium of communication. It has to inform affected parties as to how the business rescue will be carried out, who will be affected and how (Kow, 2004). Whereas Balgobin & Pandit (2001) maintain that if the plan is able to communicate well, it will enable the BRP to secure all resources necessary to enable business rescue as well as buy-in from affected parties, Kow (2004) states that communicating during business rescue is also a statutory requirement from the BRP.

The third principle requires that all affected parties including the BRP be bound by the terms and conditions in the plan throughout the proceedings until substantial implementation has been achieved (UNCITRAL, 2012).

The fourth principle demands for the plan to be clear and liable in order to gain the support of affected parties. This principle also assists potential investors and lenders to be able to take calculated risks and avoid unnecessary conflicts (UNCITRAL, 2012). This principle improves the chances for the BRP to be able to secure PCF (Pretorius & Rosslyn-Smith, 2014).

2.7 Conclusion

This chapter has summarized the principles and guidelines prescribed by Chapter 6 of the Companies Act No. 73 of 2008 as fundamentals to be fulfilled by BRPs when developing plans. The chapter also highlighted agency theory dilemma that BRPs may face while trying to act in the best interest of all parties affected by business rescue and trying to come up with balanced solutions. Business rescue being a creditor friendly process is aimed at protecting all affected parties whereby the BRP cannot afford to be conflicted and favour any side but rather ensure

that the interests and benefits to all parties are equitably adjusted within the restrictions of the legislation.

The predecessor of Chapter 6, judicial management was over the years overlooked and underused in the turnaround business because of its challenges mainly related to costs. The bulk of the costs stemmed from the involvement of the court and this is different in the business rescue practice administration because the administration is mostly independent. The affected parties of business rescue can approach the court during business rescue proceedings only when necessary. The introduction of Chapter 6 which is more creditor-friendly is inclined towards stakeholder theory principles and focus on supporting one of the South African macroeconomic objectives of saving companies and the employment they create. Chapter 6 also gives companies the option to sell assets or the entire shares at their own will in order to get BRiL. Without considering external factors, the financial distress of companies is mainly caused by the agency problem.

The literature review has highlighted what makes a good plan in terms of the principles and guidelines set out in Chapter 6. The literature has also taken an overview of the renowned USA and UK insolvency regimes that are more flexible and more debtor friendly as opposed to the South African business rescue practice. This means that the business rescue of the various regimes may have the same basic principles of communicating; being transparent; contracting and securing PCF but their targeted stakeholder focus differ.

With that said, it means that the plans in South Africa are standard and mostly uniform whereas in the USA and UK are assorted as they are dictated by the creditors for the debtor companies to be revitalized. This difference then requires a look at the South African plans to assess what sets the winning plan apart from the failed plans.

Chapter 3

3. Research Questions

3.1 Introduction

In terms of Chapter 6 a business rescue plan is divided into three guided parts: background; proposals; and assumptions, and conditions. The background part gives a summary of the company's assets, creditors and securities as well as an agreement on the remuneration of the BRP. The proposals part includes details on the length of the moratorium, how debt repayments are structured and if they will be converted to equity or what company property will be used as means of payment as well as the order of preference to be applied to creditors. The last part makes reference to several conditions including conditions of employment which will enable the plan to prosper and gives the projections of the company's balance sheet and income statement for the ensuing three years (Werkmans Attorneys, 2011; Companies Act, No. 71 of 2008, 2009). The literature has indicated the importance of plans as well as what they need to cover. However, given that Chapter 6 offers guidelines on how to compile a business rescue plan, no emphasis is placed on full compliance with these guidelines as they are not mandatory. There is also no differentiation made for the requirements for listed or unlisted companies.

3.2 Research Questions

Business rescue plans are guided by Chapter 6 to be detailed and as such the researcher states the following research questions:

3.2.1 Research Question 1

Is compliance of business rescue plans with the principles and guidelines set out in Chapter 6 is critical for successful rescue actions?

3.2.2 Research Question 2

Do companies that come out of business rescue proceedings successfully have exceptionally unique rescue strategies and their business rescue plans provide more details over and above the guidelines provided for by the Chapter 6?

3.2.3 Research Question 3

Do listed companies have better plans that make them come out of business rescue successfully than unlisted companies?

3.3 Conclusion

These questions assume that even though there are principles and guidelines that the plans need to follow, there are unique details that set aside winning plans from those that failed.

Chapter 4

4. Research Methodology

4.1 Introduction

The aim of this chapter is to outline the research design that enabled the examination of the research problem, gathering of relevant data, proficient analysis and interpretation of data into useful information to answer the questions. Research design is tantamount to an action plan that is specific on how the research will be carried out. It is a logical structure for the research (Cargan, 2007). Simply put, research design is a guide that outlines the methods, techniques, steps and processes for collecting and analysing data that seeks to answer the research questions (Robert Wood Johnson Foundation, 2008). A research design is unique to every research project and serves as a blue print to be followed in order to answer research questions as undeniably as possible (Saunders & Lewis, 2012). Every research project requires a research design. The design for this study emanated from the objective of this research and is aligned with the method, population, unit of analysis and sample (New York University, 2016).

This study is qualitative and exploratory in nature and as a result is formulated based on the insights and experiences of business rescue.

4.2 Choice of Methodology

The aim of the study is to analyse business rescue plans based on the principles and guideline from Chapter 6 to determine any leading indicators of the outcome of business rescue proceedings in the South African context. Data was collected by conducting an archival research of past rescue plans filed with the CIPC. As McBurney & White (2009) describe it, archival research is the use of data that the researcher played no part in gathering. The purpose of the researcher in this instance was to select and analyse data from records or archives. Archival research is useful in the sense that data required for analysis may have already been collected and recollecting data may have meant duplication of efforts.

The researcher reviewed a wide range of literature that exists in the business rescue and turnaround fields in order to find common themes, and pinned the research on a stakeholder theory dominating in the South African business rescue regime and touched on the agency theory that highlighted conflict in the business rescue practice. The researcher's predetermined questions were refined as literature review progressed and are clearly stated in Chapter 3. Addressing these questions required that the researcher adopt an interpretivist philosophical perspective to study past business rescue plans taking into consideration the context within which they were developed (Saunders & Lewis, 2012). Interpretivism is usually combined with constructivism and both generally seen as conventional approaches to qualitative studies as researchers seek to understand the world they live in (Creswell, 2014) and in this instance being the outcomes of business rescue proceedings that are generally influenced by rescue plans.

The strategy, approach and philosophy chosen by the researcher were best supported by a qualitative method (Saunders & Lewis, 2012). The researcher followed an inductive reasoning process to make sense of the data collected and made broad generalizations. This required working backward and forward from patterns and categories until comprehensive themes were established (Creswell, 2014).

Creswell (2014) highlights that qualitative research comprises of the collection of data and analysis that is not quantitative in nature. It is regarded as philosophical, methodical, and focuses on quality to get to the essence of the subject matter. It is also said that it is subjective and that the researcher is also the research instrument. Qualitative research is aimed at understanding reasons why certain outcomes develop by studying underlying reasons. As a result, it focuses on the "why" and "how" questions of the topic instead of the "what", "where" and "when" which are more leaning to quantitative solutions (Cargan, 2007). Reduced sample groups are ideal in qualitative studies as opposed to large samples that are usually essential for the reliability of quantitative results (Babbie, 2008). Qualitative research takes into consideration the context and natural setting of the subject matter being investigated (Saunders & Lewis, 2012). This study is aimed at understanding why some companies make it successfully out of business rescue while others do not and if the way plans were developed have had an influence. This was conducted by assessing plans of past proceedings to look for the "how" and "why" indicators of business rescue outcomes.

4.3 Unit of Analysis

The unit of analysis in the study is business rescue plans. By analyzing the rescue plans in line with the principles and guidelines from Chapter 6, the researcher was able to examine and address “how” and “why” that supports the research questions. The unit of analysis was defined in order to be clear about what is being studied and the level at which research was performed (Saunders & Lewis, 2012). A unit of analysis is the thing that gets studied in order to create a synopsis of its description. If units of analysis were not defined, the researcher would not have been able to establish what views are to be made on whom or what. Naturally, a unit of analysis intends to describe the population within which the research dynamics operate (Babbie, 2008).

4.4 Population

The population of interest in this study was made up of all business rescues plans developed and carried out for South African companies from May 2011 when Chapter 6 was promulgated to December 2015. A population or universe is the total number of units from which the researcher draws a sample (Saunders & Lewis, 2012). It is the focus pool that possesses the required similar characteristics and enables the scientific inquiry. It is to this population that the research results are generalized (Cargan, 2007).

4.5 Sampling Method and Size

When considering how to pick a sample, the researcher was mindful of the purpose of the research. A sample is a subclass of the population. It is a smaller collection of the study units that gets selected from the population. The sample gets studied in order to generalize findings to the entire population from which it was drawn (Saunders & Lewis, 2012). A sample is used due to the large sizes of populations and it is often not possible for researchers to examine every unit in the population due to time constraints and costs involved. It was essential that the sample be representative of the population in order for the results to be generalizable (Cargan, 2007).

Purposive sampling, also referred to as judgmental, selective or subjective method was used to select the study sample. The researcher selected plans of two random enterprises (listed and unlisted) for each year since the inception (2011 to 2015) of business rescue that have come

out of business rescue successfully as well as two enterprises (listed and unlisted) that had unsuccessful business rescue experiences. The measure of success in this study meant that business rescue was wholly successful or substantial implementation was achieved. Failure meant that the business rescue was ineffective and, as a result, the company had to be liquidated. At the time of obtaining business rescue plans, companies that survived business rescue were trading and those that did not were in liquidation or already liquidated. The total sample was made up of twenty plans. The researcher believed that the size of the sample was suitable when following a qualitative methodology and helped reach the study objectives (Saunders & Lewis, 2012).

Purposive sampling is one type of non-probability techniques as it relies on the judgement of the researcher when it comes to the overall number of units to be selected (Saunders & Lewis, 2012). The sample selected is usually small compared to studies that use probability sampling. This small sample size enabled the researcher to focus on specific characteristics that were of interest to the researcher to support research questions. In this sampling technique, it should be noted that the sample selected may not necessarily be representative of the entire population but that cannot be considered to be a weakness in a qualitative study (Cargan, 2007).

4.6 Data Gathering Process

Research cannot be carried out without data. Data gathering was essential for the researcher to draw objective and verifiable conclusions (Saunders & Lewis, 2012). When collecting data, the researcher needed to select a method that was to enable the collection of data needed for supporting research questions and also that the method was to deliver the data in a format that enables analysis. The data gathering process was determined by the research objectives, availability of and access to data as well as the cost of collecting such data (Pawar, 2004).

This researcher made use of secondary data already contained in the plans filed with the CIPC by the business rescue practitioners.

4.7 Measurement Instrument

The researcher made use of Atlas.ti qualitative software that has a dashboard that allowed the researcher to develop a performance analysis checklist, collect and report data as it emerges.

The data was grouped to form patterns, the patterns then grouped into categories, thereafter the categories were arranged into themes. Such themes (or their absence in other companies' plans) were evaluated further to establish if and how they added to business rescue outcomes (Biddix, 2009).

4.8 Analysis Approach

Miles, Heberman & Saldaña (2014) outline the fundamentals of data analysis as including coding, cleansing and revision of coded data, moving from codes to patterns, and then to jottings which usually help to strengthen the coding process by highlighting deep underlying issues and memoing.

The data collected through the analysis checklist was coded and categorized by similarities to form meaningful patterns and to look for answers in the data that answers the research questions. The terms used in data analysis were acquired from the literature review chapter (Saunders & Lewis, 2012).

4.9 Validity and Reliability of Findings

Triangulation of data entailed using a different method of data collection in order to ascertain its reliability and validity of the main data that has been analysed. In this study, external validity was sought from business rescue practitioners to ensure that the data collected from plans, the coding and classification was correct. This data was coded and classified. After establishing patterns and themes, then sufficient information was then available to develop and finalize the questionnaire. The questionnaire was used to interview BRPs.

In order to ensure validity between data from the plans and the one provided by the BRPs, the researcher did not tell the BRPs which questions were control questions and which ones were validity questions nor prompt to lead the answering of questions. The questions were open ended and as a result, the researcher received rich data as well as telltale information on the not so good side of the business rescue practice.

It is believed that the research findings and conclusion of this study can be generalizable to past business rescue proceedings. The validity of this belief was tested by interviewing two members

from companies that specializes in business rescue to triangulate the findings. This company was independent in the study since none of the rescue plans analysed were developed by their business rescue practitioners. The interviews were guided by a questionnaire with open ended questions (Annexure A). The questions were stated in line with the guidelines and principles of Chapter 6 as well as themes that emerged from the data collected from the rescue plans. The questionnaires were analysed in the same way as the data collected from plans. The Atlas.ti software was used to reduce the data into meaningful information to be able to compare findings from the data collected in the plans. The triangulation task was intended to test data for reliability so that it depicted the right state of affairs (Saunders & Lewis, 2012). To ensure that the findings were more reliable, the researcher double checked her understanding of the answers given by repeating what was said by the BRPs as guided by Leedy & Omrod (2013). This exercise also assisted the researcher to simultaneously validate data through her own peer review process so as to validate the coding and classifications already completed by the researcher (Rowley, 2012).

4.10 Limitations

The limitations of the study include the availability of academic literature given that business rescue is still a new experience in South Africa. Additional to that, the study only followed a qualitative method, whereas a quantitative method could also add value by statistically examining relations and validity of some variables that affect the outcome of business rescue proceedings. Archival research has its own drawbacks. The data contained in records that were studied was compiled for other purposes other than scientific research and could not have been entirely suitable to meet the objective of the research (McBurney & White, 2009). The data could have missed some essential details (Goodwin, 2010). Accordingly, archival research required that the researcher read everything in the hope of finding valuable information. The researcher needed to have an appreciation of what happened in the past. As indicated previously by McBunney & White (2009) about the purpose for which the data was initially collected, Kirsch & Rohan (2008) add that the researcher may end up collecting data that they first did not have the intention of using. Given that the researcher adopted an interpretivism viewpoint, it is highlighted that the interpretation of the results may be influenced by the researcher's background and experience (Creswell, 2014).

4.11 Conclusion

This chapter outlined the research blue print that the researcher followed to address the research objective. The research design covered the methodology, the population, sampling technique, data collection approach, data analysis and validating the research results. The table below summarizes the overall research design:

Table 2: The Overall Research Design

Philosophy	Interpretivism
Approach	Inductive
Strategy	Archival research
Method	Qualitative
Time horizon	Cross-sectional
Data	Secondary
Analysis	Themes

As this was an exploratory archival research, the methodology outlined above was deemed suitable to address the research problem and questions. The next chapter focuses on the presentation of research findings. This methodology is not far from that used by a devoted and South African business rescue experts, Pretorius and Rossly-Smith (2014) whose similar research's unit of analysis was business rescue literature. The next chapter focuses on the presentation of research findings.

Chapter 5

5. Research Results

5.1 Introduction

The aim of this chapter is describe data collected from the plans as part of conducting this research. The business rescue plans looked standardised and uniform by having three main parts and attachments of projected financial statements as outlined in Chapter 6. Given this uniformity and adherence to the standardisation, the researcher had to look critically for unique details in the plans could have been leading factors to the different outcomes of business rescue outcomes. A comparison was also made between companies listed on the Johannesburg Stock Exchange and those that were not.

5.2 Data Description

The sample used for this study was made up of twenty South African companies that had gone through business rescue proceedings. Of this twenty, ten of them had been liquidated and the other half has come out of business rescue successfully. Of the liquidated, five were companies listed on the Johannesburg Stock Exchange (JSE) and the other five were proprietary limited companies. The same categories and numbers apply to the sample for companies that had successful business rescue proceedings (see table below). The companies listed below are not referred to with their real names to protect their identity, their BRPs and affected parties.

Table 3: Indication of Data Sources

Year	Name of Company	Successful Outcome	Unsuccessful Outcome
2011	Company A Limited	Yes	
	Company B Proprietary Limited	Yes	
	Company C Limited		Yes
	Company D Proprietary Limited		Yes
2012	Company E Limited	Yes	
	Company F Proprietary Limited	Yes	

Year	Name of Company	Successful Outcome	Unsuccessful Outcome
	Company G Limited		Yes
	Company H Proprietary Limited		Yes
2013	Company I Limited	Yes	
	Company J Proprietary Limited	Yes	
	Company K Limited		Yes
	Company L Proprietary Limited		Yes
2014	Company M Limited	Yes	
	Company N Proprietary Limited	Yes	
	Company O Limited		Yes
	Company P Proprietary Limited		Yes
2015	Company Q Limited	Yes	
	Company R Proprietary Limited	Yes	
	Company S Limited		Yes
	Company T Proprietary Limited		Yes

The companies were randomly chosen from differently sectors with four companies selected in each year of exiting business rescue from 2011 to 2015. This has however not been in line with the initial sampling methodology which stated that the companies chosen for the study will be the first that came out of business rescue. This deviation was necessary to further protect the identity of the subjects. These companies also range in terms of longevity. In the sample, there are companies that are over thirty years old and some as young as two years when they were in business rescue.

5.3 Data Collected

Since this was an archival study, the researcher assessed plans of past business rescue proceedings in order to find support for the research questions. Triangulation of findings was achieved by data was collected through interviews. This was mainly to ensure that data collected from the plans was interpreted correctly.

5.3.1 Data Collected from Business Rescue Plans

Although the plans were uniform, there were different in content. This uniformity relates to compliance with principles and guidelines set out in Chapter 6 of the Act. Uniformity speaks to research question one. The data extracted from the plans has taken into consideration the research problem and research questions. Data from companies are discussed in the table below focusing only on the reasons why they were in rescue; what strategies they adopted in their plans; what assumptions and conditions needed to be upheld in order for their business rescues to be successful. The researcher believed that this focus was to enable an assessment into the leading indicators of business rescue outcomes. This was mainly because the strategies employed by BRPs were intended to address why the business was in rescue, help relieve the financial distress or get better returns for affected persons. The assumptions and conditions stated in the plans were to support strategies for the rescue of the businesses to be effective or were not strong enough to make the strategies effective. Some of the conditions and assumptions stated raised questions to the researcher as they seemed to be based on wishes. These challenges did not have any remedies given that the business rescue plans started with a disclaimer from the BRPs:

Table 4: Data Collected

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
A	<ul style="list-style-type: none"> • Joint venture partner applied for business rescue. • The global recession affected the business of the company and secured funding was withdrawn. • Claims were made against the assets of the company. • Failed to meet conditions of the 	<ul style="list-style-type: none"> • Relieve the major shareholder from the partnership. • Funding to be secured in favour of the minority shareholder and extended to the business to pay all its creditors. • The minority shareholder to receive all shares of 	<ul style="list-style-type: none"> • Extension of the moratorium. • All creditors proving their claims to the satisfaction of the BRP. • All creditors settled.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	partnership agreement.	the major shareholder.	
B	<ul style="list-style-type: none"> • No financial trading facilities. • Creditor repossessed part of the assets they financed. • Downturn in the market. 	<ul style="list-style-type: none"> • Preference shares converted to ordinary shares. • Retrench employees. • Secure PCF pay to pay salaries of remaining employees and other operating expenses. • Got a strategic equity investor through competitive bidding. • Non-refundable amounts were charged to bidders in order to obtain offer information. This boosted cashflows. 	<ul style="list-style-type: none"> • 50% votes from independent creditors. • Approval from the companies within the group. • Approval by the competition commission.
C	<ul style="list-style-type: none"> • Company in arrears and not able to pay creditors. 	<ul style="list-style-type: none"> • Increase prices of products. • Use company's access to funds and investors. • Obtain credit facility from suppliers. • Extend repayment period with creditors. • Convert 50% of owing 	<ul style="list-style-type: none"> • Consortium members need to approve. • Due diligence results to be in line with the proposed plan. • All regulatory authorities need to approve the plan.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		<p>amount to be interest free.</p> <ul style="list-style-type: none"> • Sale and realization of non-core assets. • All other restructuring mandates were cancelled. 	
D	<ul style="list-style-type: none"> • Placed under business rescue by the High Court. • Liabilities exceeded assets. • Unable to secure working capital. 	<ul style="list-style-type: none"> • Suppliers granted services and products on credit. This was regarded as PCF. • Subordination of intercompany loans. • Compromise with creditors. • Employees not to be affected. 	<ul style="list-style-type: none"> • Full adoption of the plan. • Creditors to approve the subordination of intercompany loans. • The practitioner's fees need to be paid in full.
E	<ul style="list-style-type: none"> • The board decided that the company was in financial distress. • Funding company could no longer provide funding. • The company was not financially independent. • The company had little assets in the form of debtors but huge amount of 	<ul style="list-style-type: none"> • Transfer employees to holding company. • Benefited from PCF extended to the holding company. • Only independent creditors to participate in the dividend. • Equipment and furniture to be sold to improve cashflow. • To enforce collection 	<ul style="list-style-type: none"> • Dependency of finding buyers for equipment and furniture. • No default on dividend. • Full support of creditors.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	<p>creditors. As a result was insolvent.</p> <ul style="list-style-type: none"> • Had been making losses. • Gone into business rescue to get better return for affected parties. 	<p>from debtors and proceeds be paid to creditors (to accept a compromise) as full and final settlements of amounts owed.</p> <ul style="list-style-type: none"> • The company to be deregistered after substantial implementation is archive. 	
F	<ul style="list-style-type: none"> • Economic downturn added to company's financial distress. • Too much stock at hand. • Cashflow challenges. • Slow sales and low volumes. • Aged debtors that could become bad debts. • Secured creditor sent a letter of demand. 	<ul style="list-style-type: none"> • Haircut to creditors balances. • Secure PCF. 	<ul style="list-style-type: none"> • 75% unanimous approval. • Working together with the BRP.
G	<ul style="list-style-type: none"> • Financial misuse led to distress. • Technical errors added pressure. • Labour unrests. • Lack of compliance 	<ul style="list-style-type: none"> • New shareholder from historically disadvantaged background. • Non-core asset sales. • New board members. 	<ul style="list-style-type: none"> • Management to abide fully by the rules set out by the BRP. • Full support from creditors required.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	<p>with statutory requirements.</p> <ul style="list-style-type: none"> • Tolerant oversight role by directors. • Shareholder disputes. 	<ul style="list-style-type: none"> • Guarantee to comply with statutory requirements. • Management restructuring. • Expand operations to benefit from volumes. • Secure funding from third parties. 	
H	<ul style="list-style-type: none"> • Aggressive growth led to distress. • Escalating expenses. • Low profit margins. • Management already had a turnaround plan. 	<ul style="list-style-type: none"> • Cession of debt book to creditors. • Unproductive assets to be optimized. • Moratorium to be placed on recruitment. • Suppliers to have new cash based accounts with the company while old debt being resolved. • Restructure shareholding and inject new capital to be used as working capital. 	<ul style="list-style-type: none"> • Suppliers' support crucial to success. • No dividends to be declared. • No remuneration increase for a year.
I	<ul style="list-style-type: none"> • Cashflow challenges. • Employees applied for business rescue. 	<ul style="list-style-type: none"> • Ring-fenced some money in order to pay a secured creditor. • Some non-core 	<ul style="list-style-type: none"> • Depended on all creditors' unconditional approval of plan.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		<p>unencumbered assets to be realized and cash used as working capital</p> <ul style="list-style-type: none"> • Full recovery of trade receivables to argument working capital. • Appointment of temporary chief executive officer to assist the BRP with implementation of the plan. • Creditors to accept a haircut and share free cash flow according to their credit ratios. • Employees to receive salary cuts for the period of business rescue. 	<ul style="list-style-type: none"> • Depended on cooperation of management. • Board of directors unconditionally approving the plan.
J	<ul style="list-style-type: none"> • Went into business rescue voluntarily following board resolution. • Became financially distressed from lack of scale, irreversible losses and failure to 	<ul style="list-style-type: none"> • Identified a strategic investor. • Restructured shareholding and offered creditors shares in new company. • Reached compromise 	<ul style="list-style-type: none"> • Assumption that company would have subscribers. • Assumption that subscribers would pay subscription fees. • Existing company to have a long term

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	<p>secure required working capital.</p> <ul style="list-style-type: none"> • Had a secured creditor. 	<p>with small creditors for a payment holiday.</p>	<p>business agreement with new company.</p> <ul style="list-style-type: none"> • Important that everyone work together.
K	<ul style="list-style-type: none"> • Creditor applied for business rescue. • Borrowed money to give loans to subsidiaries. • Had a big amount of irrecoverable debts. • Slump in the business industry increased the company exposure and had difficulty repaying loans. • The external environment not conducive for business. • Has a secured creditor who also granted PCF while the company was in business rescue. 	<ul style="list-style-type: none"> • Secured creditor took over collecting rentals due to the company. • Contracts cancelled by the BRP. 	<ul style="list-style-type: none"> • Worked on various dividend payout scenarios because of uncertainty. • Anticipated that all creditors would be paid in full. Difficult assumption to make as nothing was guaranteed. • PCF was to be paid in full. • Support of affected parties is necessary.
L	<ul style="list-style-type: none"> • The company nominated own BRP. • Company sales down due to economic 	<ul style="list-style-type: none"> • Delegated powers and functions to existing employees. • Restricted trade in 	<ul style="list-style-type: none"> • Need for creditors to adopt the plan stressed. • Finding buyers for

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	<p>downturn.</p> <ul style="list-style-type: none"> • The company expanding too rapidly with little supporting management processes. • Lost most of its management to competitors. 	<p>other provincial offices and put a halt on the Gauteng office.</p> <ul style="list-style-type: none"> • Negotiated haircuts on creditor balances. • Surrendered unencumbered assets to a major creditor to sell and accept proceeds as full and final settlement. • Selling immovable assets. • Shareholder loans subordinated. • Number of employees reduced due to closure of offices in other provinces. 	<p>immovable assets.</p>
M	<ul style="list-style-type: none"> • Issued redeemable shares and could not pay when they were due. • Loss of profitable contracts. • Company overdraft withdrawn leading to financial distress. 	<ul style="list-style-type: none"> • The BRP negotiated the release of money from call accounts. • Share restructuring. • Rent per square meter reduced. • Arranged an overdraft and secured it by cession of debtors 	<ul style="list-style-type: none"> • Assumed no deterioration in market conditions. • Current clients to continue supplying the company with business. • New clients to be secured.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
	<ul style="list-style-type: none"> • Preference shareholders refused to convert their shares to ordinary shares. 	<ul style="list-style-type: none"> • book. • Expenditure limited to essential services only. • Partial debt forgiveness. • Restructured remaining debt to be repaid over three years. • Interest and penalties to be written off. 	<ul style="list-style-type: none"> • Support of creditors necessary.
N	<ul style="list-style-type: none"> • Drop in demand. • Clients cut back on orders due to market conditions. • Labour unrests. • Request for tax reduction was denied. • Holding company stopped extending loans to affected company. 	<ul style="list-style-type: none"> • Secured supplier commitment. • Getting new customers and retaining existing ones. • Spending only on critical items. • Cut back number of employees. • Securing of PCF. • Selling of some assets to improve cashflow. • Extended publication deadline. • Retrenched some personnel to reduce 	<ul style="list-style-type: none"> • Depended on management executing delegated tasks. • Assumed that constant communication with creditors would ensure cooperation and avoid litigation. • Creditors encouraged to approve the business rescue plan.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		costs. <ul style="list-style-type: none"> • Cancelled rental leases. 	
O	<ul style="list-style-type: none"> • Forced to halt operations due to a force majeure. • Not able to continue with operations. 	<ul style="list-style-type: none"> • Paid salaries and wages to avoid litigation. • Proposed severance packages. • Suspended contracts. • Specialist personnel deployed to other companies. 	<ul style="list-style-type: none"> • Assumed that market conditions would prevail. • Operations to resume once safety confirmed. • Assumed PCF would be secured.
P	<ul style="list-style-type: none"> • Investigations revealed lack of competence and capacity since resignation of senior leadership. • Customer orders not fulfilled. • Statutory requirements not fulfilled. 	<ul style="list-style-type: none"> • Creditor to be paid in full if accepting a longer payment period. • Interest incurred on hire purchases to be spread over the term of debts. • Strengthen debtor collections effort. • Some fixed trade receivables to be ceded to SARS. • Immovable assets no longer needed to be sold. 	<ul style="list-style-type: none"> • The success depended on creditor amounts verified not exceeding the amount in the projections. • Dependence on finding a buyer for immovable assets at market price. • Securing PCF. • Voting in favour of the plan. • Freezing payment of shareholders' loans. • Executives accept salaries paid by the BRP.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
			<ul style="list-style-type: none"> • Appointment of a non-executive director to play a more robust oversight role.
Q	<ul style="list-style-type: none"> • Product diversification brought strain to business. • Decline in exports resulted in downward market turn and added pressure on turnover. • Declining turnover, year after year while experiencing high fixed costs. 	<ul style="list-style-type: none"> • Secured strategic equity partner. • Strategic equity partner a historically disadvantaged person. This helped company gain black economic empowerment status and ability to get the share of the business in the market and necessary credit funding in future. • Strong effort on improving sales by exploring new markets. • Secured credit facilities. • Relaxed overdraft previously frozen. • Improved working capital. • Strengthened 	<ul style="list-style-type: none"> • Assumed that trade trends from one of the divisions will be maintained. • Assumed that customers will continue to place orders and the company will be able to fulfill them. • Business rescue to be successful on condition that short term loan is secured. • All creditor need to approve the plan and work together.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		<p>operational management team.</p> <ul style="list-style-type: none"> • Contingent assets converted to cash. • Creditor payment holiday. 	
R	<ul style="list-style-type: none"> • Affected by the 2008-9 financial crunch. • Contracts \ deferred. • Input costs rose significantly. • New business strategy yielded low margins. • Consolidation of facilities to improve efficiencies due to increased price of inputs needed. Consolidation had technical challenges. • Slump in the market. 	<ul style="list-style-type: none"> • Shared facilities with competitor to reduce fixed costs resulting in low cost of production. • Applied forced marketing for other products not affected by the slump. • Reduced overheads. • Redundant equipment used for spares saving costs on maintenance. • Haircuts to creditor amounts with payment of haircuts equivalent to full discharge from debt. • Subordinated shareholder loans until assets exceeded liabilities. • Renegotiated lease 	<ul style="list-style-type: none"> • The business rescue only to be effective if funds were advanced to company to pay dividends and retrenchment packages. • This posed a danger on business rescue if the funder changed mind, funds took too long to be released or the funder defaulted. • Synergy among affected parties.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		<p>agreement.</p> <ul style="list-style-type: none"> • Returned all unused equipment for cash. • Already had a mutual separation agreement with other employees affected by the plant that to be closed. <p>Better than not receiving anything in liquidation.</p>	
S	<ul style="list-style-type: none"> • Cashflow problems. • Market slump. • Subsidised imports reduced demand. 	<ul style="list-style-type: none"> • Reduce costs. • Improve efficiencies. • Improve sales volumes. • Had effective support from management to carry out delegated tasks. • Prepaid orders instead of buying on credit. • Improved debt collection. • Secured PCF. • Sold excess stock at hand to improve cash reserves. • Creditor payment holiday. 	<ul style="list-style-type: none"> • Reduction of costs could be achieved if some employees were to be retrenched. • Assumptions based on curtailed operating model. • Assumptions made that the product price would increase by 10%. • Some assets to be realized. • Support the BRP's strategy.

Company	Background and Reason for Financial Distress (Part A)	Strategy (Part B)	Assumptions and Conditions (Part C)
		<ul style="list-style-type: none"> • Created a ring-fenced fund to support business rescue. • Negotiated lower tariffs and supply of production inputs. • Secured PCF. 	
T	<ul style="list-style-type: none"> • Cash flow problems. • Customers not invoiced due to technical disagreements. • Liabilities exceeded assets. • Suffered substantial losses. • Lacked management capacity resulting in errors and failure to maintain financial balance. • Industry environment not conducive for sales and business. 	<ul style="list-style-type: none"> • Cancelled contracts not beneficial. • Negotiated with customers to prefund services. • Cession of company debtors in favour of creditors. • Subordinated shareholder loans. • PCF withdrawn. • Proposed to sell majority part of business as a going concern. • Cancelled contracts because company not performing. • Terminated lease agreement. 	<ul style="list-style-type: none"> • Employees to be transferred to companies that bought parts of the business. • Affected parties approving the plan.

All assessed plans had complied fully with the principles and guidelines of Chapter 6 and all had Parts A, B and C. The table above indicates that the companies had different issues that led

them to financial distress. The solutions proposed by BRPs were different from company to company although some similarities were evident in some aspects. These solutions relate to research question two. In particular, the plans of listed companies were comprehensive and they had more net assets and liabilities than unlisted companies. Listed companies also had complicated and big structures. This relates to the research question three. Their shareholders were in most cases institutional investors and a large numbers of individual shareholders as opposed to unlisted companies. Listed companies had numerous proposals compared to unlisted companies. Most of the listed companies were able to sell some of their non-core businesses in order to pay dividends to creditors. Most of the shareholders in listed companies were not affected by business rescue and their loans were subordinated. The management of all companies were retained and tasks were delegated to them by the BRPs. The analysis of data from the plans indicated that all companies in the study, with the exception of one which entered business rescue following an application by a creditor, voluntarily entered business rescue by passing a board resolution. The summary above yielded common patterns that were further analysed to form themes in Section 5.5 below.

5.3.2 Data Collected from Interviews

The interviews conducted with the BRPs were invaluable as they were used to validate the researcher's interpretation of the data collected from plans. The interviews were guided by a questionnaire (Annexure A) and were asking straightforward open ended questions guided by the themes emerging from the plans. The answers to these questions gave confidence to the researcher that the interpretation of the data from the plans was in line with the reality of business rescue. The interviews also assisted the researcher to gather data that was not coming forth from the plans. This data was believed to be critical to meet the research objective.

The interviewees did not believe that there is a guaranteed outcome even from a good plan. They believed that the outcome depended on a number of things such as the external environment, good faith of the professionals in the practice and the assumptions and conditions stated in the plans holding up.

5.4 Coding of Data

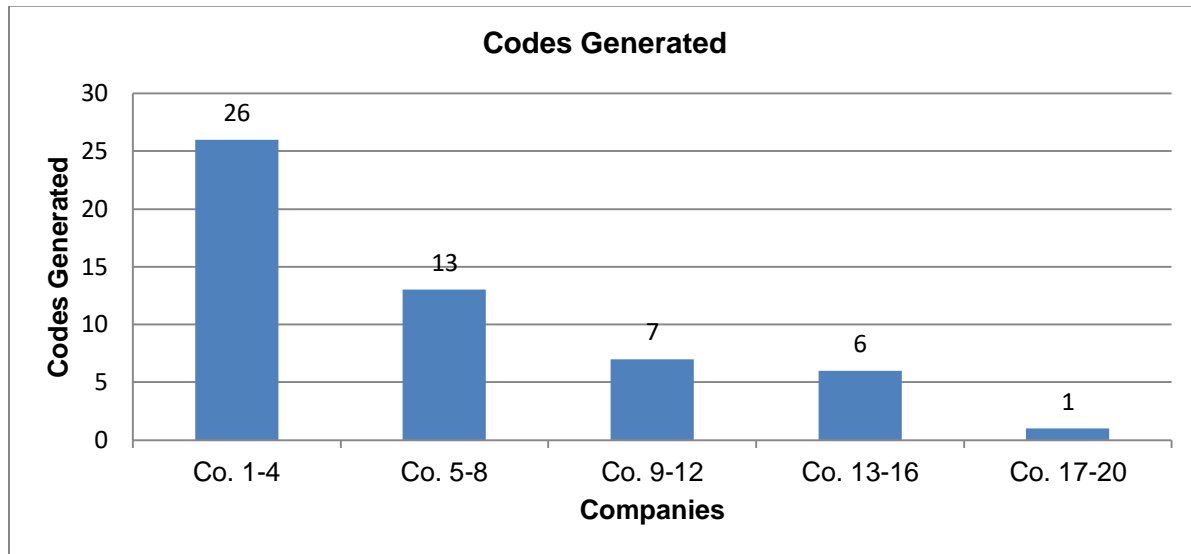
The data was analysed using Atlas.ti, a qualitative analysis software. The review of these plans was in no particular order as the researcher worked on them as they were received. The number of new codes that merged from the plans is listed in the table below:

Table 5: Number of New Codes per Plan

Year	Name of Company	Number of New Codes	Sequence of Coding
2011	Company A Limited	5	19
	Company B Proprietary Limited	2	16
	Company C Limited	9	13
	Company D Proprietary Limited	0	17
2012	Company E Limited	11	8
	Company F Proprietary Limited	0	18
	Company G Limited	0	20
	Company H Proprietary Limited	3	14
2013	Company I Limited	12	9
	Company J Proprietary Limited	57	1
	Company K Limited	22	2
	Company L Proprietary Limited	8	15
2014	Company M Limited	13	3
	Company N Proprietary Limited	9	11
	Company O Limited	3	10
	Company P Proprietary Limited	4	12
2015	Company Q Limited	11	4
	Company R Proprietary Limited	11	5
	Company S Limited	13	6
	Company T Proprietary Limited	16	7

The average of new codes gathered from the plans is depicted below. Coding saturation was reached on the seventeenth plan. The pattern to saturation is depicted in the graph below.

Figure 1: Average of New Codes Generated



The number of codes above comes collectively from all parts of the plans as all plans followed a uniform structure and were all compliant with the guidelines from Chapter 6. However, it is worth noting that the reasons why companies in rescue vary as well as their rescue strategies. The quotes stated above were merged into 15 families that indicated the patterns of data as listed below:

- Business rescue costs;
- Conditions for success;
- Difficult part of the plans;
- Effects on company effects;
- Effects on creditors;
- Effect on employees;
- Effects on shareholders;
- Effective support
- Effects on suppliers and customers;
- External environment;
- Importance of PCF;

- Obvious leading indicators;
- Reasons for financial distress;
- Strategies; and
- Who applied for rescue.

The codes were further grouped by company categories (listed vs unlisted) and business rescue outcome to assess any common codes that may be leading indicators of rescue outcomes.

5.5 Themes

The following themes emerged from the patterns summarized in families created from the code and the analysis of these themes will be discussed in Chapter 6:

- Theme 1: Common business rescue strategies;
- Theme 2: Challenging parts of a business rescue plan;
- Theme 3: Effective support required during business rescue;
- Theme 4: Adherence to principles and guidelines of Chapter 6;
- Theme 5: Obvious leading indicators to business rescue outcomes;
- Theme 6: Information given by listed companies vs unlisted companies.

These themes had to be verified for credibility and validity. Consequently, a questionnaire, with a total of ten questions was developed to further probe these themes. The other four questions were structured as control questions to ensure quality in the responses given by BRPs and focused on the following:

- Business rescue experience as a leading indicator;
- Approval and rejection of the business rescue plans;
- Additions to the guidelines state in Chapter 6;
- Factors that discourage approval of business rescue plans; and
- Time constraints.

These questions were motivated by the literature review. However, they were purposefully added in the questionnaire for the researcher to assess if the researcher was interrogating suitable participants and avoid contradicting own responses. This was achieved by adding two questions that dealt with the approval of plans. These questions were placed far apart from each other so that the BRPs could not tell that they were control questions. When the second questions on plan approvals was asked, and the answers were satisfactory, the researcher concluded that she had the required attention of the BRPs and they fully comprehended the questions. As a result, the rest of the answers to the research questions were accepted with confidence by the researcher. The data that came from the control questions was also analysed.

5.6 Theory

Data in the business rescue plans was in line with what the literature had already stated, primarily the Act. This was evident in the flow of the plans and their compliance to the principles and guidelines of Chapter 6. The rationales of the BRPs' strategies were also harmonized with literature. The BRPs started the business rescue plans by stating their background and stated a disclaimer that the strategies formulated as well the financials they projected were based on the information provided to them. This indicated that the reputation and liability risks stated in literature were authentic.

Most of the plans also stated that the management of the company would report to the BRPs who also controlled the bank accounts. The moratoria applied for by the BRPs proved to be a crucial time for the business to turn around as it was during this time that the strategies were to come into effect and yield results. This is the space that the literature highlighted as benefit to the company during business rescue.

The stakeholders are the focus of the business rescue plans and their strategies. The strategies aimed to satisfy the rights of the creditors, primarily secured ones. The secured creditors were to receive most of the proceeds realized from the strategies. Concurrent creditors were ranked lowest in the plan and most of them were to receive a few cents per rand amount owed to them. This seemed a bit unfair to these concurrent creditors as most of them were suppliers to the companies and without them there would not have been any business for the period the

companies were not in distress. The ranking of these creditors is stipulated by the Act yet they are expected to cooperate during business rescue.

Not all employees in the affected companies were to be retrenched with exception of one that had separation agreements with employees. This supported the macroeconomic objective business rescue is intended to contribute to. This also indicated that the BRPs think at a strategic level and always kept in mind the rationale for the existence of business rescue.

Overall, the observations stated above have indicated that business rescue is a specialized practice that requires skill and strategic alignment with government objectives. Hence the professionals who practice in this field have to be certified and ranked in terms of their experience in order to be able to deal with varying complexities at the right levels.

5.7 Conclusion

The data collected went through various stages of condensation as stated in the research methodology so that it can be reduced to meaningful information that the researcher could analyse. It was discussed from its broader code stage to a more narrow level of themes. This was necessary so that it could be assessed if this data revealed any leading indicators of business rescue from the business rescue plans. This condensation was necessary so that it could align with the anchoring theory, the research problem and questions.

Chapter 6

6. Discussion of Results

6.1 Introduction

This chapter discusses in detail the findings from Chapter 5. It analyses the themes that were derived from the data in relation with the literature in Chapter 2. The chapter also dwells on discussing the extent to which the research questions have been answered. The chapter concludes by identifying gaps between literature and findings. From the interviews conducted with business rescue practitioners to validate findings, rich data that enlightens business rescue practice was also accumulated.

6.2 Discussion of Findings

There are generally similarities in the plans because they all followed the principles and guidelines set out in Chapter 6. However, the reasons why the various companies are in business rescue differ as well as the strategies that were detailed in the plans. The findings are intended to answer the following research questions:

Research Question 1

Is compliance of business rescue plans with the principles and guidelines set out in Chapter 6 is critical for successful rescue actions?

Research Question 2

Do companies that come out of business rescue proceedings successfully have exceptionally unique rescue strategies and their business rescue plans provide more details over and above the guidelines provided for by the Chapter 6?

Research Question 3

Do listed companies have better plans that make them come out of business rescue successfully than unlisted companies?

The data collected was reduced into themes and these themes are elaborated further below and where appropriate are related to the research questions:

6.2.1 Business Rescue Experience as a Leading Indicator

Affected stakeholders rely on the honesty and sincerity of a BRP that the strategy set out in a plan is in good faith and is aimed to either return the company back to a solvency state or obtain BRiL for affected parties. This reliance on sincerity was highlighted by Finch (2005). The data further highlighted that there is a need to have a unified vision in order to have a successful business rescue outcome. This is in line with the practice of one BRP who mentioned that a good BRP would be patient and educate concurrent creditors about the business rescue process and the rationale for the proposed strategy. He would do this to get their buy-in in order to have no opposition when requesting approval from all affected parties. Also important was that when concurrent creditors are knowledgeable, they can engage in the proceedings in a meaningful way or informally propose other solutions for consideration by the BRP as stated by Companies Act, No.71 of 2008 (2009). As mentioned by Levenstein (2008), a working relationship that is based on warranted trust is ideal for positive business rescue outcome. Such trust is manifested in the balance of affairs that is shown in the plan.

BRPs are responsible to oversee rescue proceeding to the end. However, an experienced BRP would be able to tell when to file for substantial implementation. In this instance, according to the BRP's assessment, the business will be able to continue without the BRP holding the hand of management. This decision will relieve the company from unnecessary costs related to the BRP's remuneration. This substantial alternative has already been highlighted in literature (UNCITRAL, 2012)

The success of business rescue is not only dependent on a good plan, compliance to the principles and guidelines set out in Chapter 6 or the skills and competency of the BRP. There are other circumstances, including those external to the business that can compromise a well-planned rescue proceeding leading to failure. In many instances the problems of a company under rescue get exacerbated by stakeholders such as suppliers and buyers changing their minds. This could result in changes to the projections made in the plans. If there is a default on any payments to any affected party, the court would rule that as non-compliance and declare a

rescue proceeding in progress as a failure. As such, unknown and difficult to predict factors not accounted for in the development of the business rescue plan may emerge and affect the direction and outcome of a business rescue proceeding.

Developing a plan is said not to be a challenge. Implementing a rescue plan is said to be difficult. Even good plans can fail. As a result, most plans do not get implemented. So, even when a rescue plan looks good, the outcome of its rescue proceedings cannot be pre-empted. To add to that, the conditions of business rescue are said to be stringent and if any of the stated conditions are missed, everything else stated in the rescue plan becomes invalid and the rescue proceeding is declared a failure.

6.2.2 Challenging Parts of a Business Rescue Plan

The reasons for financial distress varied amongst the companies whose plans were reviewed. However, the strategies proposed to turn them around were similar in most instances. These ranged from proposed “haircuts” to creditor balances, alienating some assets, to giving shares to creditors in new companies. This finding does not support the research question 2 as there is nothing unique in the various strategies found in the assessed plans. The BRPs found the business rescue process exciting and challenging. Each case demanded unique solutions and as a result they had to come up with out of the ordinary solutions. Part C of the business rescue plans was found to be difficult to develop by most BRPs not only because they had to be developed without any assistance from management while solely being held accountable to it but also because it was the key focus for affected parties. The BRPs were interrogated and challenged on the assumptions stated in the plan demanding that these be backed up. Confidence in the plans was enhanced by backed-up assumptions which made the plans practical and attainable. This reflects back on the statements from UNCITRAL (2012) that to avoid conflict and gain confidence of affected parties, business rescue plans need to be reliable.

6.2.3 Approval and Rejection of Business Rescue Plans

The analysis of the business rescue plans indicated that approval of a rescue plan by affected parties mainly depended on the practicality of the rescue strategy as well as the perceived authenticity and sincerity of a BRP. Confidence in the BRP increased the chances of the rescue

plan approval by affected parties. Confidence in the BRP or approval of the plan did not necessarily lead to a successful rescue outcome.

Section 142 of the Act obliges management to supply the BRP with all the data that he may need in order to compile a rescue plan (Companies Act, No. 71 of 2008, 2009). However, given the pressure and some of the damning data, management may feel exposed and therefore present data that is cleansed especially if such data was not publicized before. This is one of the serious pitfalls of business rescue. Perceptions that documents had been sanitized to present old data as new resulted in the rejection of rescue plans despite sound strategies developed by the BRPs. Pretorius (2014) points out that the fact that data had been cleansed may not have been known to the BRP. In instances where the BRP doubted the data provided, plans were developed and implemented without publication. However, without credible data to develop plans, the odds of a successful rescue outcome were reduced.

6.2.4 Effective Support Required during Business Rescue

Business rescue plans are unique to each company even though their structure, based on the principles and guidelines set out in Chapter 6, is uniform. This brings continuous lessons to the business rescue practice. Business rescue proceedings are not short of surprises to the BRPs and a lot of things get unraveled during rescue as new issues surface. With all that getting into the mix, the BRP still has to make things work. These surprises were stated earlier in the literature review by Shaughnessy and Harrigan (2009). As new information comes to light, or unpleasant information surfaces, affected parties need to understand that this means necessary alterations will be required to the plan and be supportive of the suggestions made by the BRP.

In order to have a successful implementation, a good plan has to go hand-in-hand with good people. Given that anything can go wrong during the implementation of a plan, it is important that a rescue plan is matched with skilled people to help implement it and support the BRP. This need was made evident by Smith & Graves (2005) in the literature and the data from the plans and interviews.

While the BRP has to rely on the current management, the BRP should also verify inputs, including documentation from current management and also avoid being indebted to management. The findings from this research made it clear that the BRP had to work with

management. If the BRP found management to be incompetent or frustrating the implementation of the plan, the BRP had the power to remove them. Accordingly, the BRP needs to get himself necessary personnel, expertise and management support required during business rescue.

It was highlighted in the research findings that the downturn of the economy 2008-09 affected the success of many business rescue outcomes as many companies could no longer afford to trade. Most businesses became inward looking and cut of any business client that could be a potential liability to the business. In that way, most parties affected by business rescue were not supportive and guarding against sinking deeper into trouble or being dragged into rescue by business association and being lenient to a company that is not able to pay. This emphasizes what literature has highlighted already that business rescue takes place within an environment as highlighted by Ooghe & De Prijcker (2008) and that needs to be taken into consideration. If the environment is not supportive, then the outcome of business rescue may be desolate.

6.2.5 Adherence to Principles and Guidelines

All the analysed plans complied fully with the principles and guidelines stipulated in Chapter 6. The affected parties were not affected by the adherence or non-adherence of the plans to the principles and guidelines set out in Chapter 6 of the Act. In most cases, the BRPs had to educate concurrent creditors about how the plans were compiled. It was however highlighted that affected parties did not criticize the law but rather its application. This has been demonstrated by the fact that companies can still have turnarounds without Chapter 6 as had been the practice before the promulgation of Chapter 6 as a new framework. While the stipulations of Chapter 6 are effective, they seem to be effective because of the competence, sincerity and the style of the BRPs. Pretorius & Holtzhauzen (2013) also note that the expertise and experience of a BRP is crucial given that he steps in the shoes of management and becomes accountable for everything that goes on in the company during the rescue process. The adherence of plans to the principles and guidelines is important as legal challenges tend to be based on the degree of compliance to the principles and guidelines. As compliance is not an issue to affected parties, compliance is therefore not an indication of the direction to which business rescue will go. This is in contradiction with the research question 1. Research question 1 is therefore not addressed by this finding.

6.2.6 Obvious Leading Indicators to Business Rescue Outcomes

The cooperation of stakeholders was identified by some BRPs as one of the obvious leading indicators to the positive outcome of business rescue. Accordingly, if affected parties avoid litigating each other but rather participate in business rescue with support, then there is a high chance that the business rescue will succeed. According to some BRPs, a good strategy that is a joint effort also improves the chances of a successful business rescue. Therefore, a joint ownership of a plan and good synergy are required by a business in financial distress. Levenstein (2008) also pointed out that a relationship of trust and a common vision shared by the BRP and affected parties are essential for a successful rescue outcome.

From the interviews and the data collected, additionally to the point above, it was established that if the BRP or affected parties are able to access and secure PCF, then they will be improving the chances of companies having positive business rescue outcomes. The data has also shown that PCF comes in different formats. Apart from securing a lump sum of money to use for dividends and working capital, the BRPs can negotiate with suppliers to allow the company to buy supplies on credit while it is in business rescue. This is something that is negotiated and planned because the suppliers will become creditors should not fall prey of the company. This was highlighted by Conradie & Lamprecht (2015) that business rescue actions should not put any further strain on creditors. Rosslyn-Smith (2014) highlighted that a good plan is critical for attracting PCF.

6.2.7 Additions to the Guidelines Stated in Chapter 6

Unlike renowned international turnaround regimes, the guidelines in Chapter 6 are creditor friendly but tend to be too friendly to secured creditors. BRPs feel that secured creditors should only partake in business rescue in the same manner as in Chapter 11 of the USA in terms of voting because they are already secured. Their ability to vote is seen as a disadvantage because they can swing the vote in an unfavourable direction even for a good plan if they are not entirely happy with it. This is in line with what Pretorius (2014) highlighted in the literature. It was a general feeling that only those creditors that are not secured should be allowed to vote to approve or reject the plan. So, when the BRP looks for PCF, he would normally not approach banks but rather look for alternative funders. Such funders would be reluctant to put down PCF when they know that banks will interfere. This theme relates research question two however the

data from the business rescue plans did not yield anything unique and new that distinguished one rescue plan from another.

6.2.8 Factors that Discourage Approval of Business Rescue Plans

The findings from the data analysis indicated that most affected parties did not always believe that the issues that lead a business into financial distress will be fixed through business rescue and if so, will not recur in future. As such, they may find it difficult to vote in favour of a plan regardless of how good it is. The disclosure of off balance sheet assets of management as well as their interests infuriates affected parties as they believe that is where the company money has gone. Executives who own expensive cars and property are frowned upon and fingers get pointed at them for embezzling funds, over paying themselves or focusing on other income earning interests while the primary companies that employ them are neglected. From the research sample, there was such a case where financial distress was caused by misappropriation of funds. This is another indication of the agency problem highlighted by Weber (1994). Loan accounts are other items that are not well received. This information, gathered from a control question, indicates that business rescue outcome can be negative before proceedings reach a plan implementation phase.

6.2.9 Information Given by Listed companies vs Unlisted Companies

The quality of plans prepared for listed companies and unlisted companies usually differ in authenticity due to the data provided. From the assessment of plans, this was not obvious however; there were differences in the volume of the plan and annexures. The interviewees confirmed that listed companies provide better information as such information is already in the public domain and they are also used to complying with statutory and listing requirements. Unlisted companies, on the other hand, are not under such scrutiny and accordingly, there is usually little information for the BRP to work with. Even when such information is available, it may lack integrity. As confirmed through the interviews, listed companies end up having successful business rescue outcomes. This has been attributed to the ability of their plans to communicate coherently in a transparently manner as highlighted by Kow (2004) and Balgobin & Pandit (2001). The results of the analysis in this research has indicated that the volume and detail of information in the plans of listed companies is far greater than that provided by unlisted companies. This outcome supports research question three.

6.2.10 Time Constraints

Business rescue is conducted within strict timelines which require some performance from the BRP. Given that the BRP will rely on the current management for details, no person is entitled to keep and withhold any records or books of the company records (Companies Act, No. 71 of 2008, 2009). This provision in the Act ensures that the BRP has something to work with once the business gets in rescue and management is obliged to comply. Non-compliance is tantamount to contravention of the law and is punishable by law. However, literature has indicated that the business rescue practitioner comes into the company as an outsider and will not know much about the company and the data with which he has to work with (Pretorius, 2014). This effect reduces the chances of a successful business rescue outcome.

6.3 Triangulation of Findings

The interviews revealed that the business rescue industry is raveled by corruption in the form collusions where BRPs team up with liquidators and whoever that gets business would ensure that their counterpart gets a share or a referral to start business rescue or complete the dissolution of a company through liquidation. This revelation is not surprising as the literature has also revealed how effortful business rescue is and how liquidation is more profitable but lengthy (Loubser, 2010). The diminishing business opportunities that have befallen the liquidators have resulted in the playing ground being badly muddied. Some firms prefer to have some sort of specialization on both business rescue and liquidation. These are different fields of law altogether and one person cannot specialize in both. However, the firms would give companies options of taking either route. If business rescue was a first option, liquidation would be solution of last resort. In that case, a lot of plans get developed but implementation is rarely successful. As a result, affected companies would then have to be liquidated. Such firms earn money on business rescue while the company is still in operation and earn money again when they put the company into liquidation.

The collusion highlighted may be invisible and unbeknown to the business rescue custodians and as such may require further investigations and additional institutions to support the business rescue practice.

6.4 Conclusion

Business rescue is an intensive process that requires cooperation of all stakeholders. As a result, there is no quick fix in rescue proceedings from beginning to end. Seasoned BRPs know that a successful plan is one that balances the affairs of an affected business and expectations of stakeholders. By attaining this balance, it then becomes easy to get approval of affected stakeholders to implement the plan.

The findings have shown that plans are standard and mostly uniform. However, the proposal parts are unique for every company. The findings also showed that listed companies submit large volumes of data for the BRP to work with resulting in more detailed plans. As a result, research questions one, two and three answered and supported by the data collected and the findings were further confirmed by interviews conducted for validation.

The interviews indicated that business rescue as a new relief to businesses and creditor friendly approach is now competing with liquidation. The interviews indicated that more and more liquidators are finding themselves out of work as their potential business is now directed to business rescue practitioners. As a result, this caused chaos in the business rescue practice. Such commotion has an impact on the outcome of business rescue. They belittle the purpose of the principles and guidelines set out in Chapter 6. This means that these guidelines and principles are not predetermining factors of business rescue outcomes. This also relates to research question one in a sense that compliance with Chapter 6 is not key for a positive rescue outcome.

The analysis of this research is indistinguishable from findings by Prior (2014) as it indicates that the value of business rescue is being undermined. His reasons were however not as atrocious as this study points a finger to the business rescue professionals. Levenstein (2008) has also highlighted that companies have trust issues regarding BRPs. This indicates that the problem has long existed but has not been forthrightly communicated.

Chapter 7

7. Conclusion, Recommendations and Future Research

7.1 Introduction

This chapter summarises all the chapters of this research and concludes the study with recommendations and proposes focus areas for future research. In this chapter, the researcher reflects back on the research problem and theoretical framework followed, assesses whether the research objective has been reached or not, whether the methodology was suitable and was followed, and states to what extent the research findings support the research questions and states the general limitations of the study.

The objective of this study was to identify what makes strong and effective business rescue plans and what pitfalls needed to be avoided when developing such plans. The outcome of the study is aimed at assisting the CIPC, BRPs as well companies and parties that may be affected by business rescue in the future. The outcome can help them to know and circumvent the possible pitfalls in business rescue. Consequently, successful rescue actions will enable the country to work positively towards attaining its objectives of preserving and creating employment (South African Government, 2016).

The researcher set out to investigate answers to the following research questions with the aim of reaching the research objective:

Research Question 1

Is compliance of business rescue plans with the principles and guidelines set out in Chapter 6 is critical for successful rescue actions?

Research Question 2

Do companies that come out of business rescue proceedings successfully have exceptionally unique rescue strategies and their business rescue plans provide more details over and above the guidelines provided for by the Chapter 6?

Research Question 3

Do listed companies have better plans that make them come out of business rescue successfully than unlisted companies?

7.2 Conclusion

Given that the principles and guidelines set out in Chapter 6 have made significant improvement in assisting companies in distress, there is however room for improvement to address the low levels of success in rescuing business in financial distress. The study has provided insights into the pitfalls that need to be addressed in order for the business rescue regime to be effective and add positively to the macroeconomic objectives of the country.

The research has highlighted that the shortcomings that lead to negative business rescue outcomes are not entirely from the business rescue plans but mainly stem from the professionals in the practice. The regime has loopholes that are being abused by some BRPs and liquidators.

Literature review focused on the principles and guidelines of business rescue of the South African regime, the United Kingdom as well as the United States. These two other countries were chosen because their business turnaround systems are different yet influenced the development of South Africa's Chapter 6. The differences enabled the researcher to compare the principles used internationally and why the differences added to the gaps of success and created the loopholes that the South African business rescue is experiencing. The literature review focused on a wide range of law, business management, strategy and change management journal articles as well as the South African Companies Act. The literature revealed that business rescue is cumbersome compared to liquidation and the findings revealed that business rescue is taking business opportunities from liquidators. This has sparked corruption and collusion amongst the two practices at the detriment of companies in distress and hopeful stakeholders.

The business rescue plans were found to be uniform in structure but had different content on the three parts. There were dominating strategies outlined in the plans (outlined above). There was one holding company, however, that entered business rescue specifically to find a buyer for its subsidiary and resolve its financial distress. This was because it could secure better BRiL.

7.2.1 Research problem and theoretical framework

The outcome of the study did not indicate that the low success rate of business rescue is from the quality of business rescue plans. As a result, the research problem will remain until there are changes in the practice that will mitigate the pitfalls highlighted in the study.

The stakeholder theory that guided the study emphasized the agency problem that reside in management and BRPs. Stakeholder theory was the foundation that enabled the researcher to review to what extend the rights of the stakeholders are represented in business rescue plans of companies that came successfully out of business rescue and those that did not. It was ideal as the South African business rescue regime is creditor friendly and that made the stakeholder theory suitable. However, the rights of these creditors get violated by corrupt practices of some BRPs. The agency problem that was highlighted cannot be entirely eliminated as it exists at a pre business rescue phase and caused by executives and during business rescue caused by BRPs. As such, there needs to be some changes in the business rescue practice. Recommendations of how to transform the practice are made below.

7.2.2 Research objective

The objective of the study was to identify what makes strong and effective business rescue plans and what pitfalls need to be avoided when developing future business rescue plans. This objective was not fully attained as the archival research did not yield any substantial indicators. However, the assessment of business rescue plans yielded themes that were used in the questionnaire that guided the interviews with the BRPs. The aim of these interviews was to triangulate the findings from the assessment. These interviews did not only validate the findings, they yielded information that will never be found in the business rescue plans. It is from these interviews that substantial directive came on how to resolve the research problem.

7.2.3 Methodology used

The methodology used was valuable in gathering and analyzing data that is not only in the plans but also from the business rescue practice. The triangulation of data did not only confirm the findings from data collected but also offered rich information that would have otherwise not been

obtained. A mixture of qualitative and quantitative methodologies would have been more constructive in analyzing relations, patterns and trends of business rescue outcomes. The statistical analysis of data could also have been used to run predictive analytics and test scenarios that accommodate the recommendations below.

7.2.4 Findings and research questions

The data collected indicate that there is no way a plan can predict the outcome regardless of how strong and convincing it looks. The data has revealed that there are too many other factors that can work in favour or out of favour of a plan. Chapter 6 is only an improvement of the judicial management that has long been working. The data has revealed that plans are somewhat uniform but details are unique for each company. Most common strategies include proposing a haircut on amounts owed to creditors, bringing in strategic equity partners, and forming new companies where creditors are offered shares.

Quality of information and the lack thereof, as well as difficulties in forecasting was mentioned. BRPs recommended that the time allocated to the development of the plan be based on the size and complexity of the business, because it is not always sufficient. It was also shown that a lack of quality information and a lack of sufficient time in which to process that information is an impediment to the success of the regime. In conclusion, while the success rate of business rescue seems to be low (13.6% as at 30 June 2015 (the Commission, 2015)), the lack of a clear definition of success may cause the effectiveness of the regime to be underestimated.

Research question one was answered. Yes it is ideal for business rescue plans to comply with the principles and guidelines set out in Chapter 6 of the Companies Act, No. 71 of 2008. However this is not critical for having a positive business rescue outcome. This has been made evident by the fact that the BRPs have to educate the affected parties when compiling a plan. The banks also do not give much credit to compliance or non-compliance to Chapter 6 as they already know the company better than the BRP and his plan can be disregard whether it is good or not.

Research question two was answered. The answer is No. The strategies applied in business rescue are common but are tailored to address the challenges encountered by the various companies in distress. These strategies include but not limited to the following:

- Haircuts and compromises with creditors;
- Payment holidays;
- Realizing non-core assets;
- Setting up new companies and giving creditors shares in them;
- Finding equity partners and injecting their money back in the companies to pay dividends and operating costs;
- Increasing prices of products and services; and
- Capturing bigger market share.

Research question three was answered. Yes, the quality of the plan makes a difference. Listed companies provide more data for the BRP to work with because such data is readily available and has previously been published and made public.

7.2.5 Limitations of the study

The archival research seemed to be a submissive exercise and did not yield any new information different from the principles and guidelines of Chapter 6. However the triangulation of the data eliminated this challenge and provided information that affects the outcome of business rescue but not contained or evident in the plans. Conducting extensive interviews with a large number of interviewees would have yielded even more data that is beneficial for improving the business rescue practice.

Due to time constraints and limited scope of this study, a single research methodology was followed. It would have been more valuable to follow a mixed methodology and determine the strength of the relation between the principles and guidelines set out in Chapter 6 and the outcomes of business rescue.

7.3 Recommendations

This study was conducted with the objective of identifying what makes strong and effective plans and what pitfalls need to be avoided when developing plans. The outcome of this study is aimed to make recommendations that will assist the CIPC, BRPs and well as companies to know and circumvent the possible pitfalls in business rescue and be able to develop effective

rescue plans. What came strongly out of the study was that secured creditors' interests are protected and therefore, it is recommended that their voting privileges be reviewed and only unsecured creditors be allowed to vote in favour or out of favour of the plan. In this way, the South African business rescue regime will be fully creditor friendly. Alternatively, secured creditors should be the ones initiating and developing business rescue plans for the interest of all creditors and appoint BRPs to implement them because they usually draw up plans with very little knowledge.

It would be preferred if Chapter 6 favoured and focused more on concurrent creditors and employees in order to ensure a better balance and better outcome for all affected parties. This is viewed as better law and will add positively to positive business rescue outcomes.

Given that the business rescue industry is alleged to be riddled with corruption and collusion, it is further recommended that the business rescue practitioners take the rescue jobs at risk and only get paid if business rescue outcomes are successful or substantially implementation has been attained. This will enable them to take the work seriously, work hard for their remuneration and circumvent the inducement into corrupt activities. This will transform the business rescue practice and improve its overall outcomes and add positively to reaching the macroeconomic objective of saving companies and the jobs they created.

Even though there is a way of extending the time required to prepare a business rescue plan, there needs to be more time allocation for preparing plans in order for the BRPs to conduct thorough due diligence on the affected companies and develop plans that are more effective, defensible and convincing. This will eliminate the mockery experienced from secured creditors.

On the academic side, the literature did not dwell much on the rationale of the principles that are stated in Chapter 6. Rather there has been substantial research on the guidelines and why they are important. If BRPs and affected people know why some principles of business rescue prevail, perhaps they will uphold them and improve the outcomes of business rescue. It is therefore recommended that future research justify the existence of these principles.

While literature affirms that business rescue approach is a noteworthy improvement of the judicial management, there is definitely an opportunity for improvement. Such issues include the separation of liquidation and business rescue in business ownership, establishment of a

dedicated court to business rescue, taking away voting rights of secured creditors and allowing the creditors to develop and dictate the plan.

7.4 Future Research

There needs to be a feasibility study to determine the impact on the outcome of business rescue if the creditors were developing and dictating the strategies in the business rescue plans. This recommended research is made on the basis that banks are usually more financially knowledgeable than BRPs about the businesses entering business rescue, and can swing votes to any direction depending on their liking or disliking of the plans developed by BRPs. This is the practice in the UK and offers some flexibility as well (Fletcher, 2004).

This study was qualitative in nature. This was a limitation on its own as it did not explore statistical relations between the principles and guidelines set out in Chapter 6 and the outcomes of business rescue. A quantitative study with the same objective can be conducted in future.

Future qualitative studies should focus on interviewing business rescue practitioners about how to improve the business rescue practice in order to improve the business rescue outcomes.

The study was also limited to the outcome of business rescue proceedings in South Africa and did not examine in detail the purpose of the courts in business rescue. Future studies can be focused on the impact of establishing a dedicated court to serve the business industry.

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Annexure A

9 December 2016

Dear Sir/Madam

Request for your participation in research validity and reliability testing

My name is Mmule Lebeloane and I am a Master of Business Administration student at the Gordon Institute of Business Science.

I hereby invite you to kindly participate in my research project. My research is an archival study and focuses on the review of the plans of listed (JSE listed) and unlisted companies that have gone through rescue proceedings in the last five years. The review of these plans will be against the principles and guidelines stated in Chapter 6 of the Companies Act. My study is titled: **An Evaluation of Business Rescue Plans based on Business Rescue Principles and Guidelines to Determine Leading Indicators of Business Rescue Outcomes** and is aimed at making recommendations that will assist companies, BRPs and the Companies and Intellectual Property Commission to guide the development of future business rescue plans and improve the success rate of future business rescue outcomes.

Your participation will entail a short interview of no more than thirty minutes by myself to triangulate and validate my findings from the review of business rescue plans that I have recently completed. I attach hereto a short questionnaire that will guide our interview. Your responses will enhance the credibility, validity and usefulness of my findings to the end users of my report. Your personal and professional identity will be kept confidential. Please note that your participation is voluntary, that you can withdraw at any time and that there is no penalty for withdrawing.

Please note that there is no payment for participating in this exercise. However, as a token of my appreciation for your participation, I will share my final report with you after final marking by the University.

Please feel free to contact myself or my research supervisor should there be a need.

Thanking you in advance.

Sincerely

Ms. Mmule Lebeloane

Student #: 16390475

Email: 16390475@mygibs.co.za

Telephone: 073 5464 776

Research Supervisor: Mr. Chief Lediga

Email: chiefled123@gmail.com

Telephone: 082 389 7161

Guideline Research Questionnaire

Good day.

Thank you for agreeing to this interview. The topic for my study is **An Evaluation of Business Rescue Plans based on Business Rescue Principles and Guidelines to Determine Leading Indicators of Business Rescue Outcomes**. Just to restate, the aim of this interview is to triangulate and validate my findings from the archival research already conducted to enhance their credibility. Please note that there are no right or wrong answers to the questions I will ask you. Please give responses that are based on your daily experiences and perceptions of business rescue.

I would like to remind you that your participation is voluntary and you can withdraw from this interview at any time. May I continue?

1. Please tell me a little bit about your experience in writing business rescue plans.

2. Chapter 6 of the Companies Act No. 71 of 2008 requires that a business rescue plan be compiled in three parts – Part A: Background; Part B: Proposals; and Part C: Assumptions and Conditions. Which of the parts is most difficult to compile? Which part would you say is most critical for the outcome of rescue proceedings?

3. Assuming that you have had business rescue plans that were approved and those that were rejected by stakeholders, what would you say were contributing factors to those outcomes?

4. Assuming that you had business rescue proceedings that were successful and others that were not, what were the lessons learned in the different outcomes?

5. How sticky are stakeholders to adherence of the principles and guidelines stated in Chapter 6 of the Companies Act when reviewing business rescue plans?

6. What do you believe are obvious leading factors in the business rescue plans that contribute to the success of business rescue (e.g. the reason why the company is distressed, restructuring strategy, requirements for PCF)?

7. What would you wish to add to the guidelines stated in Chapter 6 of the Companies Act No. 71 of 2008 in order to have more comprehensive and effective business rescue plans in future?

8. Are there any disclosures that are prescribed by the principles and guidelines in Chapter 6 of the Companies Act No. 71 of 2008 that discourage the approval of business rescue plans?

9. Listed companies are used to complying with a lot of disclosure requirements; is it easier to help such companies develop effective business rescue plans than unlisted companies who may not always have information readily available?

10. Given that rescue plans are compiled within a very constraint timeframe with reliance on company executives/management to provide information, is this a practical practice to enable full compliance with the principles and guidelines stated in Chapter 6 of the Companies Act No. 71 of 2008 and the development of effective business rescue plans?

Thank you

Annexure B

Dear Virginia Lebeloane

Protocol Number: Temp2016-02434

Title: **An Analysis of Business Rescue Plans to Determine Leading Indicators of Business Rescue Outcomes**

Please be advised that your application for Ethical Clearance has been APPROVED.
You are therefore allowed to continue collecting your data.

We wish you everything of the best for the rest of the project.

Kind Regards,

Adele Bekker