Stakeholder dynamics moderation for distressed firms entering turnaround and business rescue: Who and what counts?

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JEL: D74, 23

ABSTRACT

Stakeholder salience, conflict and prioritisation are important for directing decision-making. Entering a turnaround situation or business rescue (following distress) affects who and what may be important to decision-makers. During such distress, the stakeholders' composition changes which may alter power, legitimacy and urgency relations for other stakeholders. The consequences thereof are unclear, especially as the associated uncertainty of the outcome increases. Going concerns support stakeholder theory as balanced situations but salience and prioritisation may be adversely affected by the moderating context when the decision-makers change on entering turnaround situations or filing for business rescue following distress. Hence, making sense of how the stakeholder dynamics change during distress is vitally important to stakeholders as this may moderate decision-making of the various parties and even underwrite conflict. Such decisions may affect the success of attempted reorganization interventions. By presenting comparative narratives for each stakeholder, this study explores, using analytic auto ethnography as method, the changing stakeholder views following distress and concluding with a stakeholder salience framework.

Keywords

Turnaround, business rescue, Zone of insolvency, reasonable prospect, distress concern, going concern.

Introduction

A Chinese proverb states that "A dragon stranded in shallow water furnishes amusement to the shrimps". Businesses in distress represent the shallow waters in the proverb where the dragons may include some key stakeholders with decision-making powers originating from the going concern context, but who are now faced with the distress that affects their salience. Even more so, the shallow water of distress brings about additional dragons or powerful shrimps or even reduce some dragons to shrimps in the case where formal business rescue under Chapter 6 in South Africa is pursued. The interest of this paper is therefore to better understand the antecedents of decision-making, moderation of stakeholder benefit, salience, influence and prioritisation when firm status change from going concern to distressed and followed by either informal turnaround or formal business rescue as response. Distress in this paper suggests operating in the zone of insolvency (ZoI). When firms cross the boundary between going concern and distress, it is said to have entered the ZoI.

Stakeholder theory exists to describe the business participant relationships in the scholarly management literature (Mitchell, Agle & Wood, 1997:853), whose salience model has become central to the theory but not without several criticisms. Weitzner and Deutsch (2015) have enhanced the model, addressing some of its shortcomings and adding stakeholder prioritisation to salience as the phenomenon of investigation. Bundy, Vogel & Zachary (2017:476) refer to organisation-stakeholder fit. Stakeholder theory is useful to responsive managements of going concerns, addressing opportunities and threats originating from the various stakeholder bodies. Generally it is management that are the key decision-makers but considering the stakeholder contributions to decision making is receiving more prominence for researchers.

During adverse environmental jolts (Meyer, 1982), the operating conditions may change, resulting in a context where the firm moves into distress and this potentially brings about a change in stakeholder relationships as far as decision-making and prioritisation are concerned. Who the [new] decision-makers are, their relative powers (bestowed and other forms), their perceived level of legitimacy and potential prioritisation may vary according to the strategies pursued, either informal turnaround or formal business rescue. Finally, the outcomes of such situations may disturb balance and have varying repercussions for some stakeholders. The need identified in this paper is for a better understanding of the antecedent variables and associated stakeholder decision-making complexities. This is especially true for the newly instituted business rescue conditions under Chapter 6 of the Companies Act 71 of 2008 as amended (hereafter the Act).

Knowing the stakeholder salience and prioritisation may be particularly useful to key decision-makers such as the Regulator courts, investors (PCF providers), practitioners, managers and creditors. This may benefit the industry as a whole because stakeholders are still being evaluated and judged for utility by society. Presenting the comparative narratives (going concern vs distressed concern) for individual stakeholders, may add to an improved understanding of antecedents informing salience.

I proceed by contextualising the environment using going concern versus distress situations as context. Within the distress environment, I focus on two responses, namely the informal turnaround option and the formal business rescue environment with the aim of comparing the ensuing effects on the stakeholders. Secondly, I briefly restate the theories of stakeholder, firm, resource dependence and decision-making as the basis for the research. Thereafter, each stakeholder is designated stating their underlying thinking, concerns, interests, salience, influence and prioritisations and how these would typically respond to the contexts of going concern versus distressed concern. Finally, I propose the relevance for the industry at a practical level in a framework that considers the boundary conditions imposed by Chapter 6 legislation.

Research Questions
The research questions that guide this research are thus:

Firstly, who are the new stakeholders when a business experiences distress resulting from entering the Zone of Insolvency (ZoI) and must choose to pursue informal turnaround or file for business rescue under Chapter 6? Secondly, who/what determines stakeholder salience and prioritisation for decision-making in distress and from which vantage point? Thirdly, how is decision-making moderated by the distress context? Finally, what consequences does this moderation effect have for the industry?

Contextual background as determinant of decision-making

Lewis (2017:115) states that by changing the context in which two things are compared, certain features are submerged and others are forced to the surface. Contextual situatedness (Becker-Ritterspach & Dörrenbächer, 2011:542), is a relevant contributor as it may influence levels of power, uncertainty and position. For this study, the interest is mainly the distressed concern context which is juxtaposed against the going concern context as the standard environment in which businesses operate. Going concern in this text purely rests on the principle that the entity is judged to remain in business for the foreseeable future assuming a solvent basis with disclosed uncertainties, if any.

Going concern context

When going concerns operate on a solvent basis there appears balance, which has been achieved between the concerns and interests of various stakeholders. It is, however, possible that going concerns may not know that they entered the ZoI. Stakeholders participate based on such interests and perceived benefits from "their" resources that may be involved. Risks are reasonably clear and accounted for or accepted by various stakeholders. Management is the main decision-maker who considers prioritisation of stakeholder concerns, interests and issues based on their individually perceived salience. Such interests from stakeholders may include economic, legal, ethical and discretionary concern. Management is guided by their own moral, relational or instrumental motives (Jahavar & McLaughlin, 2001:399), seeking alignment with their perceived organisational goals. These authors also present stakeholder management strategies, which include proaction, accommodation, defense and reaction (p400). Agency theory (Eisenhardt, 1989) is also at play depending on the specific circumstances that exist in the concern.

Distress concern context

Going concerns, despite operating on a solvent basis, may slide unexpectedly into the twilight zone and enter the ZoI. The ZoI, originating from law literature, is defined as: an imprecise construct (Barondes, Fairfax, Hamermesh, & Lawless, (2007). The ZoI has previously been explained as 'a blind person looking for a black cat in a dark room that is not there'. Perhaps, the inability to define the ZoI clearly is its main characteristic. Operating in the ZoI is therefore associated with uncertain information conditions and suggests that little real clarity exists about the exact characteristics and measurements thereof. Much of the decision-making may then depend on irrational behaviour associated with different biases originating from the decision-maker's vantage point. As a result of finite resources in distress, the outcome is often viewed as a zero-sum game where "claim" holders benefit at the expense of some other stakeholder, given the absence of resource slack.

Various classifying variables are used in the literature to designate distress contexts (Cameron & Zammuto, 1983), preconditions (Cameron, Whetton & Kim, 1987), turnaround matrixes (Boyle & Desai, 1991), decline stages (Weitzel & Jonsson, 1991), turnaround stage models (Robbins & Pierce, 1992), turnaround situations (Pretorius, 2008), crisis categorisation (Santana, Valle & Galan,

2017) or positions (McCann, 2009). These are used to describe the contexts for the distressed concern by proposing generic conditions and thereafter addressing the selection of appropriate strategies. This study focuses on the point in time before the value of such models become useful.

While many contributing factors (Schweizer & Nienhaus, 2017) to the complexity of operating in distress have been individually reported in the various bodies of knowledge, the two main responses to address its consequences are strategies for informal turnaround or filing for formal business rescue. Potentially, several factors that may affect stakeholders should be considered. These include: Who takes the decisions? What happens to the current decision-makers? If there is a change, what alternative thinking and motives might the new decision-makers have? Finally, what are the consequences of stakeholder changes? In distress environments, turnaround professionals (TPs) and business rescue practitioners (BRPs) are required to make decisions every time they accept a turnaround and thereafter almost daily (McCann, 2009), when they come face-to-face with the stakeholders in distress. Operating in distress suggests ambiguous, unclear and uncertain conditions. Laplume, Sonpar and Litz, (2008:1161) suggest that extremely negative and highly conflicting relations may develop in practice. While research is scant for distress contexts, Pretorius (2015) did report adverse relations during rescue for the South African industry.

One strategy for addressing distress is pursuing turnaround (often interchangeably used with reorganisation or commercial restructuring based on the US Chapter 11 bankruptcy law (James, 2016)) (Edwards, 2016:30). Being an informal process, management acquires a consultant (a TP) to advise while remaining the main decision-makers. Several practices may be included in a turnaround plan that may be condoned by a legal system, depending on the supportive jurisdiction. In South Africa, turnarounds are informal processes that are not court dependent, unlike in the United States but may be subject to creditor approval. Depending on the practices pursued (sales, mergers, reorganisation, refinancing), new stakeholders may enter the frame (investors, buyers, partners). Typically, turnaround as a regime is perceived as a debtor-friendly process and management remains the key decision-maker that prioritises the stakeholder concerns.

Business rescue, however, is a formal legally governed process under the 2008 Companies Act. Directors (S 120(1)(b)) may file for rescue through a formal process when they suspect financial distress (S 128(1)(f)), partially comparable to voluntary administration in Australia (Edwards, 2016:31). Key to this process is the appointment of an independent business rescue practitioner (BRP) who is bestowed (Section 140(1)) all decision-making powers during the investigation phase and preparation of the plan at the expense of the directors who, in practice, lose all powers of decision-making (Pretorius, 2016:480). The rescue plan, however, is subject to creditor support by a vote of 75% at the second or relevant creditors' meeting. While affected persons (stakeholders) have judicial recourse (S 130(1)(a)(i)) to BRP decisions and competency (Section 138), the decision-making powers of the BRP have far-reaching consequences (Conradie & Lamprecht, 2015) for affected parties and is often the source of extensive complaints and blame in the industry (Pretorius, 2015). The second stakeholder that enters the stakeholder network when filing for business rescue is the Regulator with certain mandates (regulation), powers (licensing) and concerns (Section 7 on social benefit rationale). Potentially, a third new stakeholder group entering may be post-commencement financiers or buyers of the concern or its business. Contrary to the intention of the legislator and public belief, business rescue appears to be a creditor-friendly process, suggesting an enhanced salience to creditors and the BRP.

The main factor to be considered is that during distress, depending on the strategy pursued, decision-making seems to depart from management as debtor in possession (DIP) when they file for business rescue. This suggests an interruption of the apparent stakeholder balance of interests and resource benefits associated with a going concern. I proceed by briefly restating the basic principles of stakeholder theory and co-creation effects (Kazadi, Lievens & Mahr, 2016) relevant for this study, summarising salience and prioritisation of stakeholders for application in the narratives of stakeholders that follow.

Theories of the stakeholder, the firm, resource dependence and decision making

Early definitions (Freeman 1984:25) broadly proposed stakeholders as individuals or groups that can affect or are affected by the achievement of organisations' objectives. The theory of the firm suggests that stakeholders benefit from the resource relations (Parmar, Freeman, Harrison, Wicks, Purnell & de Colle., 2010:420, Ho, 2008, Govender & Abratt, 2016, Loi, 2016) and, therefore, they participate. Yet, there is no consensus as to what the concept means (Miles, 2012:285). This research does not argue the relevance of stakeholder theory but pursues the application of its primary tenet of resource distribution. Underlying the theory is the idea that stakeholders participate (or not) to benefit in some or other way from being relationally associated with the other stakeholders (Decker, 2016). Parmar et al. (2010:407) suggest that stakeholder theory is primarily concerned with the distribution of financial outputs and, therefore, the question of who gets what. The concept of distribution is especially relevant to the context of distress where turnaround and rescue may be interim phases of the concern operation in the ZoI and potentially in the direction of insolvency and liquidation.

Resource dependence theory (Jahavar & McLaughlin, 2001:397) is relevant to explain the relative importance of stakeholder groups to an organisation. This includes the organisation in distress as it may favour certain stakeholders, depending on the extent to which they are dependent on those stakeholders for resources. Resource dependence theory emphasises the importance of a particular resource to the organisation (and other stakeholders) suggesting that decision-makers do not have unbridled choice at their disposal for resource allocation. Thornhill and Amit (2003:497), suggest that resources include not only assets, but also capabilities.

The absence of resource slack for reorganisation of distressed concerns is well known (Francis & Desai, 2005:1204). One of the basic tenets of resource dependency theory is that decision-makers will be concerned with, pay more attention to, and deal with prioritisation of critical resources to ensure continued survival. The resource dependency contributes to stakeholder salience (power, legitimacy and urgency) and therefore the prioritisation by the decision-maker. Resource scarcity is instrumental to distressed concerns (Schmitt, Barker, Raisch, & Whetten, 2015). Trahms, Ndofor and Sirmon (2013) recognize the importance and complexity of resource-based actions in response to turnaround situations. Barker and Mone (1998:1233), frame it as a superior or inferior resource argument that exists in the turnaround situation.

Salience is the degree to which managers prioritise competing stakeholder claims based on attributes such as power, legitimacy and urgency of the claim (Agle, Mitchell & Sonnenfeld, 1999). Parent and Deephouse (2007:3) suggest that the more of these attributes a stakeholder possesses, the more salient and therefore important to prioritise for the decision-maker they become. Such attributes are associated with the resource ownership or social influence. Power shifts are of specific interest and relevance to this study for its association with who the decision-makers are in the moderated environment. Considering the perspective on salience, therefore, may influence the choices and strategies that a decision-maker may pursue (Davila & Molina, 2015:5). What is also important is that salience is not necessarily measurable and therefore subject to observer bias.

Weitzner and Deutsch (2015:1338) emphasise prioritisation over salience of stakeholders. Prioritisation refers to the attitude by which a stakeholder's claim will be prioritised by the decision makers given the resulting interactions between members. Prioritisation also considers how claims of certain stakeholders are prioritised over other competing claims. The ranking of financial claims is not new to the insolvency and business rescue regimes where it is based on legislative prescription (S 145 (5)). They also point out that some stakeholders are powerless or illegitimate (p1339), which may lead to low priority when considered in decision-making.

Parent and Deephouse (2007:1) report that that a manager's hierarchical level and role have direct and moderating effects on stakeholder identification and perceived salience, while power (associated with the position) has the most important effect. Motivation and attitudes (Weitzner & Deutsch, 2015:1343) of decision-makers, therefore, may be significantly different from those of the other relevant stakeholders. Pretorius (2014) identified decision-making as one of the main competency requirements of entering rescue practitioners.

Entering distress moderates decisions-making powers by altering the network position based power, as well as the direct resource dependency based power of stakeholders (Pajunen, 2006). His influence model fits the interest of this research well (see Figure 1).

By taking a cross-sectional view at the point within the ZoI where a firm is typically required to act on the distress, I attempt to describe how the stakeholder salience, prioritisation and potential conflict are shaped by the distress and ensuing strategies to address reorganisation. I aim to explore a better understanding of how decision-making (thinking, concerns, interests, salience, influence and prioritisations) is moderated by comparing the two contexts and their associated happenings.

Moderation effects

The term ”moderators” refers to the presence of variables or moderating conditions that alter the relationships between elements when they are present or introduced. Moderating effects attempt to describe the variation in outcomes (directional deviations) of the elements as a result of the presence of the moderator. Such effects (Engelbrecht & Thomas, 2017:72) on the elements include a variation in importance, relevance and manifestation under the introduced condition. Such variations may bring about alternative consequences for decision-makers.

Classic stakeholder theory exists in businesses described as going concerns. When such a business enters the ZoI, the associated distress, which is the moderator/moderating condition in this study, requires investigation. Once the choice for informal turnaround or filing for rescue under the Act is made, the presence of the moderating conditions alters the relationships between variables (the elements of the classic stakeholder dynamics). Moderating effects can be observed in how the elements respond to the presence of the moderator. In this instance, the focus is on salience, prioritisation, influence and conflict by considering the reference points, powers and view changes for different stakeholders with varying expectations (Zavyalova, Pfarrer, Reger & Hubbard, 2016:253) and aspiration (Sen & Ongsakul, 2018). Contrasting the going concern context with that of the distressed concern context provides for making improved sense of the moderation.

Research Methodology and context

Context of the research

The project opened with action research, as it addresses a practical problem originating from conflict within the industry. As I wanted to apply theory to make sense of the moderating effects, I used my own turnaround experience and previous research to propose a conceptual framework for the moderation effects. I wanted to make sense of moderating effects (Berniker & McNabb, 2011) and potentially present a framework that may lead to guidelines for stakeholders. Table 1 presents the condensed thinking underlying the research.

Table 1: Research design of this study

Component	Description
Research problem	Stakeholder dynamics (salience and prioritization) and therefore influence, change when firms move from being a going concern into distress, characterized by turnaround situations or when undergoing business rescue. Conflict seems inevitable. This associated uncertainty is driven by interests and context factors of which the interrelations are not necessarily clear to stakeholders. "Who" and 'what" count are subject to the dynamic context associated with BR. Complicating the situation in formal BR is the addition of the BRP decision-making powers to the stakeholder equation.
Research aim	Seeking enhanced understanding (sense making) of the pragmatic dynamics of stakeholder salience and prioritisation as a result of entering distress associated with the ZoI.
Research questions	1 Who are the new stakeholders (if there is a change) when a business experiences distress resulting from entering the ZoI and must choose to pursue informal turnaround or file for business rescue under Chapter 6? (thus: How is stakeholder composition moderated?) 2 Who/what determines stakeholder salience and prioritisation for decision-making in distress and from which vantage point? 3 How is decision-making moderated by the distress context? 4 What consequences does this moderation effect have for the industry?
Context	Informal turnaround situations and formal business rescue legislation effective since May 2011
Phenomena investigated	Stakeholder dynamics, specifically: 1) Salience: as described by power, legitimacy and urgency relationships as reported by Mitchell et al. (1997), 2) Prioritisation: (Weitzner & Deutsch, 2015), 3) Decision-making and error; (Kahneman, 2011), 4) Vantage/Reference point and underlying interests (Taleb, 2010), 5) Expectations: Gain vs loss, 6) Likely actions and responses, 7) Influence (Pajunen, 2006)
Unit of observation	Existing and new stakeholders (who) of a firm during turnaround and business rescue compared to a going concern
Method	Firstly, relevant key stakeholders of a going concern as purported by the literature are identified. Secondly, their underlying vantage point, salience and priority are described and, thirdly, compared to what is brought about by the 1) turnaround situation and 2) BR process in response to distress. Fourthly, the consequences for decision-making, salience and interests of the changes are expounded. A framework is presented and proposed to experts to confirm its validity.
Logic linking the data to the propositions	Stakeholder salience appears to be governed by the principle of who and what counts. Who the decision-makers are, therefore, govern which stakeholders will be prioritized. Decision-maker attitudes and motivation should be considered when likely actions are to be understood.
Criteria for interpreting the findings	Insights and understanding of the researcher proposed in a framework. Validation Boundary condition for the theory Practical applicability of the proposed framework to test applicability of the process and frameworks.

Based on Yin (2003)

I chose a multiple-source setting because it accumulates extreme contributions from various contexts and examining these extremes may be helpful, because reasons for differences often become clear only under extreme conditions (McClelland, 1998). The unique qualities of distressed concerns make it ideal for direct theory building (Yin, 2003), because the dynamics being examined tend to be more distinctive than they might be in other contexts (Pratt, Rockmann & Kaufman, 2006).

Researcher qualities

As in analytic auto-ethnography, the researcher plays a dominant role. Similarly, in attempting to answer the research questions, I was aware of my own methodological values, beliefs and philosophical assumptions. These assumptions influenced how the research was conducted and are stated in order to understand the intellectual climate in which the research was conducted. The epistemology (theory of knowledge) of a researcher describes how one can discover underlying principles about social phenomena and how one can demonstrate knowledge. From my personal experience as a "skeptic empiricist" (Taleb, 2010:82), the research process emerged naturally. Being the skeptic assures challenging conventional thinking, assumptions, perceptions, reasoning, accepted principles and rules. I do this deliberately for enhanced research rigor. The end result of such a process is often a framework that depicts the key issues for decision-making that may integrate the context and the problem addressed. I therefore applied the same reasoning to understand and interpret the moderating effects when I identified them.

At the same time, being an empiricist, I have a preference for factual directives. To mitigate my biases and subjectivity, an interpretivist philosophy was applied to capture the issues, perceptions and experiences after systematic reflection on each of the illustrative stakeholder cases to describe the moderating effects resulting from the distress as moderator (See Tables 2-5). My interest was mainly to enhance practice sense making to guide those who depend on my opinion as a researcher in business rescue.

Data collection procedures

I supervise many postgraduate researches in business rescue covering interviews with BRPs, banks, directors who have filed in the past, academics working in rescue, staff of the Regulator, lawyers and accountants working in the field. I often participate in public workshops on the topic. Like Dyson (2007), I always seek new understandings rather than only the truth.

I pursue the research, drawing on the principles of analytic auto-ethnography (AAE) (Fine, Morrilli & Surianarain, 2009) and depend on the processes of Anderson's (2006) five key features of such research namely: 1) Complete "member researcher" status of the author; 2) AAE is characterised by analytic reflexivity; 3) it is acknowledged that AAE takes into consideration that the researcher's own feelings and experiences would be incorporated in the text and are considered important data for understanding the social phenomenon under review; 4) AAE is based on dialogue with informants beyond the self in order to guard against self-absorption? 5) AAE calls for a commitment to an analytic agenda. I closely follow the process described by Venter and de Villiers (2013).

Findings

In this section, the illustrative narrative analysis for each stakeholder is presented for two contexts, namely that of a firm operating under going concern conditions and thereafter that of the distressed firm conditions. The aim is to make sense of what contributors (objective and subjective), changes and effects take place when the distress enters the fray. I proceed by exploring who the stakeholders are, where decision-maker power lies and the thinking associated with the specific stakeholder, one at a time.

Who are the stakeholders and who make the decisions?

The various stakeholder groups for a going concern typically includes: directors, management, shareholders, owners, employees as internal parties and customers, creditors (secured and unsecured) suppliers, contractors, and society at large as external parties. It is important to note that directors, management, ownership and shareholding often occur in various overlapping combinations, especially in small businesses and where adherence to proper corporate governance may be lacking. Parties such as revenue services, municipal tax authorities, landlords and regulators may also be included. Suffice it to state at this point that the salience of each stakeholder varies and is expected to change when entering the ZoI. Key decisions are taken by the managers (as directors), therefore they are the ones who consider the salience of the relevant stakeholder groups. Other stakeholders, therefore, need to exert power on management to consider their resource distribution needs.

In the distressed concern, additional stakeholders may include a TP or BRP, potential buyers (acquirers), post-commencement financiers (additional creditors), the regulator and the court. Two scenarios are possible for who the decision-makers are. Firstly, for informal turnarounds the TP typically acts as an advisor to the management as debtor-in-possession (DIP), which suggests that the decision-making remains with management subject to court ratification of the plan. In Chapter 11 cases, the TP acts as a trustee for the court and in severe cases it is possible for the court to remove management. Secondly, for formal Chapter 6 filings, a BRP is appointed and granted all decision-making powers until such time as the plan is presented to the creditors for a vote. Pretorius (2016) reported the plight of the filing directors when they lose all powers.

Illustrative narratives for the key stakeholders

Four of the focal stakeholders (directors, secured creditors, unsecured creditors and the BRP) are explored in detailed tabular format, while some of the lesser stakeholders (new PCF providers, employees, revenue services, the regulator and society) are discussed together, pointing out the critical issues related to each.

The filing director (manager/owner/shareholder) as agent

Table 2 Expose of the stakeholder issues of relevance for the filing director

	Going concern	Distressed concern	
		Informal turnaround	Business rescue
Van-tage point	The director (as agent of the shareholders) holds the business for use and it is an extension of the person in society, as well as personal finance. S/he is probably risk averse and may irrationally persevere (Kahneman, 2011:247) with existing strategies in search of gains, despite suspicion (unnoticed decline) of forthcoming distress. S/he makes judgements based on the insider view and is potentially in danger of missing the outsider view and, therefore, the signs of distress.	Similar to going concern but early detection of decline in performance and willingness to act rather than persevere with current strategy. Wants to save the business and return it to a solvent going concern.	Distress (entering the ZoI) brings uncertainty with a mixed choice (pursue reorganisation or liquidate, which are both unpleasant options (Lewis, 2017:273)). S/he turns to risk seeking (taking an unlikely change) as the potential loss of asset base looms.
Salience and	Is the dominant/definitive stakeholder (Mitchell et al., 1997). Holds positional	Remains in control in collaboration	Loses decision-making (position) power to the

powers	power as decision-maker and controls the information relevant to decision-making. Can apply coercive power.		BRP but remains with relevant information.
View towards other stake holders	After shareholders, the other stakeholders are prioritised according to the benefit they have for the concern and to maintain the status quo.	May vary from serious concern for employees to remain employed, pride that all creditors must be paid and to save the concern and protect against liquidation.	Becomes a function of the BRP. Director focuses on BRP handling of stakeholder interests as a bystander.
In-fluence	Governing stakeholder (Pajunen, 2006)	Governing stakeholder	Becomes a minor stakeholder

The Secured creditor – formal historical financiers

This category refers to the debt providers that include mainly banks (Adriaanse, Van der Rest & Verdoes, 2015) or finance agencies who have as their core function to provide capital for business.

Table 3: Expose of the stakeholder issues of relevance for the secured creditors (bank perspective)

	Going concern	**Distressed concern**	
		Informal turnaround	**Business rescue**
Van-tage point	Banks do not hold their investments for use but rather for exchange – it's a risky investment but protected by securities. Banks are risk averse and therefore the existence of security. The bank's return is capped at certain levels. Banks may not share in the upside but are at risk in downside. Make judgements based on the outsider view mainly and therefore monitor the concern for compliance.	Banks may not share in the upside (gain) of a concern's performance but are at risk in potential downside. Banks do consider the outside view and will re-evaluate risk with the aim of transferring it.	When reasonable prospect determination is unclear, banks prefer the sure option, which is liquidation to protect them from further downside to their investment. Distress (entering the ZoI) brings uncertainty with a mixed choice (pursue reorganisation or liquidate of which both are unpleasant options – Lewis, 2017:273). Banks remain risk averse as the potential loss of their asset base looms.
Salience and powers	Is a dominant stakeholder (Mitchell et al., 1997). Holds positional and potentially informational power as decision-maker and controls the information relevant to decision-making. Can apply coercive power.	Remains with dominant salience when in collaboration with the directors as decision-makers.	Has indirect influence over the BRP in a quasi-principal-agent relationship to the BRP (Pretorius, 2016). Power is utilitarian and can be coercive when claims surpass 25% of voting rights (S???). If not, banks have resources to coerce other stakeholders, through the legal route, to their desired outcome.
View towards other stake holders	Single concern is the protection of its investment.	May consider the proposed plan if it supports the BRP and if plan corroborates its own total return on capital expectations. May consider personal securities to extend PCF.	Decision-making anchored in the risk at value of their investment. Regard other stakeholders as secondary.
In-fluence	Potential	Potential	Governing

The Un-secured creditor – suppliers, informal financiers

This category, also known as concurrent creditors, refers to the resource providers that include mainly suppliers and collaborators, such as landlords or finance agencies who may fund moveable assets.

Table 4: Expose of the stakeholder issues of relevance for the unsecured creditor

	Going concern	**Distressed concern**	
		Informal turnaround	**Business rescue**
Vantage point	These providers of credit through inventory, rental property and moving assets benefit as stakeholders from the going concern relationship mainly by resource exchange. They are often less risk averse as they are dependent on the going concern for their benefits. Their concern is the maintenance of existing contracts and the continuation of existing business.	Unsecured creditors depend on continuation of business and may participate in informal restructuring efforts (sometimes to their own detriment) even if there are only probable gains or lesser loss from the engagement. Willing to accept proverbial hair cut.	Similar to informal turnaround but they oppose liquidation (as a sure loss) by seeking risk associated with the rescue event. To extend their business with the firm they agree on continuing but with "cash before delivery" transactions.
Salience and powers	Is a dependent stakeholder (Mitchell et al., 1997). Holds little power unless it supplies a unique resource (ex. Patent protected paint ingredient) leading to coercive power.	Despite enhanced urgency of their claims (by not being paid), remains with low salience as a result of limited powers (Fairhurst, 2017:198).	None as concurrent creditor but same as for turnaround.
View towards other stake holders	Single concern is continued business.	May participate in the proposed plan if it supports continuation of business and potential future repayment of debts owed to them.	Single concern is the recovery of own unsecured investment and continued business.
In-fluence	Potential	Minor	Minor

The Turnaround professional (TP) and Business Rescue Practitioner (BRP)

This category refers to a stakeholder not associated with a going concern but one who comes into play once distress is acknowledged and the directors take action to involve either a TP for informal turnaround or formally file for business rescue through Chapter 6. The appellations of turnaround professionals and rescue practitioners are often used interchangeably owing to overlaps that exist in their processes, tasks, activities and functions – especially when the peculiar points of differentiation are not clear. However, while their underlying legal support is inherently different, as succinctly described by Mindlin (2013), the ZoI at the initiation of the informal turnaround versus the rescue filing process is overwhelmingly similar.

Table 5: Expose of the stakeholder issues of relevance for the turnaround professional and rescue practitioner

	Going concern	Distressed concern	
		Informal turnaround	Business rescue
Vantage point	Not applicable	The TP is generally an expert who advises the management at their request. Facing a gain only choice, as consultant the TP is the only stakeholder who can only benefit from fee and contract income and potential reputation gain with virtually no potential for describable loss.	(S 138 (1)e) requires the BRP to be independent when appointed. Similar to the TP s/he can only gain by being involved and faces a mixed choice between reorganisation and liquidation. Liquidation brings no benefit to the BRP. Expert BRPs would probably have a successful rescue as their partial goal while they value exchange rather than holding for use. BRPs would want to limit "pragmatic illegitimacy" (Weitzner & Deutsch, 2015:1345), as their future appointments may depend on it.
Salience and powers		Expert and referent powers are associated with this position. Decision-making remains with the directors.	S 140 empowers the BRP to all management decision-making powers until presenting the plan to the creditors. While s/he can utilise the creditor committee, sole decision-making remains. BRPs may also have referent and expert power at their disposal. Despite, BRPs, because of the independence requirement, enter with high levels of information asymmetry and are subject to the trustworthiness of the sources and data provided.
View towards other stake holders' interests		Aims at reorganising the business out of distress as to re-establish a going concern. Must sell rational concept plan to the directors, creditors and potentially new creditors providing PCF if part of the plan.	Shareholder view requires consideration of all stakeholders' interests but mainly the secured creditors with voting rights (Pretorius, 2016).
Thin-king errors		Potentially subject to confirmation bias and planning fallacy but are balanced to some extent by not being the sole decision maker.	BRPs are typically subject to ignoring the base rate of 9.4% successful rescues (Pretorius, 2015). This may be as a result of: 1) confirmation bias (remembering their last success) (Kahneman, 2011:80). 2) skill illusion and over confidence (p219) and 3) planning fallacy (p249) (plan presents best case scenario only) and 4) availability heuristic (p129) as they suffer from asymmetry of information and data integrity liability.
In-fluence	n.a.	Potential	Governing

The employees

Employee salience is not significantly moderated by distress despite union representation. Their main interest remains having a job and receiving a salary. Some may have additional aspirations, such as promotions and self- development interests. In going concerns it may be, depending on the organisation, that they can exert coercive powers (strike action which enhances urgency) by deliberate union action. Influence remains minor for all contexts.

The society wherein the concern operates

Going concerns, when they operate legally and ethically, contribute to economic development by the benefits they bestow on society at large through taxes, employment, business relationships, enhanced environments, innovations, and more. Their value is often recognised only once the business disappears. Distressed concerns pose a threat to these benefits. Chapter 6 has as its underlying philosophy (S 7) the protection of these benefits for the societal stakeholders and therefore the establishment of business rescue as a regime. Limited power exists in BR.

Potential post-commencement finance providers

PCF providers come about in response to distressed concerns pursue informal turnaround or business rescue. Closely related to the secured creditor views, this stakeholder will only enter if gain is visible in the rescue plan, re-opening the conversation on perceived reasonable prospect and what was mentioned as error contributors of the BRP in Table 3. PCF providers will have governing influence (Pujanen, 2006) in decision-making during turnaround and BR.

The Regulator

The Regulator's duties are fulfilled by the rescue division within the CIPC. Ultimately responsible for licensing BRPs and governing the rescue process requirements, such as filing, licensing, substantial implementation and progress reporting, which in practice turned out to be an administrative function. The Regulator is required to look after the society at large by overseeing the implementation of Chapter 6 as foreseen at implementation. Salience and prioritisation of the Regulator's interests appear insignificant to decision-making by BRPs. The Regulator is part of the government role interfacing with society (Dahan, Doh & Raelin, 2015).

South African Revenue Services (SARS)

South African Revenue Services, as discretionary stakeholder (Mitchell et al., 1997) in the going concern has a preferential claim which becomes a concurrent claim in business rescue. They therefore may, as a stakeholder, prefer informal turnaround and eventually liquidation over rescue to protect its claim. In turnaround and liquidation, SARS can gain but in rescue they may lose.

Figure 1 represents the movement in stakeholder influence based on Pajunen's model (2006:1278) for BR and for turnaround distressed contexts.

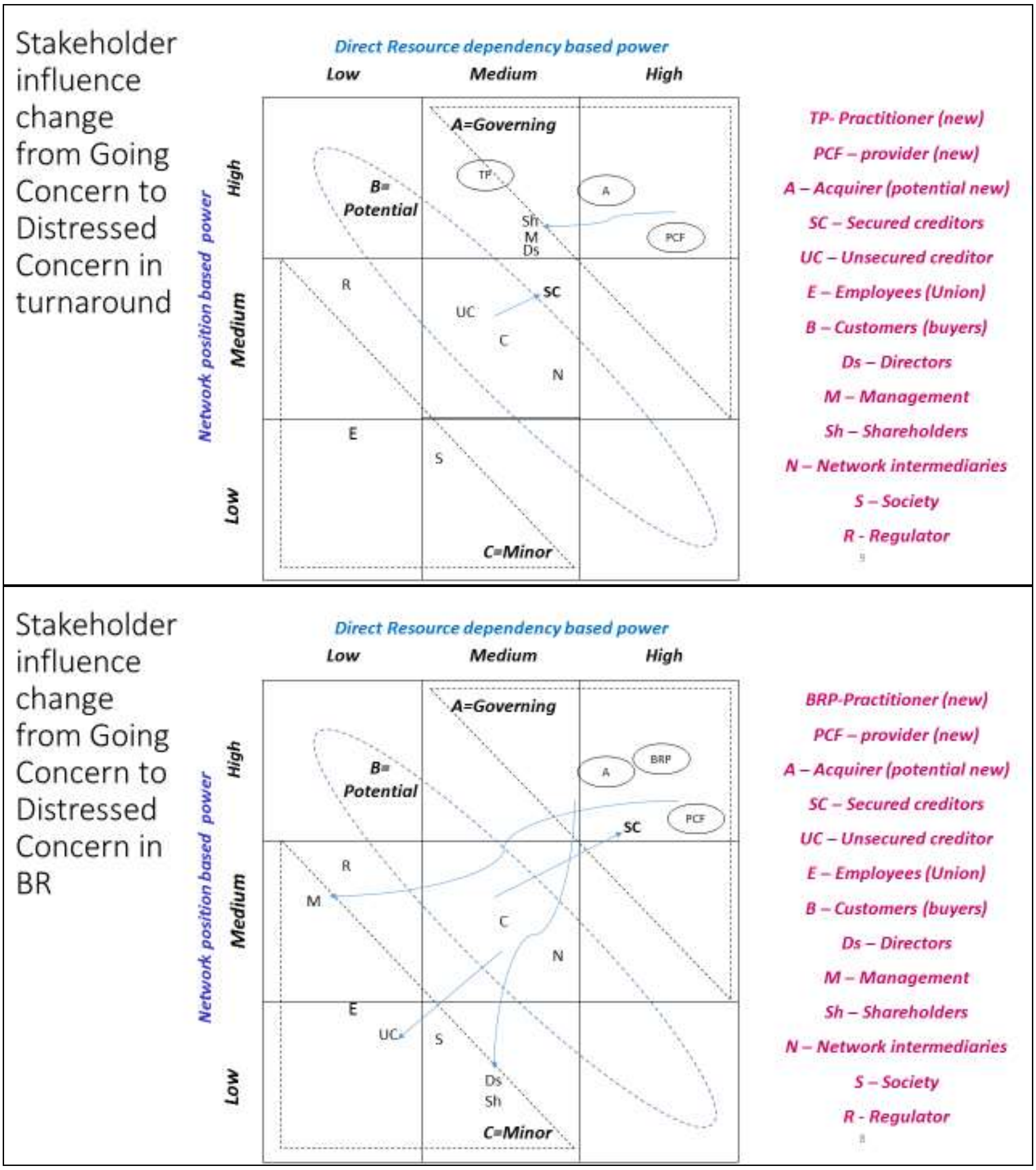

Figure 1: Stakeholder influence changes when transitioning from going concern to distressed contexts – specifically turnaround and business rescue (Own compilation based on Pajunen, 2006:1278)

Discussion

Sense making of the salience, prioritisation and influence relationships of stakeholders associated with distress when operating in the ZoI is useful for decision-making. How these stakeholder relations are judged depends strongly on who makes the judgement, which leads to significant interpretation differences and conflict of interests amongst stakeholders, such as shareholders, debtors, creditors, practitioners, advisors, courts and regulators alike.

In this paper, I identified the change in stakeholders, their positions and vantage points, salience, prioritisation and influence when firms move from going concern status to distress and follow either turnaround or formal business rescue. This research does not dispute the differences in perceptions of the stakeholders as decision-makers, rather it embraces these differences as potentially beneficial while searching for a framework that could encapsulate the subjectivity of the different perceptions to benefit all involved. Five key observations from the framework are now explored.

On informal turnaround versus formal business rescue in Chapter 6, it is important to acknowledge two things: Firstly, the two processes have different contexts for application but much in common from a business perspective, such as analysis of the distress, evaluation and verification, formulating strategies and implementation, hence the interchangeable use of the terminology in the bodies of literature. Secondly, and relevant to this study from a stakeholder perspective, informal turnaround is much more closely related to a going concern stakeholder model than to that of a business rescue. This is mainly due to the powers bestowed on the BRP and secured creditors as stakeholders in Chapter 6 business rescue, which is not equal for informal turnaround. Table 6 depicts the key dynamics considered in this study leading to proposition 1.

Proposition 1: In distress, the stakeholder model for informal turnaround is more closely related to that of a going concern than to that for business rescue.

Table 6: Differentiating the stakeholder dynamics to delineate distress contexts

	Normal business	**Distressed context**	
	Going concern	**Informal turnaround**	**Formal business rescue**
Addition of stakeholders	None	TP	BRP, Regulator
Designated decision maker	Directors	Directors	BRP, Secured Creditor
Prioritised stakeholder – salience based (Mitchell et al., 1997)	Directors – dominant All other – dormant or discretionary	Various - dormant	Banks (secured creditor) – definitive
Governing stakeholder	Directors	Directors	BRP, Secured Creditor, PCF providers

Secondly, when entering distress, new stakeholders enter the pool – thus there are more and changing claims and expectations on the finite resources. If the directors do not add the new stakeholders, it may be regarded as irresponsible and a violation of their duties. For the informal turnaround, adding the TP signifies acknowledgement of business problems, probably visible in declining performance.

If the distress requirements stated in the Act (S 128(1)f are visible, the directors filing for business rescue introduce the BRP as a key and salient stakeholder. Other role players that may appear (by own choice), are the new PCF providers if drawn by the perceived opportunity.

Distress moderates the balanced stakeholder relationships of a going concern by adding turmoil (un-balance) that requires stakeholders to review their own interests and benefits of participation in what previously was beneficial and valuable to them. It is stated as follows:

Proposition 2: Stakeholder composition is moderated when a concern enters distress.

Thirdly, distress may bring about different decision-makers. For informal turnaround, the directors remain with the decision-making powers with the TP becoming a stakeholder in an advisory capacity. For business rescue, however, the BRP becomes the sole decision-maker by virtue of the Act (S 140). Pretorius (2016) already showed that the directors fade into powerlessness (Weitzner & Deutch, 2015:1345) once they have filed formally. Of course, this is at the discretion of the appointed BRP.

Banks, with their definitive salience during the vote, appear to become the "real" decision-makers as the BRP has to obtain their support for the proposed rescue plan. It appears that banks have power over BRPs such that they can influence the future public legitimacy (pragmatic illegitimacy reported by Weitzner & Deutch, 2015:1345) of BRPs. This may suggest that BRPs prioritise the banks as stakeholders suggesting that the decision-making power really lies with the banks. Being "savvy" the BRP should be, suggests that s/he will seek a close relationship with the bank. It is stated as follows:

Proposition 3: Who the decision makers are moderated by entering distress – especially business rescue.

Fourthly, the TP and BRP are the only key stakeholders that enter the relationship network with the expectation of potential gains through fees, performance agreements (bonuses) and potential reputation benefits (future fees). They are therefore bound to act with a risk averse approach. Secured creditors are also risk averse and therefore tend to be negative towards rescue. In contrast, the directors, unsecured creditors and employees have much to lose and therefore support rescue in the hope that they might gain at least a portion of their rapidly fading investment. SARS are likely to be unwillingly to support rescue as they might have lost their claim anyway. Thus, understanding what is, or what is not to be gained or lost sheds light on how stakeholders may act during distress. It is stated as follows:

Proposition 4: Distress moderates how the gain versus loss perspective is applied in decision making.

Finally, stakeholders depend on information for decision-making. Participation for benefit in a going concern is based on the information each stakeholder has. Typically, in distress, the directors hold most insider information, which becomes the only power they can hold once the BRP takes charge. Banks have internal supportive systems to inform their decisions with both insider and outsider information. The BRP, entering as "independent" generally lacks information and depends on her/his own expertise to obtain the key information while investigating the affairs, especially when the relationship with the filing directors sour (a standard phenomenon experienced in practice). Other stakeholders depend on who is in charge to supply the information they need for decision-making, however, they are limited by their powerlessness. Forming a creditors committee (S145(3)) and utilising it to ensure the right of creditors to all relevant information, is a useful tool for addressing asymmetry of information. It is stated as follows:

Proposition 5: Asymmetry of decision making information is moderated for the worse by distress.

Table 6 does not claim to lay down the correct method or approach in all cases (Klopper & Bradstreet, 2014:563) but one that could be used to direct the descriptive establishment of stakeholder dynamics for use by TPs, BRPs, the regulator, courts and affected parties alike.

Conclusions

Business rescue practitioners are faced with a context that has several complexities. They are the decision-makers but their decisions (management and operation decisions but mainly the proposed rescue plan) are subject to the vote (read veto) of the secured creditors as definitive stakeholder. This context makes it significantly different from the informal turnaround situation where the decision-making power remains that of the directors supported by the expertise of the TP.

While conflict between BRPs and creditors mainly, and to a lesser extent between BRPs and directors, have been reported by Pretorius (2015, 2016), this study adds to the understanding brought about by applying stakeholder theory to the distress context. The value of the stakeholder illustrations (Tables 2-5) and the dynamics comparison (Table 6) therefore illuminates the moderating effects of distress and especially those associated with business rescue. In business rescue, the directors are not aware that they will lose all decision-making powers but because they become risk seekers in the face of losing all, they still pursue filing. To my mind this is a mistake and it highlights the need for research into responding earlier to distress so that informal turnaround can be pursued.

Prioritisation of stakeholders depends inherently on the salience originating from the stakeholder powers. In business rescue it also appears that the legitimacy afforded by the Act determines who will be driving the core decisions. Currently it appears stacked against the directors.

Implications for the rescue industry

While the legislators intended for Chapter 6 to establish a more debtor friendly context, the stakeholder view presents a different angle on what happens in practice. Based on this research it is clear that both salience and prioritisation are moderated by business rescue as powers of decision-making are removed from the directors (Debtor) and placed with the creditors. It appears that the BRP becomes a pawn to the creditor who holds the definitive salience through voting rights.

Limitations and further research

The first potential limitation of the proposed framework is its conceptual nature and design that was subject to my own observer perceptions and experiences in the practice of turnaround. The stakeholder theory framed the research usefully but it must be noted that each situation will have its own contextual contributors and therefore care should be taken to generalise from the findings. While the findings have been discussed with other researchers and BRPs, it remains to be formally tested in more detail by empirical research.

A second potential limitation is that the evidence presented in this research is illustrative and future research should attempt to enhance and confirm it by anecdotal and narrative evidence. While the illustrations support the conceptual framework, more practice examples could only be beneficial.

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