

**Stakeholder roles in the success of business rescue**

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## **ABSTRACT**

While it is widely accepted in the literature that stakeholders play a role in the turnaround of an organisation, it is unclear precisely what role stakeholders play. This study set out to investigate the roles of stakeholders in the success of business rescue through the lens of stakeholder theory. The research study focuses on the identification of key stakeholders involved in business rescue, an evaluation of which stakeholders are influential in the process, and the determination of the factors contributing to the influence of stakeholders in the realm of business rescue.

To gain new insights into the roles of stakeholders in business rescue, a qualitative, exploratory research methodology was adopted. Data was collected through 13 semi-structured in-depth interviews with business rescue practitioners. The research findings indicate that key stakeholders go beyond affected parties as described by chapter six of the Companies Act. Creditors are considered the most influential stakeholders due to their ability to vote on the business rescue plan, followed by post-commencement finance providers and employees that provide funding and support to ensure business continuity. The study concludes with a conceptual framework on stakeholder roles and suggestions for future research on stakeholder roles in business rescue.

## **KEYWORDS**

Business Rescue

Stakeholder Theory

Affected Parties

Stakeholders

Business Rescue Practitioner (BRP)

## **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.

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7 November 2018

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# **1. CHAPTER ONE - PROBLEM DEFINITION AND PURPOSE**

## **1.1 Introduction**

The March 2016 status report released by the Companies and Intellectual Property Commission (CIPC) presented a general update on South African business rescue proceedings (CIPC, 2016). The report revealed that there were 2422 business rescue proceedings between 2011 and 2016. Of the 2422 proceedings, only 454 were considered successful as the companies were no longer financially distressed (CIPC, 2016). Additionally, the business rescue status quo report reflected a 9.4% success rate in business rescue (Pretorius, 2015). With South Africa's unemployment rate currently standing at 26,7% (Statistics South Africa, 2017), understanding that business survival plays a significant role in countering unemployment is important. Business rescue provides an opportunity to save jobs that would be lost through business failure, provides the shareholder with the prospect of getting a return on their investment, and enables creditors to maximise their return (World Bank, 2015). Conradie and Lamprecht (2015) posit that successful business rescue proceedings have a positive impact on South African business in general and positive spin-offs for different stakeholders such as creditors, workers and customers. Furthermore, D'Aveni and MacMillan (1990) and Trahms, Ndofor and Sirmon (2013) stated that recognising and understanding the importance of stakeholders is crucial for the business turnaround. It is, therefore, valuable to understand stakeholder influence in the success and failure of business rescue.

## **1.2 Background and Definitions**

According to Mitchell, Agle, and Wood (1997), the stakeholder definition has evolved over the years. Freeman's (1984) classical theory outlines stakeholders as any group that can have an impact on, or can be impacted by, the organisation's objectives. Stakeholders include the government, competitors, customers, employees, civil society, suppliers and shareholders (Freeman, 1984). Clarkson (1995) went further by defining stakeholders as a group that can have a claim, ownership, rights and interest in an organisation and its operations. The classical definition by Freeman (1984) remains the

most broadly acknowledged definition of a stakeholder according to Fassin (2009) and is the stakeholder definition adopted in this study.

Business rescue is defined in chapter six of the 2008 Companies Act 71 of 2008 which became effective from 1 May 2011 (The Companies Act no 71 of 2008). The chapter is known as “Business Rescue and Compromise with Creditors”. Business rescue is defined by section 128 (b) as proceedings that enable the rehabilitation of a company that is financially distressed by providing temporary management of the company and a temporary moratorium on claims made against the company (The Companies Act no 71 of 2008). Ultimately, business rescue seeks to provide an opportunity to financially distressed companies to recover and continue to operate as a going concern that can fulfil its obligations as they fall due. In terms of section 128 of the act, a company is financially distressed when it

appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months. (The Companies Act no 71 of 2008, p. 230).

These definitions of business rescue and financial distress are adopted in this study.

An individual appointed according to chapter six of the Companies Act 71 of 2008 section 128 (d) to oversee and manage the business rescue proceedings is referred to as a business rescue practitioner (BRP). The BRP has full management control, can make operational and management decision on behalf of the board and previous management, and ultimately takes responsibility for the business rescue process (Pretorius, 2016). The practitioner must also be a good standing member of a professional body and suitably qualified to ensure successful management of the business rescue process (The Companies Act no 71 of 2008). BRPs can be removed in terms of section 139 of the Companies Act. The practitioner can be removed for incompetence, inability to perform duties, illegal conduct, incapacity or impaired independence (Pretorius, 2013).

It is also necessary to define what a successful business rescue or turnaround is. Pretorius (2015) argues that there is no clarity on what constitutes a successful business rescue. Generally, a common objective of international rescue regimes reflects success to mean that all stakeholders involved in the business rescue will be better off than if the

business goes into liquidation (Conradie & Lamprecht, 2015). Being more specific, Barker and Duhaime (1997) suggest that success within turnarounds is considered as the positive return on assets and sustained performance. Conradie and Lamprecht (2015) put forth that success means long term economic viability which is supported by solvency, profitability ratios and the fact that the company does not file for subsequent business rescue. While a successful business rescue is not defined explicitly in chapter six of the Companies Act, section 128 (h) of the act defines rescuing the company as achieving the objectives of business rescue as set out by section 128 (b) which discusses the proceedings that enable the rehabilitation of a company that is financially distressed (The Companies Act no 71 of 2008). On further review, section seven provides the purpose of the Companies Act. Notably, one of the purposes given in The Companies Act is the “efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders” (p. 44). It can be inferred that if the purpose is achieved, the business rescue has been successful. This meaning as provided by the act is adopted in this study.

### **1.3 Problem identification and verification**

Priego, Lizano and Madrid (2014) argue that stakeholders can contribute significantly to reduce the prospect of business failure. In addition, Tangpong, Abebe and Li (2015) in their study of retrenchments and turnaround of declining firms, acknowledge external stakeholder support as valuable when stabilising a corporate during the corporate decline phase. Furthermore, Benedettini, Neely and Swink (2015) review the causes of corporate failure and include the business environment which incorporates stakeholders as a factor that contributes to business failure. These researchers (Priego et al., 2014; Tangpong et al., 2015; Benedettini et al., 2015) show that stakeholders play a prominent role in an organisation’s failure and turnaround processes.

Having reviewed the literature, Smith and Graves (2005) note that within the turnaround process it is unclear precisely what role stakeholder support plays within the decline and turnaround process in an organisation. Pajunen (2006) also highlights that although much has been written on business failure and turnarounds, practically no research investigates stakeholder influences within corporate failure and turnaround. Furthermore, while “stakeholders are addressed within the literature, stakeholder theory remains underutilised” (Trahms et al., 2013, p. 1297). Decker (2016) concurs; despite stakeholders possessing the resources to support an organisation in decline, there is

limited evidence of stakeholders' actual roles in a turnaround. To further consolidate the need for further research Ghazzawi (2017) suggests investigating how the power of stakeholders may interfere with the organisation's decline and turnaround efforts. In summation, it is clear that literature recognises the importance and contribution of stakeholders within corporate decline and turnaround. However, it remains unclear within literature precisely what roles different stakeholders play within turnarounds.

Within the South African context, the legal and formal turnaround process an organisation would undergo is referred to as a business rescue process. Business rescue is a formal process governed by chapter six of the Companies Act as compared to an informal turnaround whereby, as an example, creditors and financial institutions collaborate to provide financial assistance to aid the company's recovery (Levenstein, 2016). Pretorius (2013) likens business rescue literature to turnaround literature, the former being formal and usually done when the business is in its later stages of decline. Since business rescue as a phenomenon has limited literature, turnaround literature is often used as a guide (Pretorius, 2013). Similarly, in turnaround literature where the roles of stakeholders are virtually unknown, the part that stakeholders play in business rescue has not been clear and little research has been done to uncover the influences of stakeholders in business rescue in South African organisations (Pretorius, 2013). It is therefore beneficial to understand the roles stakeholders play in business rescue processes in the South African context to alleviate the problems that arise from business failure, unemployment being prominent among these issues.

#### **1.4 Research motivations and rationale**

From a business point of view, this study seeks to understand how stakeholder theory can be utilised in an actual business rescue to facilitate a successful turnaround. James (2016) suggests that managing relations with relevant stakeholders will have a positive contribution on an organisation's performance. The study will, therefore, seek to support BRPs with guidance on stakeholder analysis when they manage a company in business rescue. From a management perspective, the study attempts to comprehend the behaviours of different stakeholders thereby assisting managers in prioritising stakeholders during the decline and turnaround processes. Managers may have conflicted interests, meaning they may have their self-interest against the interest of other stakeholders. This will enable managers to be pro-active and take necessary action

in managing their own interests and that of stakeholders during a decline in order to facilitate a successful turnaround.

From a literature perspective, this study will add on to the studies of Pajunen (2006) and Priego et al. (2014) by complementing the literature on the identification and definition of stakeholders that are the most influential during the turnaround process. The study was undertaken within the context of South African business rescue where there is limited literature on stakeholder theory and business rescue (Pretorius, 2013). This study will therefore fill the gap that exists in the literature of business rescue in South Africa regarding the roles that stakeholders play in the rescue process.

### **1.5 Purpose statement**

The purpose of this study is to investigate the roles of stakeholders in the success of business rescue in South African organisations. In doing so, this study aims to understand how to manage stakeholders and their influence on organisations during periods of business rescue as stakeholders play a pivotal role in the survival of the organisation (James, 2016). The study will examine the behaviour and power dynamics of stakeholders in a business that is in decline, with the understanding that collaboration between stakeholders will result in a better chance of achieving success in the turnaround of the business (Priego et al., 2014). While stakeholder power means that the stakeholder with power may be influential in the business rescue proceedings, resources and network influence are also seen as important sources of power (Pajunen, 2006). Other factors may also be useful in determining stakeholder influence in business rescue.

The study will, therefore, address the following primary research question: what are the roles that different stakeholders play during a period of successful or unsuccessful business rescue in South African organisations? The sub-research questions for this study are as follows:

1. Who are the key stakeholders involved in the business rescue process that an organisation goes through?
2. Which stakeholders are influential in business rescue processes?
3. What factors contribute to the influence or power the key stakeholders have in an organisation during periods of business rescue?

The propositions that feature in chapter three will be based on these research questions which aim to answer the research propositions as set out in chapter three.

## **1.6 Research Scope**

Business rescue in South Africa is governed by chapter six of the Companies Act no 71 of 2008. The study focuses on business rescue and is therefore applicable in South Africa. Due to some similarities within turnaround literature, the study may be used in other countries.

To answer the research questions, input will be required from business rescue practitioners based in Johannesburg. The concentration of business rescues in South Africa is largely in the Gauteng province. The statistics from CIPC (2016) indicate that 52% of business rescue proceedings from 2011 to 2016 are from the Gauteng province followed by the Western Cape with 18%. These percentages are based on where information has been provided on the province. Further details are covered in the research methodology in chapter four.

Most research work on turnarounds is usually done on the larger listed organisations; turnarounds are also applicable to small and private companies (Decker, 2016). The study will, therefore, focus on South African private companies as private companies are key drivers in employment creation and their survival is vital to economic growth (De Wit & De Kok, 2014). In addition, the statistics from CIPC (2016) indicate that private companies, including close corporations, account for 96% of business rescue proceedings commenced from 2011 to 2016. Close corporations are an outdated legal business form in South Africa and they are regulated the same way as private companies, so for the purposes of this research they will be treated in the same way as private companies (The Companies Act no 71 of 2008).

## **2. CHAPTER TWO – LITERATURE REVIEW**

### **2.1 Introduction**

The literature review section that follows sets out the overall context of the study. Boote and Beile (2005) put forth that a good literature review should set out the scope of the study, indicate what is known and unknown in the field and provide an understanding of historical and current theory, thereby providing an anchor for areas that still need to be researched.

This chapter starts by providing an overview of chapter six of the Companies Act and covers the salient points on business rescue in context of this research. Attention is then given to understanding stakeholders using stakeholder theory. Seminal work done by Donaldson and Preston (1995) and Mitchell et al. (1997) provides insight into stakeholder's identification, classification and influence. Emphasis is subsequently given to current work done by Mainardes, Alves and Raposo (2012) and Miles (2017) who add on the work by earlier researchers.

In understanding the relevance of stakeholders within a declining firm, attention is given to understanding how stakeholders affect the performance of an organisation. Different stakeholders' views are reviewed. Harrison, Bosse, and Phillips (2010) advocated for an all-inclusive approach which leads to an organisation gaining a competitive advantage. The gap in the literature is then demonstrated by Trahms et al. (2013); Rosslyn-Smith and Pretorius (2015) and Ghazzawi (2017) on the role stakeholders actually play in a turnaround or business rescue. Finally, a review of the power dynamics of stakeholders in business rescue is undertaken. All stakeholders play a part in the business rescue; the study further focuses on creditors and the providers of capital seen to play a valuable role in the efforts of rescuing a declining business (Decker, 2016; Ghazzawi, 2017).

### **2.2 Chapter six overview**

#### **2.2.1 Business rescue commencement**

When a business is in financial distress, business rescue proceedings can be commenced if there is reasonable prospect that the company can be rescued from failure (Le Roux & Duncan, 2013). The business rescue proceedings can be initiated voluntarily

by that board of the company through a board resolution or by a court order brought about by affected parties (Conradie & Lamprecht, 2015). Section 128 of the Companies Act defines affected parties as registered trade unions, employees, creditors or shareholders of the company (The Companies Act no 71 of 2008). In the case where proceedings are commenced by the board in terms of section 129 of the Companies Act, the board needs to have reasonable grounds to believe that the company is financially distressed and that there is a reasonable prospect of rescuing the company. When the application emanates from a court order, the application should provide sufficient justification that the company is financially distressed and unable to meet its obligations as they fall due (The Companies Act no 71 of 2008). Given that some parties may be unjustified in applying to the court for business rescue, section 131 provides latitude for the court to grant an order against business rescue based on the grounds of financial fairness.

### **2.2.2 Moratorium**

Section 133 of the Companies Act provides a stay or moratorium on legal proceedings. Levenstein (2016, p. 12) likens the moratorium to “breathing space” provided to an organisation in decline. Accordingly, no legal proceedings may be brought against the company during the business rescue proceedings except when

- The BRP provides written consent;
- The court considers it suitable for legal proceedings to ensue;
- There are criminal proceedings against the company directors or officers;
- There is a set-off on a claim made by the company; or
- Legal proceedings in respect of property or rights where the company has trustee powers (The Companies Act no 71 of 2008).

The moratorium results in a temporary stay on claims of affected parties like creditors and employees as the BRP develops and implements a rescue plan to rehabilitate the company (Le Roux & Duncan, 2013).

The business rescue plan is considered as one of the key activities carried out by the BRP and is integral to the business turnaround process. Salient features of the plan are discussed in the following section.

### **2.2.3 Business rescue plan**

Once business rescue proceedings have commenced, and a temporary moratorium on the rights of claimants on the company becomes effective, the BRP must develop and implement the business rescue plan (Le Roux & Duncan, 2013). The plan should display how the company will be rescued and should reflect the rehabilitation activities to be carried out, for example restructuring the business, requesting additional funding and paying debt obligations (Rosslyn-Smith & Pretorius, 2014). Section 150 of the Companies Act prescribes the minimum contents that must be included in the rescue plan to ensure that affected parties can approve or reject the plan.

Rosslyn-Smith and Pretorius (2014) argue that affected parties play a role in the creation and adoption of the plan. The business rescue plan is instrumental to the business rescue proceedings as it enables the BRP to commence the process of rehabilitating the company. Given that Le Roux and Duncan (2013) and Rosslyn-Smith and Pretorius (2014) take the view that the business rescue plan is important, it must be noted that stakeholders described as affected parties play a significant role in the proposal and approval of the plan. It is useful to understand the power dynamics at play between the parties during the rescue proceedings. The section that follows reviews the powers and rights of affected parties as legislated by chapter six of the Companies Act.

### **2.2.4 Duration and termination**

The duration of business rescue proceedings is set out in section 132 of the Companies Act and states that once proceedings have commenced, the process should be completed within three months. In the case where the time is exceeded, the BRP will have to fulfil reporting requirements thus providing an update on the progress of the rescue proceedings. The report must be delivered to each affected person and the court (The Companies Act no 71 of 2008).

Business rescue can be terminated in several ways, for example, when the rescue is changed to liquidation proceedings by the court. The court sets aside the resolution which commenced the rescue, or when the BRP files for termination in line with section 132 of the Companies Act (Jijana, Chetty, & Karodia, 2016). Business rescue can also be terminated when the proposed business rescue plan is rejected or when the BRP files a notification that the plan has been substantially implemented according to section 132 (The Companies Act no 71 of 2008). Given that business rescue proceedings can

continue for a prolonged period if the three-month period is extended, Levenstein (2016) believes that the proceedings should not continue indefinitely as this antagonises stakeholders such as creditors, suppliers and customers. It is therefore noted that the earlier the business rescue proceedings are completed, the better for all the parties involved.

### 2.3 Affected parties' rights and powers

Section 128 of the Companies Act defines affected persons as creditors, employees (or their representative), a registered trade union or shareholders (The Companies Act no 71 of 2008). The rights and powers of the affected parties are detailed in section 144 to 146 of the act. Table 1 provides a summary of the rights and powers of affected parties.

**Table 1: Rights and powers of affected parties**

<b>Rights and powers of affected party</b>	<b>Employees / Trade Union</b>	<b>Shareholders</b>	<b>Creditors</b>	<b>Companies Act, 2008 - Section</b>
Entitled to - notice of each proceeding, decision, meeting or relevant event concerning the business rescue proceedings	b	b	b	144 (3) (a); 145 (1) (a); 146 (a)
Participate in any court proceedings during the business rescue proceedings	b	b	b	144 (3) (b); 145 (1) (a); 146 (b)
Form a committee of employee representatives / creditors committee in the case of creditors	b		b	145 (3); 145 (3)
Formally participate in a company's business rescue proceedings to the extent provided for in this Chapter; and		b	b	145 (1) (c); 146 (c)
Informally participate in those proceedings by making proposals for a business rescue plan to the practitioner.			b	145 (1) (d)
Be consulted by the business rescue practitioner during the development of the business rescue plan, and afforded sufficient opportunity to review any such plan and prepare a submission contemplated in section 152(1)(c);	b			144 (3) (d)
Be present and make a submission to the meeting of the holders of voting interests before a vote is taken on any	b			144 (3) (e)
Vote with creditors on a motion to approve a proposed business plan, to the extent that the employee is a creditor, as contemplated in subsection (1); and	b			144 (3) (f)
The right to vote to amend, approve or reject a proposed business rescue plan, in the manner contemplated in section 152; and			b	145 (2) (a)
If the proposed business rescue plan is rejected, to— (i) propose the development of an alternative plan, in the manner contemplated in section 153; or (ii) present an offer to acquire the interests of one or more affected persons, in the manner contemplated in section 153.	b	b	b	144 (3) (g); 145 (2) (b); 146 (e)

Source: Adapted from section 144 to 146 (The Companies Act no 71 of 2008)

Table 1 illustrates the rights and powers of affected parties set out in section 144 to 146 of the Companies Act. The salient points to take note of include the fact that shareholders have limited powers and rights when compared to employees and creditors. Shareholder rights are limited as they do not need to be consulted by the BRP on the business rescue proceedings and they cannot form a committee similar to creditors or employees (Jijana et al., 2016). Shareholders also do not have a vote in approving the rescue plan, they may however vote to the extent that they are creditors. Given shareholders' limited powers, section 146 provides them the opportunity to intervene through court proceedings on the voting process provided that their rights as shareholders have been affected by the plan and may vote to approve a plan if their shareholding is altered by the plan (Levenstein, 2016).

Creditors are relatively influential in the business rescue proceedings, the final vote to approve the plan lies with the creditors (Le Roux & Duncan, 2013). In terms of section 152, the business rescue plan must be approved by more than 75% of the creditors through a vote of which 50% of the votes must be from independent creditors. Le Roux and Duncan (2013) argue that creditors have various responsibilities and powers within the proceedings as they can influence the key elements of the business rescue proceedings and ultimately creditors have the power to vote favourably or unfavourably for the plan.

In conclusion, the rights and powers of the affected parties are legislated by chapter six as illustrated by Table 1. Affected parties have rights and powers that are legally protected. The legal process makes provision for only employees, trade unions, creditors, and shareholders. It is peculiar that other stakeholders, that also have interest in the business rescue, are therefore ignored by chapter six.

## **2.4 Business Rescue Practitioner**

The principal objective of the BRP is to rescue a company that is financially distressed. In achieving this objective, which includes providing relief to affected parties, the BRP's rescue plan is important (Pretorius, 2014). It is useful to understand the general powers and duties of the practitioner governed by chapter 140 of the Companies Act. The BRP has complete control of managing the affairs of the company and replaces the current board or management of the company (Pretorius, 2013). Pretorius (2013) carried out a study to identify the main tasks and activities carried out by BRPs using the interview to

the double (ITTD) process, five main tasks executed by BRPs were identified. The tasks identified are illustrated in Table 2.

**Table 2: Business Rescue tasks**

	BRPs' tasks from Chapter 6				
	Take management control	Investigate affairs	Prepare rescue plan	Implement rescue plan	Total
Number of instructions allocated per task by BRPs (sticky notes)	98	142	131	66	437
Percentage	22.4	32.5	30.0	15.1	100
Number of instructions per task by researcher	171	123	48	14	429
Percentage*	39.9	28.7	11.1	3.3	83.5

\* Five categories of tasks appeared through the analysis, with the supreme task = 16.5%

Source: Pretorius, 2013, p. 16

In summary, the main “tasks include control, investigating the affairs, preparing a rescue plan and implementing the plan, if accepted by the creditors through a vote” (Pretorius, 2014, p. 3). The fifth task relates to the supreme tasks. This task includes topics that cover adherence to statutory requirements (Pretorius, 2013). In addition, collaboration with stakeholders in the business rescue proceedings in the form of working together on the plan, investigating the affairs of the company and meeting with stakeholder’s forms a part of the sub-tasks identified by Pretorius (2013). In understanding the role the BRP plays in the rescue proceedings and the power and duties bestowed by the legislation, it is clear that BRPs have considerable influence on the success of the business rescue. It is further argued that selecting a suitably qualified BRP is important in the success of the business rescue as failure to do so will have dire consequences on the potential relief available to employees, creditors and shareholders (Pretorius, 2014).

In addition to Pretorius (2014), the suitability of the BRP is further questioned by Levenstein (2016) by referring to ad-hoc appointments, the competency of the BRP and the appointment of practitioners who lack expertise or have limited education. The ethics of the BRP are also of paramount importance as there are opportunistic BPRs who focus “on the ‘profit opportunity’ and uncertainty that emanates from the business rescue environment” (Levenstein, 2016, p 592). The opportunists in the field of business rescue want to benefit financially rather than pursue the process of rehabilitating a company.

Opportunists make use of what is referred to a “better return than liquidation” (BRIL) concept to pursue profit for prolonged periods (Levenstein, 2016). Pretorius (2014) and Levenstein’s (2016) views on the competency of the BRP are supported by Bradstreet (2010) who goes a step further, indicating that adequate legislation will result in the BRP being able to protect the interests of creditors and other stakeholders in a fair manner. Appointment of any “loose cannon” practitioners creates a risk as creditors will not be able to provide finance to support the operations (Bradstreet, 2010, p. 212).

In December 2017 the “Diener judgement” was made. This judgement was related to BRPs receiving their fees and expenses when the business rescue has failed and the company goes into liquidation. The judgement was that, if the company goes into liquidation, the BRP must prove their claim for fees and expenses with the liquidators and there is no special preference afforded to the BRP over secured creditors (Braatevdt, 2017). Essentially, the judgement means that BRPs must carry out an objective pre-assessment of the distressed company to assess if the company will be able to pay the BRP’s fees and expenses before taking on the assignment (Braatevdt, 2017). Consequently, the judgement may curtail the “loose cannons” as identified by Bradstreet (2010).

## **2.5 Business Rescue Regimes**

Business rescue proceedings in South Africa are legislated by chapter six of the Companies Act (no 71 of 2008). Pretorius (2013) and Rosslyn-Smith and Pretorius (2014) argue that there is limited literature on business rescue. It must be noted, however, that chapter six business rescue emulates global trends in insolvency legislation; namely countries such as Australia, The United Kingdom, the United States and Germany (Rosslyn-Smith and Pretorius, 2014). Magardie (2016) also supports the view that there are similarities between chapter six and the four international regimes mentioned. To further support the notion that all regimes are similar in nature, Levenstein (2016) concedes that the primary aim of any business rescue regime is to ensure that a financially distressed company can recover and become stable. Seven core fundamental business rescue themes were identified, these themes are considered to be universally applicable to other regimes and, in the context of this study, chapter six of the Companies Act of South Africa (Levenstein, 2016). The themes are

- 1) The moratorium on claims;

- 2) The management of the company during the rescue;
- 3) The admission into and the term of the rescue process;
- 4) The financial management of the company during the rescue;
- 5) The rights and protection of stakeholders;
- 6) The pardon on creditor claims while under rescue proceedings; and
- 7) The creation of a practical rescue plan which protects the company from discourteous creditors (Levenstein, 2016).

The themes are common to different rescue regimes including the United States, United Kingdom, Canada and Australia (Levenstein, 2016). Conradie and Lamprecht (2015) suggest that research indicates that the United States, Canada, Australia and the United Kingdom rescue legislation goals are aligned to South Africa's chapter six and that the regimes aim to improve and support continued employment and enabling the organisation to continue as a going concern.

This study largely makes inferences to turnaround literature, primarily the chapter eleven turnaround literature. Financially distressed companies in the United States are governed by chapter eleven of the US bankruptcy code (Magardie, 2016). It is useful to compare chapter eleven and chapter six to highlight the objectives, similarities and differences between the two regimes. Loubser (2010) viewed the United States chapter eleven as debtor-friendly while chapter six is considered to be creditor friendly.

Levenstein (2016) contends that chapter eleven takes a strong view on the protection of creditors and adopts a more holistic approach when a company is in financial collapse. In ensuring the creditors are paid, the courts take into cognisance the loss of jobs, protection of asset values, support to the company in financial decline and also takes note of tax authority obligations (Levenstein, 2016). In their study, Rosslyn-Smith and Pretorius (2014) took the viewpoint that chapter six is debtor-friendly; a notion that was later refuted by Pretorius (2016) with the view that chapter six is creditor-friendly. Pretorius's (2016) view emanated from the principal and agent lens in which the debtor has limited control and power of the business rescue proceedings. Although there may be some differences between chapters eleven and six, the central themes seek to address the decline of a company in financial distress. Conradie and Lamprecht (2015) view chapter eleven as analogous to chapter six and other main international business rescue regimes. In conclusion, business rescue and turnaround literature from chapter six and eleven has been used interchangeably in this study.

## **2.6 Stakeholder Theory**

### **2.6.1 Identification, classification and influence**

When a company is in decline and is attempting to turnaround, stakeholders play a valuable role in the recovery (Trahms et al., 2013). Stakeholder theory provides a theoretical base to assess how the relationship between the company and its pivotal stakeholders can strategically improve the company's performance (Freeman, Harrison, Wicks, Parmar & De Colle, 2010). Bridoux and Stoelhorst (2014) also take the view that stakeholder management is useful in value creation. The importance of stakeholder analysis is to identify stakeholders and their requirements, act with urgency on stakeholder needs with the ultimate objective to make good decisions (Yang, 2014). Harrison et al. (2010) further argue that stakeholder theory focuses on which parties have input in decision making and who consequentially benefits from the decision taken. In making sense of the identification and influence of stakeholders in business rescue, stakeholder theory will, therefore, be used as the guiding lens.

Before starting with the salient aspects of stakeholder theory, it is valuable to recap the key definitions of stakeholders as they have evolved with stakeholder theory (Mitchell et al., 1997). The classical theory by Freeman (1984) outlines stakeholders as any group that can have an influence or can be influenced by the organisation's objectives. Freeman (1984) notes stakeholders to comprise of the government, competitors, customers, employees, civil society, suppliers and shareholders. Clarkson (1995) further defined stakeholders as a group that can have a claim, ownership, rights and interest in an organisation and its operations. In the later years, the classical definition by Freeman remains the most broadly acknowledged definition of a stakeholder (Fassin, 2009).

In respect of stakeholder theory, the earlier work done by Donaldson and Preston (1995) on stakeholder management, when viewing classification and identification of stakeholders, identified three fundamental approaches. The first of the three approaches is the instrumental stakeholder theory based on the economic model of stakeholder identification. The second is the normative view which takes the ethical view argument of co-operation and community and is seen as the most fundamental. The third is the descriptive stakeholder theory based on how stakeholders are actually managed in practice. Mitchell et al. (1997) presented a model which categorises stakeholders through their control of power, legitimacy and urgency. They purported that the stakeholder's relevance is undoubtedly linked to the cumulative number of these traits.

Power was defined as the ability of one party in a relationship to impose one's will through coercion based on force via physical resources, restraint or violence. In addition, power can also be derived from utilitarian power, which is based on financial resources, and normative power which is based on social or ethical power (Mitchell et al.,1997). The model by Mitchell et al. (1997) is criticised for overlooking the distinct levels of the characteristics and the challenge of separating power and legitimacy in practice (Pajunen, 2006).

In later studies, Friedman and Miles (2002) addressed some of the limitations of the earlier models by assigning stakeholders into four categories based on whether the substantial interests of the company and the stakeholders are compatible or incompatible and whether the relationship between the company and the stakeholders is necessary or contingent. This model attempts to address the question of why some stakeholders have more influence over organisations than others and why some stakeholders may be considered legitimate.

Pajunen (2006) created a model referred to as the "model for stakeholder influence identification" which demonstrated that stakeholders' identification and influence during corporate survival is in the form of direct resource dependence and network position-based types of power. The model classified stakeholders into three categories; governing stakeholders who have a direct influence on organisational survival, potential stakeholders that have possible influence, and minor stakeholders with no influence. The study carried out by Pajunen (2006) revealed that shareholders usually have resource dependence power based on the resources, knowledge of the firm and the ability to provide finance during the organisation's decline. Resource-based power is when stakeholders with vital resources needed by the organisation have a compelling lever to influence the organisation to recover from decline, while network-based influence emanates from an intermediary stakeholder with the ability to link other stakeholders and become the focal point regulating information and resources (Pajunen, 2006). In summation, the model by Pajunen (2006) provides a theoretically robust method to define and identify stakeholders that are influential during the organisation's decline.

Mainardes et al. (2012) carried out a study with the aim to overcome the limitations of the earlier stakeholder models, namely the classification model by Mitchell et al. (1997). The model identified six stakeholder classes which were dependent, passive, partner, controller, regulator and non-stakeholders. The classifications were not only based on

the prioritisation according to stakeholder influence but took the relationship between the organisation and the stakeholder into account.

Miles (2017) looked at producing a thorough, all-inclusive stakeholder theory after the review of 593 various stakeholder theory definitions. The study viewed stakeholder theory as an essentially contested concept meaning that although most ideas are mutually agreed upon, some elements are subject to interpretation (Miles, 2017). As a result, the classification system developed uses an essentialist approach looking at the core concepts. The classification model suggested four superordinate terms relating to stakeholder classification and identification, namely:

- Influencers – relates to individuals or groups that have the ability to insert their will on actions and strategy of the organisation;
- Claimants – refers to individuals or groups that have a claim on the organisation and have a strategy to follow up on the claim, however, may lack influence for management to follow up on the claim;
- Recipients – refers to none active individuals or groups that may be impacted by the organisation; and
- Collaborators - refers to individuals or groups that collaborate with the organisation but lack the power to influence the organisation (Miles, 2017).

Given the different classifications of stakeholders done by Mitchell et al. (1997), Pajunen (2006) and Friedman and Miles (2002), Miles (2017) argues that the multi-dimensional classification is more comprehensive and pragmatic in consolidating, clarifying and ordering the concepts of stakeholder classification and identification.

In conclusion, it is noted that different stakeholders yield power, resources, network positions and compatibility which may be influential when the company is in business rescue. Stakeholder identification and classification is therefore relevant in tackling organisation decline. Additionally, early involvement and identification of stakeholders is beneficial in ensuring success in the turnaround process (Decker, 2016). In relevance to the study, stakeholder identification, influence and classification will seek to address the first and second question of the study.

## 2.6.2 Improved performance and stakeholders

Managers need to improve the performance of a declining organisation in light of reduced resources within an organisation in decline (Trahms et al., 2013). Managing stakeholders is valuable towards ensuring improved performance which may improve the chances of success when an organisation is in distress. Tracking the evolution of stakeholder theory, Laplume, Sonpar and Litz (2008) reviewed 179 top management journals relating to stakeholder theory and derived five key themes and trends from 1984 to 2007. The five major themes are “a) stakeholder definition and salience, b) stakeholder actions and responses, c) firm actions and responses, d) firm performance, and e) theory debates” (Laplume et al., 2008, p. 1160). In the context of this study, the theme of firm performance is relevant. Loi (2016) suggests that managing stakeholders is vital towards the organisation achieving its economic and social objectives. Additionally, it enables co-operation between shareholders and other stakeholders thereby allowing the competent use of resources.

Harrison et al. (2010) argue that to increase performance an organisation must adopt a broad view strategy that includes the requirements of diverse stakeholder groups. By adopting an all-inclusive approach of managing key stakeholders an organisation may achieve a sustainable competitive advantage over some firms. Taking an approach that includes stakeholders may result in improved performance thus positive stakeholder relationships play an important role in the survival of the firm (Harrison et al., 2010). While Harrison et al. (2010) advocate for an approach that includes stakeholders, Henisz, Dorobantu and Nartey (2014) claim that support from external stakeholders is a useful enabler to financial performance and firm value, this claim is based on the foundation of the instrumental stakeholder view. They further argue that conflict between external stakeholders (for example government, lobby groups and shareholders) may result in the decline in value of some of the organisation's assets. The contrasting views represent the challenges experienced when managing and prioritising stakeholders.

During the turnaround of the organisation, retrenchment activities such as the sale of non-core assets or reduction of operating costs and recovery activities may lead to immediate performance improvement on the short and long-term (Schmitt & Raisch, 2013). Loi (2016) further argues that stakeholders influence the internal and external activities of the organisation which have an impact on the organisation's triple bottom line, therefore actively managing stakeholders is valuable for the organisation to meet its objectives.

In totality, it is useful to note that stakeholder management is relevant to the organisation's mission to improve performance when the organisation is in decline. Regardless of the stakeholder view taken, whether instrumental or normative as noted by Donaldson and Preston (1995), Harrison et al. (2010) advocates for a broad strategic approach in managing stakeholders with decision making influence as this will have a positive impact on performance. By improving performance through stakeholder engagement, it can be inferred that the organisation will have a better chance to survive organisational decline.

### **2.6.3 Employees, management and turnarounds**

Having noted that business rescue provides an opportunity to save jobs and uplift the unemployment rate in South Africa, employees need to be discussed in more detail in reference to business rescue. There is consensus that a successful business rescue will result in the preservation of jobs (Levenstein, 2016; Pretorius 2015; Conradie & Lamprecht, 2018).

Levenstein (2016) notes that employees are the lifeblood of a company and are valuable if the company is going to trade out from its financially distressed state. Competent and skilled management and employees must be kept if the company will stand a chance of surviving business rescue proceedings. Legislation provides employees with considerable power in a business rescue process. Section 136 of the Companies Act indicates that employee's conditions and terms must persist even though the company is in business rescue. Unless there is attrition in the ordinary course of business, employee's conditions may not be altered. An exception is available as employees or unions can agree to modify the terms and conditions of employment provided both parties consent to the changes (Levenstein, 2016). This is demonstrative of the influence employees may have during the business rescue.

The distinction between directors and employees may be elusive in a business rescue, however directors who are involved in the management of the company are still employees as defined by the labour laws (Joubert & Loubser, 2016). Directors may exert additional influence on the business rescue process. They have the right to be present as an employee and make submissions on the business rescue plan before the creditors vote on the plan. By implication, directors enjoy the power, rights and benefits afforded

to other employees which may be positive or negative to a successful business rescue (Joubert & Loubser, 2016).

Trahms et al. (2013) puts forth that top management play a crucial role in the efforts of a business in distress, management's cognition and subsequent turnaround actions results in better opportunities for turnaround. Therefore, it is plausible that the role of top management is essential in a successful turnaround.

The impact of employees and top management is clear, negative employee morale may limit the company's chances of turning around a company in financial distress (Trahms et al., 2013). While Trahms et al. (2013) indicates that there is no readily available evidence in the context of turnarounds that management and employees will be supportive of recovery efforts, the ultimate failure of the business will have dire consequences on the managers and employees. This infers that managers and employees will have an interest in the organisation's survival.

#### **2.6.4 Turnarounds and stakeholders**

Trahms et al. (2013) argue that there is lack of coherence in the investigation of stakeholders within turnaround literature. It is therefore valuable to make use of stakeholder theory to frame an understanding of stakeholder interests and claims during successful or unsuccessful turnarounds (Trahms et al., 2013). There is a need for the consideration of multiple stakeholder roles during the decline and turnaround of an organisation (Trahms et al., 2013). While chapter six refers to affected parties as creditors, employees, shareholders and unions, stakeholders are not defined in the act but only mentioned once in the purpose of the act which seeks to ensure that all rights and interests of all relevant stakeholders are catered for during the business rescue process (The Companies Act no 71 of 2008). Chapter eleven, however, allows for the comprehensive management of stakeholders not limited to suppliers and equity holders but also other key stakeholders, for example customers, trading partners and employees (James, 2016). Ghazzawi (2017) further suggests the consideration of stakeholders such as government and the general public. Government is considered a vital stakeholder as it seeks to ensure compliance with a host of legislation that impacts the business operations, while the general public can influence the organisation in many ways which may have an impact of the organisation's image and reputation. The contrast between the chapter six and eleven reinforces the research question which seeks to understand which stakeholders are taken into account during the business rescue process.

Focusing on one stakeholder may be to the detriment of the other stakeholders, i.e. concentrating on stakeholders from a profit perspective may have a negative impact if the non-financial stakeholders are ignored (James, 2016). Benefits are sought by managing all key stakeholders proactively during the decline of the organisation (James, 2016). While it is possible to attend to all the requests of stakeholders, it is not always feasible. Therefore, there is a need to classify stakeholders in order to prioritise the key stakeholders at the expense of other stakeholders (Mainardes et al., 2012). Pajunen (2006) advocates for categorising and prioritising stakeholders by identifying three classes - governing, potential and minor stakeholders - while Miles (2017) suggests four superordinate classes - influencer, claimants, collaborator and recipients. It can, therefore, be inferred that stakeholders may need to be classified and prioritised accordingly during the business rescue process. This will enable the BRP to focus on the key stakeholders thereby increasing the opportunity for a successful business rescue.

### **2.6.5 Business rescue and stakeholders**

Business rescue legislation is relatively new in South Africa, made available in May 2011 through the promulgation of the South African Companies Act, no 71 of 2008 (Pretorius, 2016). Limited theory was identified when investigating the literature on business rescue and stakeholders within the South African context. However, Rosslyn-Smith and Pretorius (2015) investigated stakeholder expectations of the business rescue plan from a South African perspective. This paper examines the most relevant elements required to fill the gap between the Companies Act and additional details necessary to achieve the purpose of the business rescue plan to provide the stakeholders with adequate information on the rescue proceedings. Rosslyn-Smith and Pretorius (2015) acknowledged that the business rescue plan legally recognises creditors, shareholders, employees and trade unions representing the employees. Other stakeholders are accounted for through section 7(k) of the Companies Act, which requires business rescue to balance the rights and interests of all relevant stakeholders (Rosslyn-Smith & Pretorius, 2015). Given that regulatory authorities and other external stakeholders like special interest groups are not taken into account by the business rescue legislation, their omission may be detrimental to the turnaround effort (Rosslyn-Smith & Pretorius, 2015). An example of this would be tax authorities, Du Preez (2012) noted that there is uncertainty on the ranking of taxes in business rescue whether looking through the lens of business rescue or the Insolvency Act. Levenstein (2016) further commented that

South African Revenue Services (SARS) is ranked on par with other creditors in business rescue, while viewed as preferent in liquidation. SARS may consider liquidation as opposed to business rescue as they vote as a creditor. The issue with taxes indicates the impact of regulators on the success of business rescue. Therefore, additional research on regulators and external stakeholder's impact on business rescue is required.

Pretorius (2016) further considered agency relationships as the business rescue legislation modifies standard agency relations. The relationships referred to here relate to the requirement to regulate the demands of affected persons which ultimately has to be done by the BRP. The studies of Rosslyn-Smith and Pretorius (2015) and Pretorius (2016) touch on aspects of the study but have no direct link with the research question, and this reinforces the need for the study.

The importance of stakeholders in business rescue has been noted by Le Roux and Duncan, (2013), Rosslyn-Smith and Pretorius (2015), Conradie and Lamprecht (2015) and Jijana et al. (2016); they noted that business rescue seeks to protect and balance the interests of all the stakeholders. Consequently, the substantive use of stakeholder theory in understanding the stakeholders in the success of business rescue is limited. There is a need for further consideration of implications of stakeholder theory within business rescue in South Africa.

## **2.7 Stakeholder Influence**

### **2.7.1 Stakeholders**

Within business rescue there are various power dynamics at play, these are captured by Pretorius (2016) in the paper refuting business rescue as being debtor friendly. The presence of various stakeholders and the reliance of such stakeholders generates a predicament of how to manage stakeholder relationships during organisation decline and turnaround (Ghazzawi, 2017). This problem is demonstrated by Pajunen (2006) who indicated that stakeholder resource-based power is evident at the beginning of the decline and that stakeholders slowly lose power as the decline continues. Pajunen (2006) identified the four key roles of the different stakeholders. Firstly, the bank's power is seen to increase continually on the basis that the bank may be able to finance the operations and assets of the declining firm. Second, creditors are also seen as important to enable continuity of normal operations. The organisation is highly dependent on resources afforded by the creditors. Third, in the context of a turnaround, employees did

not possess critical resources but posed the threat of striking. Fourth, other stakeholders, for example partners, were seen to have moderate influence. These stakeholder relationships and interaction indicate the complexities experienced during an organisation's decline and turnaround.

To some degree, agency theory assists in understanding some of the stakeholder relationships in business rescue. Agency theory suggests that the interests between the agent and principal differ and one of the contributing factors is the agent's self-interest (Lui, 2011). The BRP retains a significant amount of influence as the legislation places the emphasis of success on the BRP who takes control of decision making and running the organisation (Pretorius, 2016).

### **2.7.2 Post commencement finance**

In section 2.3 the powers and rights of affected parties were demonstrated. Affected parties provide an additional dynamic in understanding the influence stakeholders have during business rescue proceedings. This section provides more details on creditors and post-commencement finance (PCF).

Within stakeholder relationships, creditors, providers of capital and banks have a useful role to play as they have power and influence during the decline phase of the business (Ghazzawi, 2017). Within the context of business rescue, it is imperative to note that secured and unsecured creditors may have equal voting rights, the voting rights are based on the value of the amounts outstanding (The Companies Act no 71 of 2008). Subordinated creditors, however, have voting rights based on the appraisal by the BRP based on the amount the subordinated creditor would receive on liquidation (Jijana et al., 2016).

Le Roux and Duncan (2013) argue that creditors play a crucial role in the business rescue process, they have the rights to influence the process through voting and their decisions impact other stakeholders. Pretorius (2016) viewed secured creditors as significantly powerful when compared to the other stakeholders, specifically noted are the banks that are seen to hold the key to the success of business rescue. Decker (2016) also supported the view of banks being powerful due to the resources they have to rescue a business in distress. In summation, Le Roux and Duncan (2013) emphasised the influence of secured creditors, suggesting that secured creditors have protection in

the rescue process and usually the secured creditors are not concerned with PCF, while unsecured creditors may lose significantly in the case of liquidation.

PCF, covered by section 135 of chapter six of the 2008 Companies Act 71 of 2008, is also relevant in determining stakeholder power dynamics during a business rescue. Pretorius and Du Preez (2013) note that PCF is a valuable ingredient to achieve a successful business rescue. Rosslyn-Smith and Pretorius (2015) and Levenstein (2016) support this view and further argue the importance of PCF for business continuity. Levenstein (2016) puts forth the fact that PCF is critical in the organisation's endeavour to restructure and rescue the failed business successfully, this statement fairly summarises the overall view "PCF is the life-blood of the company while it is undergoing its restructuring process under business rescue" (Levenstein, 2016, p. 474).

With the importance of PCF notably demonstrated, Pretorius and Du Preez (2013) further argue that PCF is usually not advanced by banks if there are no assets to offer as security or surety provided. Surety is addressed by section 133 (2) of the act, "surety by a company in favour of any other person may not be enforced by any person against the company except with leave of the court" (The Companies Act no 71 of 2008, p.120). This however, is not applicable when directors or shareholders provide surety in their personal capacity; the bank may proceed with such surety (Levenstein, 2016). Accordingly, directors that provide surety hope the obligations are discharged within the business rescue process. Directors are incentivised to co-operate and participate in the business rescue process (Levenstein, 2016).

In summation, the point to note is that PCF and the surety granted may have an impact on the success of the business rescue and key stakeholders may have a role to play in providing PCF.

### **2.7.3 Ranking of claims**

The ranking of claims which indicate which creditor will be paid first is covered by section 135 of chapter six of the Companies Act 71 of 2008. Preference in terms of order is given to

- The business rescue practitioner's remuneration and costs;
- Other costs related to claims from the business rescue;
- Employment-related costs incurred after commencement of the business rescue;

- Secured creditors before the business rescue;
- PCF secured creditors;
- Unsecured claims by PCF creditors;
- Employment-related costs incurred before the commencement of the business rescue;  
and
- Finally, all other unsecured claims (The Companies Act no 71 of 2008).

In making sense of the rankings in relation to business rescue, it is important to understand where power will lay. Stakeholders that are highly ranked may want to act in self-interest, meaning according to Bridoux and Stoelhorst (2014) stakeholders will only be concerned about protecting their self-interest and not the interest of the organisation. Harrison and Wicks (2013) suggest that stakeholder interests may overlap given finite resources to be allocated among stakeholders. Conflicts and pressure exist as self-interest will mean stakeholders want to be better off.

The question of the power dynamics between stakeholders in business rescue proceedings remains valid and is the focus of research question three of this study.

## **2.8 Conclusion**

The literature review section presented an overview of chapter six which provides context to the study in light of affected parties and their rights and powers as afforded by the legislation. As demonstrated, stakeholder theory provided a lens to understand the identification, classification and influence of stakeholders to assist in understanding which stakeholders are relevant when an organisation is in decline. Different views were provided by Donaldson (1995), Mitchell et al. (1997), Friedman and Miles (2002), Pajunen (2006), Mainardes et al. (2012) and Miles (2017) on the influence different stakeholders possess which could be based on resources, network positions and compatibility.

In understanding the first element of the study, the identification and classification of stakeholders, lead to the query of how improved performance provides relief to an organisation in decline. Harrison et al. (2010) further reinforce the importance of stakeholder influence in organisational survival with the broad view approach on stakeholder support to improve performance. Taking a closer look at stakeholders and turnarounds, the contrast between the identified stakeholders in chapter six and eleven

leads to the question asked by Rosslyn-Smith and Pretorius (2015) relating to chapter six not capturing all the relevant stakeholders.

The study then explored the dynamics at play during the business rescue as Ghazzawi (2017) puts forth the challenge of managing stakeholders during a decline and turnaround. BRPs play a pivotal role in the success of business rescue proceedings, the legislation further reinforces their power as the BRPs manage and control the organisation during the rescue. Decker (2016) argued that other stakeholders, for example creditors and banks, may have resources to be influential in the business rescue process. It must be noted that PCF and the ranking of claims, which may lead to creditors acting in self-interest, also adds to the dynamic of understanding the complexities identified by Ghazzawi (2017) on the question of the most influential stakeholders.

The next chapter presents the research questions and propositions that seek to understand the gaps identified in the literature review.

### **3. CHAPTER THREE – RESEARCH QUESTIONS AND PROPOSITIONS**

#### **3.1 Research questions and propositions**

Chapter three originates from the presentation of the literature review in chapter two. Research questions in chapter one guided the research study. The research questions and propositions in this chapter assist in providing structure and support to respond to the purpose of the study adequately.

Question 1: Who are the key stakeholders involved in the business rescue process that an organisation goes through?

**Proposition 1: Key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six.**

Miles (2017), Trahms et al. (2013), Mitchell et al. (1997), Donaldson and Preston (1995), and Pajunen (2006) all seek to develop methods to identify stakeholders. The value of the identification and involvement of stakeholders on meeting the objectives of the organisation and in the decline and turnaround of the organisation have been demonstrated by Yang (2014) and Decker (2016). The proposition aims to identify and conclude on key influential stakeholders with an impact on the business rescue process.

Question 2: Which stakeholders are influential in business rescue processes?

**Proposition 2: Stakeholders with the largest material claim are the most influential in the business rescue process.**

Pajunen (2006) and Decker (2016) suggest a resource-based view as important for a stakeholder to influence business rescue proceedings. Pretorius (2016), Le Roux and Duncan (2013), Decker (2016) and Ghazzawi (2017) evaluate the influence of creditors and banks during the organisation's decline as they are seen as powerful due to the resources they possess. The proposition suggests the stakeholder with the largest material claim will be the most influential.

Question 3: What factors contribute to the influence or power the key stakeholders have in an organisation during periods of business rescue?

**Proposition 3: Size of the claim, resources, networks, PCF, creditor security, and rankings of creditors determine influence during the business rescue process.**

Pajunen (2006), Pretorius and Du Preez (2013), Pretorius (2016) and the Companies Act provide factors that impact the influence on stakeholders. The factors range from the size of the claim to understanding the influence holders of resources may exert in achieving a return on their stake. The proposition seeks to conclude on the factors that influence the power of key stakeholders.

## **4. CHAPTER FOUR – RESEARCH METHODOLOGY**

### **4.1 Introduction**

This chapter outlines the chosen research methodology used in this study to respond to the research questions in chapter three. The literature review in chapter two demonstrated that the roles of stakeholders within business rescue in South Africa have not been thoroughly investigated. To gain insights into the stakeholder roles, a qualitative and exploratory research design was selected as the appropriate research method. This chapter details the defence of the methodology, sampling techniques, data collection and analysis, ethical consideration and concludes with the limitations of the study.

### **4.2 Research methodology and design**

The study research design is qualitative. Saunders, Lewis and Thornhill (2009) describe a qualitative study as one in which qualitative data is collected through in-depth interviews, notebook or journal entries and is analysed via non-numerical (qualitative) procedures. Qualitative research interrogates theory from different angles, providing the ability to identify valuable themes relevant to answering research questions. In some cases, qualitative research supplements work performed by previous researchers to offer relevant insights previously unknown (Creswell, 2008). Bettis, Gambardella, Helfat, and Mitchell (2015) put forth that qualitative research “can provide rich nuance about empirical phenomena, whether by extending prior research or exploring new contexts” (p. 637).

The research approach is exploratory. Exploratory research seeks to discover general information about a topic, find new insights and asks new questions to develop a fuller understanding of an issue or situation (Saunders & Lewis, 2012). Blumberg, Cooper and Schindler (2005) further suggest the use of exploratory research in cases where the researcher intends to understand the opinion and interpretation of respondents to given questions. This study is, therefore, qualitative and exploratory. With business rescue being a relatively new concept, obtaining and understanding new insights into stakeholder management within business rescue from BRPs proficient in the field will be valuable to understanding the phenomena. To gain an understanding of the dynamics of stakeholder influence in business rescue, in-depth interviews will be used so that the perspectives and views of stakeholders and their power are obtained from BRPs.

Additionally, the study will seek to build on to the theory of the role of stakeholders in business rescue in South Africa.

Cross-sectional studies are conducted once and reveal a particular time recognised as a snapshot (Saunders & Lewis, 2012). The study focused on stakeholder identification and their influence during a specific time period. While business rescue may have occurred over a period of time, this research will be conducted once and will obtain information about what would have happened during an organisation's period of business rescue. This study is cross-sectional.

The choice of technique for the study was semi-structured interviews. Interview subjects were asked questions about stakeholders within business rescue and the influence and power dynamics that play out during the process. As theory was used to guide this study, the themes for the interview questions were obtained from stakeholder theory and the Companies Act. The themes were used to facilitate the questions asked during the semi-structured interviews, allowing for 'probing' of answers and permitting the interviewees to explain, or build on, their responses (Saunders et al., 2009). This was useful in uncovering what could have been overlooked in literature and theory.

The research philosophy of this study is interpretivism. Collis and Hussey (2013: p. 44) claim that "interpretivism rests on the assumption that social reality is in our minds and is subjective and multiple." This study adopted interpretivism as its philosophy because it investigated the different roles of stakeholders in the success of business rescue and how these stakeholders influence business rescue proceedings. In doing so, the study focused on understanding the role of actors in the form of stakeholders in the context of business rescue from the perspectives of BRPs. Furthermore, the study aimed to understand the power and influence dynamics of the different stakeholders in organisational business rescue.

While conducting deductive research, a researcher uses a "top-down" approach whereby their investigation is guided by existing theory (Myers, 2013). This existing theory may then be used as a lens or a guide for the research, data collection and analysis to prove or dispute the theory (Myers, 2013). Bettis et al. (2015) established that deductive work seeks to build on previous work done in order to frame logic that can be used to illustrate whether predictions, interpretations and insights may be relevant to a specific study. A deductive approach is, therefore, the most appropriate because an existing theory, the

stakeholder theory, has been utilised. Furthermore, the process of deduction resulted in the formulation of research questions and propositions which are derived from the theory base discussed in chapter two. The propositions provided the conceptual lens used to collect and analyse data from semi-structured interviews to assist in ensuring that the research objectives are met.

### **4.3 Population**

To gain in-depth insights on business rescue, experienced professionals proficient in the field were valuable in providing a holistic view of stakeholder management. The population, defined as the complete set of cases or group members by Saunders et al. (2009), was professionals in the business rescue field. Professionals within the business rescue field are known as BRPs in terms of chapter six of the Companies Act. Rosslyn-Smith and Pretorius (2014) state that a BRP is a suitably qualified, independent person appointed to oversee and take full responsibility for managing the company through business rescue proceedings. Conradie and Lamprecht (2018) concur, indicating that BRPs are experts in the field of business rescue and would be able to consider the indicators necessary for successful business rescue in South Africa.

In qualitative studies carried out by Pretorius and Du Preez (2013) and Conradie and Lamprecht (2018) relating to business rescue, the studies used BRPs as they were seen as subject matter specialist with experience and knowledge.

The population of the study will, therefore, be BRPs as defined by chapter six of the Companies Act 71 of 2008.

### **4.4 Unit of analysis**

Elo, Kääriäinen, Kanste, Pölkki, Utriainen and Kyngäs (2014) state that to ensure credibility of the content analysis the election of a satisfactory unit of analysis is imperative. If the unit of analysis is too narrow or too broad, it may result in data that is fragmented or difficult to manage respectively.

The unit of analysis for this research will be stakeholders within business rescue in South Africa.

#### **4.5 Sampling method and size**

Collecting data from the whole universe is not practicable. Therefore, a sample, which is a subgroup of the entire population, is used (Saunders & Lewis, 2012). The sampling techniques that were used in this study were non-probability sampling, purposive, judgemental, and snowball techniques. Purposive sampling applies as BRPs who participated were selected based on the researcher's judgement in choosing professionals that are knowledgeable in the field (Elo et al., 2014). A request was made to the Turnaround Management Association – South Africa (TMA-SA) for a list of registered BRPs.

Given the time constraints on completing the study, it is quite difficult to determine the sample size. In qualitative research conducted by in-depth interviews, interviews need to be performed until data saturation is reached (Saunders et al., 2009). Alternatively, Guest, Bunce and Johnson (2006) indicate that twelve interviews may be adequate to reflect data saturation within a homogenous population. Saunders and Lewis (2012) take the view that the sample size should be about ten. This study used a minimum of twelve interviews, as suggested by Guest et al. (2006).

Using a random number generator, 12 BRPs were selected. Of the 12 BRPs selected, not all were able to participate in the study. Therefore, both judgemental and snowballing sampling techniques were utilised to get the final sample size of 13 BRPs. Snowballing had the advantage of providing access to BRPs who were considered highly skilled and had a good record in successful business rescues.

#### **4.6 Sampling consideration**

The sample comprised of BRPs of good standing, registered with the TMA-SA and CIPC. The participants were either junior or senior BRPs, the mix was eight senior practitioners and five junior practitioners. The practitioners have varying experience and were all all-rounders who did not specialise in a specific sector or industry. Although judgemental sampling resulted in the diverse mix of BRPs, only BRPs with experience and those that have carried an actual business rescue were selected; there was no focus on industry as many practitioners worked across sectors. The focus was on Gauteng which has the most number of companies under business rescue and where most BRPs are based.

Table 3 represents the participants that took part in the study. Supplementary details of the sample will be provided in chapter 5.

**Table 3: The Category, location and year of license of the BRPs**

<b>Participant</b>	<b>Category of License</b>	<b>Year Licensed with CIPC</b>	<b>Location of business rescue</b>
Participant 1	Senior	2011	Gauteng
Participant 2	Senior	2011	Gauteng
Participant 3	Senior	2015	Gauteng
Participant 4	Junior	2017	Gauteng
Participant 5	Senior	2012	Gauteng
Participant 6	Junior	2016	Gauteng
Participant 7	Junior	2014	Gauteng
Participant 8	Junior	2017	Gauteng
Participant 9	Senior	2011	Gauteng
Participant 10	Senior	2011	Gauteng / Eastern Cape
Participant 11	Junior	2017	Gauteng
Participant 12	Senior	2011	Gauteng
Participant 13	Senior	2011	Gauteng

#### **4.7 Data Collection Tool**

In-depth, semi-structured interviews were used to collect data. The benefit is that the interviews allow interviewees to provide profound insights into the subject matter and allows the researcher to adjust the questioning (Creswell, 2008). Through semi-structured interviews, the researcher can ask pre-determined questions and also vary the questions which cover the salient themes and ensure that the research questions are appropriate (Saunders & Lewis, 2012).

In total, 13 semi-structured interviews were conducted with BRPs with different ranges of experience; 12 of the interviews were carried out face-to-face. The interviews according, to Saunders and Lewis (2012), should take place at a convenient place for both parties involved. The interviews were conducted at the workplaces and the homes of the interviewees. Invitations were done via email and face-to-face after the researcher attended a members' event held by the TMA-SA. One interview was carried out via telephone due the participant's availability. This, however, did not take away the nature of the interview as the participant clearly articulated and responded to the questions without any reservations.

Once consent was received from the participant, a confirmation email was sent with a meeting request with the meeting's details and the nature and purpose of the study. A sample of the invitation is provided in Appendix 1.

Before the commencement of the interviews, the researcher joined the TMA-SA as a student member to develop a better understanding of the field and to understand the turnaround professional's expertise and relevance to the study. Only BRPs in good standing participated in the study. To ensure that ethical considerations were adhered to in conducting the research, each participant completed and signed a consent form prior to the interview, as recommended by Saunders and Lewis (2012). Permission was also given by the participant to audio record the meeting. Refer to Appendix 2 for a sample of the consent form.

Creswell (2008) recommends that substantial literature review should be carried out to determine the research question that needs to be answered. The interview questions in Appendix 1 were formulated after substantial literature review - detailed in chapter two - in response to the research problem illustrated in the chapter one. The design of the interview questionnaire was established to link the research question in order to tackle the overall research problem. The semi-structured open-ended questions were designed such that they align to the research propositions.

The three propositions that link to the research questions to cover the three focus areas of the study are firstly, the understanding of which stakeholders BRPs consider in the business rescue process. The second is to identify the stakeholders considered the most influential, and lastly to examine the factors that result in a stakeholder influencing the business rescue process. Mapping the questions to the propositions allowed for quality data collection. The interview questionnaire was used as a guide. However, additional questions were asked and answered were necessary to develop further understanding and to obtain relevant information. As noted by Saunders and Lewis (2012), the researchers can adapt the interview questions where required. The interview questions that were mapped to the propositions are presented in Table 4.

**Table 4: Interview questions and propositions**

Proposition	Interview Questions
<p><b>Proposition one:</b> Key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six.</p>	<p>i) What is your understanding of a stakeholder within business rescue? ii) How do you identify stakeholders? iii) Within the context of business rescue, who constitutes a stakeholder?</p>
<p><b>Proposition two:</b> Stakeholders with the largest material claim are the most influential in the business rescue process.</p>	<p>i) Within the realm of business rescue, do you prioritise stakeholders? ii) Which stakeholder do you consider most impactful? iii) How would you rank the listing of stakeholders in terms of influence? iv) Why do you consider a stakeholder or a group influential?</p>
<p><b>Proposition three:</b> Size of the claim, resources, networks, PCF, creditor security, and rankings of creditors determine influence during the business rescue process.</p>	<p>i) Given that the stakeholders are influential, what basis or process do you follow to make your determination? ii) What drives stakeholder power in business rescue? iii) Are given drivers/factors considered in isolation? iv) What is your view of the influence of personal surety by shareholders and subsequent behaviour by shareholders?</p>

#### **4.8 Pilot Interview**

Prior to the commencement of the interviews, one pilot interview was conducted in order to examine the appropriateness of the interview guideline. Creswell (2008) recommends doing a pilot test to ensure the validity of the instrument and to improve the questions. The pilot was carried out with the research project supervisor who matches the profile of the sample requirements. The supervisor is a senior BRP registered with the TMA-SA and CIPC. As a result of the pilot interview, adjustments were made to the interview questionnaire to ensure questions that were not open-ended were eliminated and to

ensure that the interview questions were logical and would facilitate adequate and quality responses from the interviewees.

#### **4.9 Data Collection**

Given that the study was exploratory in nature, semi-structured, opened ended and in-depth interviews were selected as the means to collect data. 13 BRPs with experience in business rescue who are classified as either junior or senior were chosen from the sample for the interviews. The objective of the researcher was to draw upon the BRPs' experience in business rescue proceedings, to understand their views and opinions on key stakeholders and the influence the stakeholders wield to ensure success in business rescue in South Africa. Bluhm, Harman, Lee and Mitchell (2011) further concur that qualitative research is critical in comprehending, uncovering the experiences of individuals and interpretations of individuals experiences in understanding specific phenomena.

The interviews were carried out in an environment free of disturbance and allowed the participant to be comfortable and respond freely to questions (Saunders & Lewis, 2012). The interviewing process occurred over a six-week period. The average interview was thirty-four minutes, with the longest being forty-eight minutes while the shortest was twenty-four minutes. As noted, the interviews were recorded using an audio recorder and further transcribed into Microsoft Word for data analysis. In addition, the researcher utilised an interview guide with questions during the interviews to enable note taking and writing of key themes that came out during the interviews as recommended by Creswell (2008).

#### **4.10 Data Analysis approach**

Data analysis according to Zikmund, Babin, Carr and Griffin (2013) focuses on identifying key features, patterns and insights from analysed data collected from interviews. In exploring the patterns, a thematic analysis was used. Thematic analysis is a process whereby themes are identified and examined from the data from interviews to report patterns concerning the research question (Braun & Clarke, 2006). Data analysis and transcription was carried out soon after the interviews to ensure that the researcher was immersed in the data. Atlas.ti, a qualitative data analysis computer software, was used for data analysis, interpretation, coding and identification of themes. Analysing the data

and gathering sufficient understanding of the data enabled the researcher to understand the relationship between the codes.

Units of data from the transcripts were coded and categorised into themes. The initial codes emanated from the literature review which was predetermined, while the other codes emerged from an inductive process thus from data collected during the analysis. Creswell (2008) notes the combined use of developed codes emerging from predetermined codes derived from literature and codes developed from collecting information from the analysis is a common practice in data analysis. After the initial coding process, the researcher then reviewed the initial codes and repeated the process to ensure that all data was coded appropriately and that the themes were categorised correctly. Throughout the process, the themes and patterns identified were linked and examined in the context of the research questions and propositions (Braun & Clarke, 2006). This process also allowed for the data to be presented in a suitable manner to ensure that the research questions are responded to comprehensively.

The results of the analysis will be presented in chapter five.

#### **4.11 Data Validity and reliability**

Validity refers to the extent to which the data collection method measures what it professes to measure and whether the research findings are really what they purport to be about (Saunders & Lewis, 2012). Reliability is concerned with whether the researcher's approach is consistent; if a different researcher carried out the research, are they bound to reach the same conclusion (Creswell, 2008). With semi-structured interviews, more than two independent sources of data collection methods can be used to ensure that the data is valid thereby ensuring triangulation (Saunders et al., 2009). The use of in-depth interviews, recordings and note taking was employed to ensure that the data collected is credible and dependable. In addition, the review of the transcripts through listening to the audio ensured that the contents of the interview were correctly captured to further ensure validity.

The use of follow-up and probing questions in an in-depth semi-structured interview helps the researcher comprehend and fully understand responses thus ensuring reliability (Saunders & Lewis, 2012). This tactic was employed during the interview

process, particularly when the participant responses were not clear, or the researcher requested clarification of specific comments and statements.

To aid validity and reliability Saunders and Lewis (2012) recommend pilot testing interviews which ensures that the participants understand the questions asked during the interview and that the questions are not leading. As already noted, a pilot test was conducted which resulted in the amendment of questions to ensure that the questions were clear, not leading and solicit in-depth responses from the participants. Bluhm et al. (2011) notes the existence of the qualitative researcher's bias which may come from the researcher's history, experiences, social position and training. This bias may impact how the researcher interprets and analysis data from interviews. To ensure validity and reliability the researcher used a standardised approach in all interviews, the same interview guideline was used, and participants were free to express their views and opinions. Being aware of the potential biases, the researcher made a concerted effort to focus on the content in relation to the study.

#### **4.12 Research limitations**

- I. Due to the time constraints, only professionals based in Gauteng were interviewed. Therefore, the research will be limited in generalisability.
- II. Not all experts in the field have been interviewed, viewpoints from other experts, for example restructure specialist in financial institutions and legal practitioners, have not been considered.
- III. There is a possibility of interviewee bias as the interviewee in a semi-structured interview may choose not to reveal information that they consider sensitive. The interviewee may also be biased given their profession or discipline (Saunders et al., 2009).
- IV. There is currently limited literature on business rescue in South Africa, literature from corporate failure and turnaround will be used which is from different contexts.

## **5. CHAPTER FIVE – RESULTS**

### **5.1 Introduction**

This chapter outlines the key findings of the 13 in-depth qualitative interviews carried out during the data collections stage. The results are presented in a manner that responds to the propositions discussed in chapter 3. The themes developed from the data analysis are shown as they relate to the research question and associated proposition. In the presentation of the chapter, themes with minimal responses were excluded. The results are presented in a format that covers three areas: the identification of key stakeholders involved in business rescue, an evaluation of which stakeholders are influential in the process, and the investigation of the factors contributing to the influence of stakeholders in the realm of business rescue.

This chapter will start with the description of the interviewees that participated in the study, followed by the results presentation on the research questions and the propositions outlined in chapter three.

### **5.2 Details of participants interviewed during the data collection phase**

All participant names have been excluded and replaced with the generic term “participant” and a number. This was done to enforce anonymity of the participants. A total of 13 interviews were conducted. Participants mainly based in Gauteng, where most of the business rescue proceedings and BRPs are based, were interviewed, with one exception being a participant who also does work in the Eastern Cape. Only BRPs registered with the TMA-SA and CIPC were selected for the sample. Table 5 further documents the expertise and areas of focus of the BRPs which indicate their suitability as participants. Their experience demonstrates the considerable skill and expertise in turnarounds, business rescue and business consulting.

**Table 5: Description of participants**

<b>Participant</b>	<b>Category of License</b>	<b>Year Licensed with CIPC</b>	<b>Location of business rescue</b>	<b>Areas of focus</b>
Participant 1	Senior	2011	Gauteng	Business rescue, turnaround consulting, financial advisor and business transformation consulting, accounting, private equity.
Participant 2	Senior	2011	Gauteng	Business rescue, turnaround consulting, corporate renewal, banking, strategy formulation and accounting.
Participant 3	Senior	2015	Gauteng	Business rescue, accounting, banking, turnaround consulting, insolvency, financial advisor and business transformation consulting.
Participant 4	Junior	2017	Gauteng	Business rescue, turnaround consulting, business transformation, financial advisor, management consulting and corporate restructuring.
Participant 5	Senior	2012	Gauteng	Business rescue, turnaround consulting and strategy, business transformation, business advisory and mentoring.
Participant 6	Junior	2016	Gauteng	Business rescue, turnaround consulting, business transformation, insolvency, and interim management.
Participant 7	Junior	2014	Gauteng	Business rescue, practicing law, receivables collections, turnaround consulting, strategy.
Participant 8	Junior	2017	Gauteng	Business rescue, accounting, banking, interim management and turnaround consulting.
Participant 9	Senior	2011	Gauteng	Business rescue, corporate renewal, turnaround consulting, cashflow management, valuations.
Participant 10	Senior	2011	Gauteng / Eastern Cape	Business rescue, business transformation, corporate renewal, management consultant, project management, business coaching.
Participant 11	Junior	2017	Gauteng	Business rescue, accounting, business transformation, corporate renewal, financial advisor, turnaround consulting, strategy development, receivables collection and stakeholder optimisation outcomes.
Participant 12	Senior	2011	Gauteng	Business rescue, corporate transactions, listings, business transformation, business reviews, corporate renewal, financial advisor, turnaround consulting, interim management and bank restructuring.
Participant 13	Senior	2011	Gauteng	Business rescue, accounting, business transformation, corporate renewal, financial advisor, turnaround consulting and interim management.

### 5.3 Results: Proposition one

The research findings that follow reflect the results of the study and an attempt to accept or reject the research propositions, thereby attending to the research question.

**Research Proposition one: Key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six.**

Question 1: Who are the key stakeholders involved in the business rescue process that an organisation goes through?

The proposition aims to identify and conclude on key influential stakeholders with an impact on the business rescue process. To answer the research question, it is necessary to define, identify and understand the process employed by a BRP in identifying the key stakeholders in business rescue.

#### 5.3.1 Stakeholder Definition

The themes that follow relate to the understanding of stakeholders in business rescue by BRPs. The participants were asked what they understood as stakeholders in business rescue. The results that follow reflect the significant themes that emerged from the discussions.

**Themes identified:**

- Affected parties
- Broad view
- Parties influenced by an outcome

#### **Theme one: Affected parties**

**Description:** Affected parties refers to registered trade unions, employees, creditors or shareholders of the company as defined by section 128 of the Companies Act (The Companies Act no 71 of 2008). The results of this theme are displayed in Table 6 and are based on the number of participants who referred to affected parties when asked about their understanding of stakeholders in business rescue.

**Table 6: Response to definition question**

Percentage of respondents	100%	Responded to question
Percentage of respondents	76,92%	Referred to affected person in definition question
Percentage of respondents	23,08%	Made other references in the definition question

**Observations:** All the participants contributed to this theme. It emerged that BRP's immediately referred to affected parties when asked whom they considered to be the stakeholders in a business rescue. The evidence presented below shows that affected parties are major stakeholders considered by practitioners.

So, stakeholders, I think, refers to the act as affected persons. So, the affected persons in the act refers to creditors, anyone who has a claim against the company, the employees, and the shareholders and the directors. The affected persons. Look the act is quite clear, where it is grey is the related parties. The related parties which is an affected person to the company. (Participant 1)

Stakeholder is any party that is directly influenced or affected by the business rescue process. (Participant 4)

That's exactly it, it is all the affected parties. That's what I believe. Your creditors, your secured and unsecured creditors. Your employees, your shareholders, your funders, SARS, everybody. (Participant 5)

The act defines affected person as a creditor, shareholder or employee and employee's representative like the unions. (Participant 7)

So, I think they refer to as affected parties, but in my eyes a stakeholder is someone who is interested in the outcome of the business rescue. (Participant 8)

The stakeholders are effectively the affected persons as defined by the act, which are your creditors, employees and shareholders. I think that broadly encompasses it. A lot of debate is whether directors are stakeholders, whether they fall under the definition of affected persons. I think if they are not seen as

affected persons, then they are probably still stakeholders. I think in my opinion an affected person, quite nicely defines what a stakeholder is. (Participant 10)

Affected persons in my mind is anybody that is affected by the business rescue in one way or another. Even if you don't have debt, like staff. Staff do not have debt by they are consider an affected person. In my mind anybody that will be affected by, irrespective of whether you have a vote or not, I would see them as an affected person. (Participant 11)

As an affected party, they may not have a standing in terms of the voting run in business rescue, but they are a stakeholder in any way. (Participant 12)

One of the respondents made it clear that there is a distinction between affected parties and stakeholders within the realm of business rescue. Affected parties are regarded as a component of the wider group of stakeholders.

The plan deals with affected persons, the plan does not necessarily deal with the stakeholders. Because the stakeholders may have no right to the plan at all. It is an extraneous element, an extraneous influence. That part of the stakeholders that is not part of our affected persons, the stakeholders would include affected persons and whoever else can influence business rescue. We need to draw that distinction very clearly. Stakeholder may be a collective noun for anybody or everything that can be affected or affect the business rescue, where affected persons are those that are entitled to participate in the business rescue either as a creditor or affected person by definition of the act. (Participant 12)

The majority of respondents referred to affected parties and, in some instances, included stakeholders that are not affected parties as defined by the act. This leads us to the second theme.

### **Theme two: Broad view**

**Description:** The broad view refers to participants noting that stakeholders in business rescue relates to a more extensive number of stakeholders in addition to affected parties. Some of the respondents that made reference to stakeholders being affected parties

also mentioned that the definition of affected parties as defined by the act goes further than just affected parties.

**Table 7: Broad view**

Percentage of respondents	100%	Interviewed
Percentage of respondents	53,85%	Referred to a broad definition
Percentage of respondents	46,15%	Did not refer to a broad definition

**Observations:** Respondents recognised that the definition of stakeholders in business rescue should be all inclusive and indicated that a broad view should be considered.

I think stakeholder might have a wider definition than an affected person, so it would include directors, suppliers and maybe debtors. It's a little bit wider than the definition of affected person. (Participant 7)

I don't think it's as narrow as the Companies Act states. There are a lot of ancillary stakeholders. The Companies Act has a very narrow view that they take. Creditors, employees, there are a lot of other people involved in getting the thing running and making it a success. (Participant 4)

All the parties to the business rescue are stakeholders. Even the practitioner. That is my understanding. And as I said the clients are not officially stakeholders, affected parties, but they are also stakeholders in there. (Participant 5)

So, stakeholders are very wide, far wider than affected persons. Much wider. (Participant 12)

It is quite broad. You have read chapter six, I assume quite a few times in terms of stakeholders. So, I think they refer to as affected parties, but in my eyes a stakeholder is someone who is interested in the outcome of the business rescue. (Participant 8)

### Theme three: Parties influenced by an outcome

**Description:** This theme relates to participants recognising stakeholders as a party that is affected by or has an interest in the business rescue. The party is therefore directly or indirectly impacted by the business rescue proceedings.

**Table 8: Parties influenced**

Percentage of respondents	100%	Interviewed
Percentage of respondents	53,85%	Made reference to an influenced party in the definition
Percentage of respondents	46,15%	Did not make reference to an influenced party in the definition

**Observations:** It emerged that the BRPs, when responding to the question of stakeholders in the business rescue process, considered parties that were influenced by the outcome of the proceedings, parties that were influenced by the process and parties that were directly or indirectly affected by the business rescue proceedings.

The stakeholder by definition is somebody who is affected, somebody who has got an interest in the business. (Participant 10)

So, a stakeholder is anyone who is an interested party in the business rescue proceedings. Who ultimately, the outcome will affect their lives. In my eyes a stakeholder is someone who is interested in the outcome of the business rescue. (Participant 8)

Anyone who will be affected by the process indirectly or directly. (Participant 1)

A stakeholder would be someone who is influenced by the outcome of the business rescue proceedings. Actually, a stakeholder is someone who is influenced by, or was able to influence the outcome of a business rescue. (Participant 2)

If you are able to influence his life or his livelihood by making a choice. Then he is most likely a stakeholder. That is the broader definition. (Participant 6)

Directly influenced by the choices of management almost. (Participant 6)

### 5.3.2 Stakeholder Identification

The research findings that follow assist in understanding the process the BRP follows to determine the key stakeholders involved in the business rescue. The results assist with responding clearly in establishing the key stakeholders in the business rescue. The three themes discussed below are the main themes that emerged from the discussions on how the BRPs identify the key stakeholders.

**Themes identified:**

- Request the company to provide information
- Review of financial records
- Parties involved in the business rescue

#### **Theme four: Request the company to provide information**

**Description:** In identifying the key stakeholders, the BRPs request the company provide them with information of the parties involved in the business rescue. The directors and employees give the data in the ordinary course of the business as this information should be readily available.

**Table 9: Request for information**

Percentage of respondents	100%	Interviewed
Percentage of respondents	69,23%	Request the company to provide information
Percentage of respondents	30,77%	Did not make reference to requesting information from the company

**Observations:** In most instances, the participants requested information from the company to identify the stakeholders in the business rescue. The information is provided in the lists from the company, discussions with directors and management and in some cases the legal departments within the organisation.

If it is voluntary, we will get all the information from the directors in the director's statement of affairs plus in conversation. (Participant 13)

Even if the company provides you with lists of affected persons and possible creditors, the practitioner must still impose due care by going through the financials and the use of his experience. (Participant 11)

As the Companies Act says it is up to the owners and directors of the company to present the business rescue practitioner with all the information of the affected persons. (Participant 11)

You will have, if there is a legal department internally, you go through them, your HR, your CEO, you definitely use all the staff. The staff internally are the people who know the people they are dealing with in all the different areas. (Participant 8)

Then you will ask for a list of employees from them and a full list of creditors. Then you send out the first notice of the meeting to the creditors and so you start. (Participant 7)

For instance, let's assume they would upload on our behalf, the list of trade creditors, the list of employees, the list of liabilities, contingent liabilities, SARS, the list of debtors, the list of shareholders, the list of directors and list of people of interest. (Participant 1)

**Theme five: Review of financial records**

**Description:** This theme relates to BRPs making use of the company's financial records as the source of identifying key stakeholders.

**Table 10: Review of financial records**

Percentage of respondents	100%	Interviewed
Percentage of respondents	46,15%	Make use of financial records to identify stakeholders
Percentage of respondents	53,85%	Did not mention financial records in identifying stakeholders

**Observations:** In some instances, BRPs mentioned using the financial records as the basis of identifying stakeholders. In some cases, in addition to other company records that were provided, the BRPs considered the review of financial records relevant to identifying stakeholders.

The way I start, first is the balance sheet. I literally take the balance sheet and I look out who are the creditors, SARS if they are owed. I literally pick out all the important ones. Then I go into the specific company, if it is mining or milling or banking, regulators, then I pull out all the regulators. (Participant 8)

What I do, I go in obviously, we see who the creditors are, and we rank the creditors whether they are secured or unsecured. Then we look at the shareholding, obviously the shareholders, if the company has liabilities to the shareholders. We look at the funders, the banks etc. The secured creditors usually are the banks and some other. All the employees, we look at the list of employees. (Participant 5)

Even if the company provides you with lists of affected persons and possible creditors, the practitioner must still impose due care by going through the financials and the use of his experience. (Participant 11)

Basically, from financial information that you are given, you can see who the creditors are. Share register for example will tell us who the shareholders are. Payroll will tell us who the employees are. Discussion with directors would establish if there are any other stakeholders or affected persons. (Participant 10)

The directors will give us financial information, creditors age analysis or a payroll and we would work from that information to identify who are the creditors, who are the employees and sometimes the information is either old or lacking or they don't want to tell us, or they think that they are now protecting one creditor. (Participant 4)

#### **Theme six: Parties involved in the business rescue**

**Description:** This theme refers to the how the BRPs identify stakeholders in the business rescue process by making use of the affected parties definition.

**Table 11: Parties involved in the business rescue**

Percentage of respondents	100%	Interviewed
Percentage of respondents	30,77%	Referred of parties involved in the rescue
Percentage of respondents	69,23%	Did not refer of parties involved in the rescue but the use other methods

**Observations:** On some occasions, the respondents identified stakeholders by using the affected parties as defined by the act. The stakeholders were seen as the parties with influence and had the ability to vote. Additionally, parties that were involved in the business rescue and the implementation thereof were also identified. By using the affected party definition, the BRP covered the stakeholders as required by the law.

First of all, the first thing you do in business rescue, you determine who is part of the voting universe. That will be creditors and employees etc. who are directly involved in the business. (Participant 12)

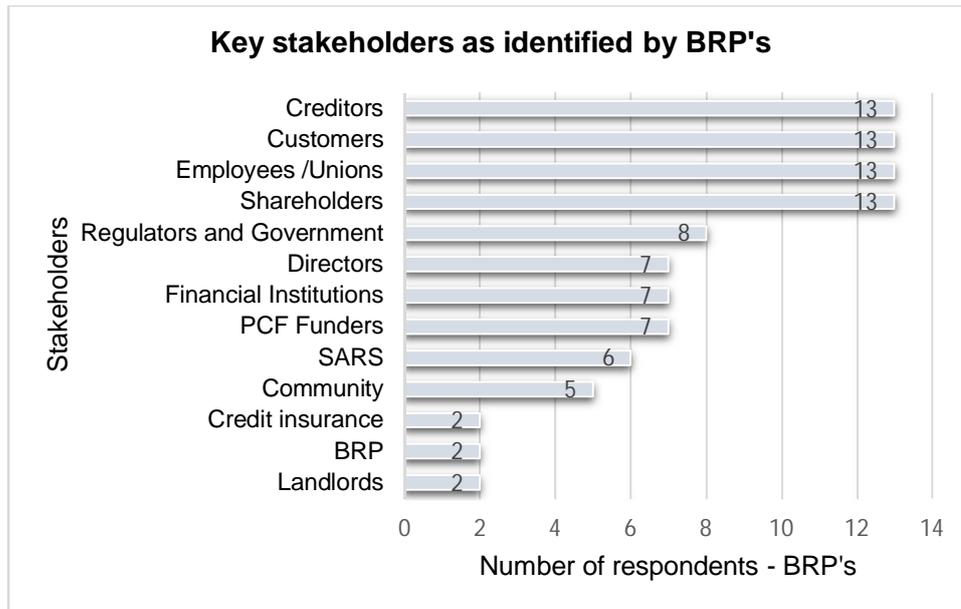
Anybody you interact with, with regards to getting it into rescue and implementing the business rescue plan. So, anybody who you come in contact with, if it's an external financier or whoever, it doesn't matter. (Participant 4)

Initially you only deal with the affected persons, so as the process unfolds your initial contact is with the directors, who in a private company are normally the shareholders, and then the employees as you get into the company and then obviously the creditors following that. (Participant 7)

In a normal case. Each case is so different. For me I use the definition almost. You follow in to see who will be influenced and who will influence your decision making because it's one thing to say its normal to always have employees as stakeholders, you will always have suppliers, and you will always have those standard ones. (Participant 6)

### 5.3.3 Stakeholders Identified

To adequately answer the research question, it is important to understand who the key stakeholders are that BRPs consider in the process of ensuring that the business rescue process is successful. Although stakeholders vary from case to case, the BRPs provided a list of stakeholders they considered to feature prominently in the business rescue proceedings they had been a part of.



**Figure 1: Key stakeholders identified by BRP's in the data collection phase**

All the respondents included creditors, employees/unions and shareholders as stakeholders, which aligns to the affected party definition as defined by the act. Observations from Figure 1, indicate customers and government/regulators are seen to also rank highly in the stakeholders considered. Customers unexpectedly have the same number of respondents as affected parties.

The main views of the participants in respect of customers being critical stakeholders within business rescue are displayed below.

Customers are stakeholders, especially if they got warranties on products.  
(Participant 3)

Yes, customers would also be stakeholders. In certain industries, customers will be very hesitant to procure goods from a company that is in business rescue. (Participant 10)

A customer that is potentially being owed products, now although a customer is not someone who will have a vote. (Participant 11)

We will bring in the customers as well and they are not affected parties in terms of the Act. If we are doing a genuine turn around where we come and rescue the actual business, as opposed to doing a wind down. We will look closely at customers and get customer support. (Participant 13)

Other stakeholders that were mentioned in the interviews include attorneys and competitors. Interestingly, Participant 6 stated the following in respect of the BRP also being a stakeholder: “You need to balance the interest. Because you become a stakeholder as soon as you are in there you become a stakeholder”. It must be noted that stakeholders like SARS would fall under creditors but have been disclosed separately as BRPs consider them to have different powers as provided for by the legislation. Similar with directors, they should be classified as employees, but in some cases in private companies, directors play a dual role as managers and shareholders, therefore, they have been classified separately. PCF Funders could also play a dual role, for example being a creditor and PCF provider or PCF funders can be solely from an external funder.

#### **5.4 Results: Proposition two**

**Research Proposition two: Stakeholders with the largest material claim are the most influential in the business rescue process.**

Question 2: Which stakeholders are influential in business rescue processes?

Research proposition two sets out to understand which stakeholders the BRPs consider to be the most influential on the success of the business rescue. Before determining which stakeholder is influential, it is important to understand whether the BRPs prioritise stakeholders. After determining whether the BRPs prioritise, the next step is to identify

the most impactful stakeholder, followed by how BRPs rank the stakeholders in terms of influence and finally concluding with why the stakeholders are considered influential.

### 5.4.1 Stakeholder Prioritisation

This aspect of the findings intends to establish the approach by BRPs on prioritisation of stakeholders in the realm of business rescue. In line with stakeholder theory, once stakeholders are identified, it is important to prioritise them, such that emphasis is placed on relevant stakeholders to ensure success, which in this study relates to a successful business rescue. The main themes identified are as follows.

**Themes identified:**

- Prioritise Stakeholders
- Balanced approach taken without prioritisation
- Employment

**Table 12: Stakeholder Prioritisation**

Percentage of respondents	100%	Interviewed
Percentage of respondents	61,54%	Prioritise stakeholders
Percentage of respondents	30,77%	Balanced approach taken without prioritisation
Percentage of respondents	7,69%	Ensuring employment

#### Theme seven: Prioritise Stakeholders

**Description:** Prioritisation of stakeholders is an approach taken to determine which stakeholders are vital at a specific point in the business rescue process. BRPs deal with multiple parties and should be able to focus on particular stakeholders if required to ensure that the business rescue proceedings are successful.

**Observations:** The majority of the BRPs prioritise specific stakeholders in the business rescue process. 61,54% of the respondents made it known that they consider prioritisation important in terms of ensuring a successful business rescue.

The prioritisation will differ slightly from rescue to rescue. (Participant 4)

I am absolutely reliant on creditors leading me within the process. So, what I can do is tell them the following people are important for me to create a better exit, so I will treat them differently than I will treat somebody in the same class as the

creditors, but that is the reason. Then they need to buy into that and they actually need to vote on that. (Participant 9)

You definitely have to prioritise, but it has got to be fair. There is case law where you can't offer one creditor more than the other if they are in the same class just because they might be an essential supplier. (Participant 7)

As a matter of priority. Depending what the burning issues are in a business rescue that need to be dealt with first, that is all part of the prioritisation and initial assessment of the business. So, the business rescue practitioners can get his feet under the desk and can understand and get support to try and create stability and to create a rescue that is going to be successful in its outcome. (Participant 12)

At some stages of the rescue, you might prioritise certain stakeholders over others, but it has to be a very balanced approach and in the best interest of the company. (Participant 10)

You cannot favour one creditor above another unless they are a secured creditor. Sometimes the secured creditor can help you with the business rescue by providing PCF and other means. (Participant 5)

In a perfect world all stakeholders should be balanced. It is what it is. You need to understand, you are in rescue. The idea here is first idea, the main goal is that you need to stabilise. The thing is volatile, it is busy sinking so you need to stabilise. Unfortunately, what that means is sometimes I need to rank someone before someone else. (Participant 6)

Some of the respondents make a note of the need to be fair and also to take a balanced approach even though they may prioritise stakeholders. The concept of fairness and a balanced approach is discussed next.

### **Theme eight: Balanced approach taken without prioritisation**

**Description:** The balanced approach refers to BRPs not prioritising any specific stakeholder as their approach to ensuring a successful business rescue. The balanced approach means a fair return to all the stakeholders in the business rescue.

**Observations:** 30,77% of the respondents take this approach and use a balanced approach where each stakeholder is important and there do not prioritise.

So, my view, I'm not prioritising. When you look at section 7(k) of the Companies Act, it says that the Business Rescue Practitioners are required to take a balanced view of all stakeholders. (Participant 2)

In fact, all of them are prioritised. (Participant 3)

The thing is here you need to balance that as well. (Participant 6)

We need to follow a very balanced approach. It is very important for us to balance our approach. You find a lot of business rescue practitioners will probably, a lot of them historically have been found to prioritise shareholders over creditors. Or dance to the tune of the shareholder. (Participant 10)

We don't prioritise the shareholder over the creditor, or the directors over the employees. We play it equally. (Participant 13)

### **Theme nine: Employment**

**Description:** Employment emerged from the discussions on prioritisation with a few respondents. Employment was considered as one of the main reasons that the BRPs considered the business rescue. Keeping people employed is viewed as one of their biggest ambitions in the business rescue process.

**Observations:** For a minor percentage of the respondents, the outright priority was to save jobs and keep employees in their jobs. Although this translates to 7,69% of the respondents, other participants who either took a balanced view or prioritised stakeholders still commented that saving employment was a top priority for them as evidenced below. Most of the respondents discussed employment at one point.

To save the company, if there are no employees, there is nothing to save. So, I don't normally take on business rescue if there are no employees, because then what's the point? (Participant 1)

Within business rescue prioritising the interest of employees in particular. The Act does cover the employees first of all in terms of services rendered during the business rescue there are effectively giving you post commencement finance that needs to be paid and then the provision around retrenchment is that they're entitled for retrenchment. (Participant 3)

What's most important is keeping the employees' jobs. Management and shareholders are not my priority, obviously some management, but if they have been part of the problem then you have to deal with them. Your workers on the shop floor, those are the ones that concern me more than anybody else. (Participant 5)

Sometimes I need to rank employees before creditors, because if there are no employees, there is no business. If there is no business I can't pay creditors. The idea is to stabilise, first identify and do your analyses. (Participant 6)

Most important for me, government don't agree with me for some silly reason, is the employees. For them it is all about the value of dividend, I must say it's South Africa. You can't concentrate on that. Several people will be affected if you lose one job. (Participant 9)

My priority is always to keep the doors open, to keep staff employed. Because ultimately the staff are the guys that came to work every day. They are the guys that did their job and the difficulty that the business is experiencing is not their fault. (Participant 11)

Participant 1 was adamant on the importance of employees when conducting the business rescue. Saving employment was the participant's foremost focus and employees were prioritised above all stakeholders. While the other participants either prioritised or took the balanced approach, they still considered saving jobs as an important consideration.

#### **5.4.2 Impactful stakeholders**

The section that follows outlines the stakeholders BRPs consider to be the most impactful in the business rescue process. Impactful stakeholders have the direct effect of derailing or supporting the efforts of a successful business rescue. Impactful

stakeholders have the ability to impose their will on the outcome of the business rescue. Although the impact of a stakeholder may vary with each business rescue case, the findings indicate the practitioners' perception on the most impactful stakeholders. The findings from the interviews are summarised into three themes.

**Themes identified:**           PCF Providers  
   Creditors  
   Employees

**Table 13 Influential stakeholders**

Percentage of respondents	100%	Interviewed
Percentage of respondents	53,85%	PCF providers most impactful on the success of business rescue
Percentage of respondents	30,77%	Creditors most impactful on the success of business rescue
Percentage of respondents	15,38%	Employees most impactful on the success of business rescue

**Theme ten: PCF Providers**

**Description:** PCF comes from various sources. It could come from secured, unsecured creditors, banks, shareholders, customers etc. PCF is regarded as a valuable ingredient in achieving a successful business rescue as it provides finances required to keep the business running and to continue to pay its costs as they fall due.

**Observations:** The BRPs consider the PCF provider as a valuable stakeholder; 53,85% of participants concurred with the view. In some cases, the respondents would not take on a business rescue without PCF as it is considered vital for the operations of the distressed company.

I don't want to take on rescue unless there is some funding, because that is just suicidal. (Participant 2)

The Post Commencement Funder. Most of these business rescues fail or are still born where there is insufficient or no Post Commencement Funding. So, the critical success factor is to have sufficient Post Commencement Funding. In fact,

we will not start a business rescue unless you know that there is sufficient funding, because otherwise it will be very short lived. (Participant 3)

The creditors provide the PCF. (Participant 5)

Very key in the whole process is PCF, I don't think I mentioned that. Potential investors are a major stakeholder. So, Post commencement financiers are absolutely key. And all the rest is academic. (Participant 7)

The PCF provider is the most vital because in any business you are on the back foot when you start. You need that sort of funding, if you don't have that funding, most business rescues will fail. (Participant 8)

If the company doesn't have the cash to do a business rescue and there is not PCF available to do it, then they have left it too late, then I don't take it. Then the directors need to be locked up for reckless trading. (Participant 12)

## **Theme ten: Creditors**

**Description:** Creditors are part of the affected parties as defined by the act. Creditors play a number of roles in the business rescue. They are pivotal in the voting of the business plan and can continue to support the operation of a distressed company by providing services or goods during the business rescue.

**Observations:** Creditors are the second most important stakeholders as identified by the BRPs. It is relevant to note that creditors may also be PCF providers. However, 30,77% of the respondents consider creditors as impactful as PCF providers to the success of the business rescue.

But if there is only one guy supplying a certain product, no matter how much money, that guy is just not willing to supply me anymore. Even if you get finance, you might not be able to do your product, you might not be able to service your value offering. (Participant 6).

In most cases it will be the creditors, I think. Whether they accept, at the end of the day they are the ones that vote on the plan. If they are reasonable and so on,

accept the business rescue plan and are willing to negotiate and in good faith and constructively understand business rescue, and the dealing with the practitioner who is looking after the interests. Then the creditors are definitely the most impactful, the stakeholder on which the success hinges the most. (Participant 10).

The one with the biggest amount of debt because he will have the biggest amount of vote. At the end of the day without a vote you are dead in the water. As unfair as that may sound, dependant on the vote it will say if the business rescue is successful. (Participant 11)

The creditors. You have to have the creditors. If you get their approval, then it flows. If you don't then it's dead. (Participant 13)

### **Theme 11: Employees**

**Description:** This theme refers to employees who are also affected parties as defined by the act. The employees play a role in the continuity of services once the business is in distress as they assist with keeping the operations going. As noted in the previous theme of employment, BRPs consider employees as necessary in the business rescue process.

**Observations:** It appears that BRPs do not consider employees as impactful when compared to the other stakeholders, as only 7,69% of the respondents concluded that employees are the most impactful in the success of business rescue.

First employees. So, you need funding to pay the employees to motivate them to work, because if they're not going to get their salary, why must they come to work? (Participant 1)

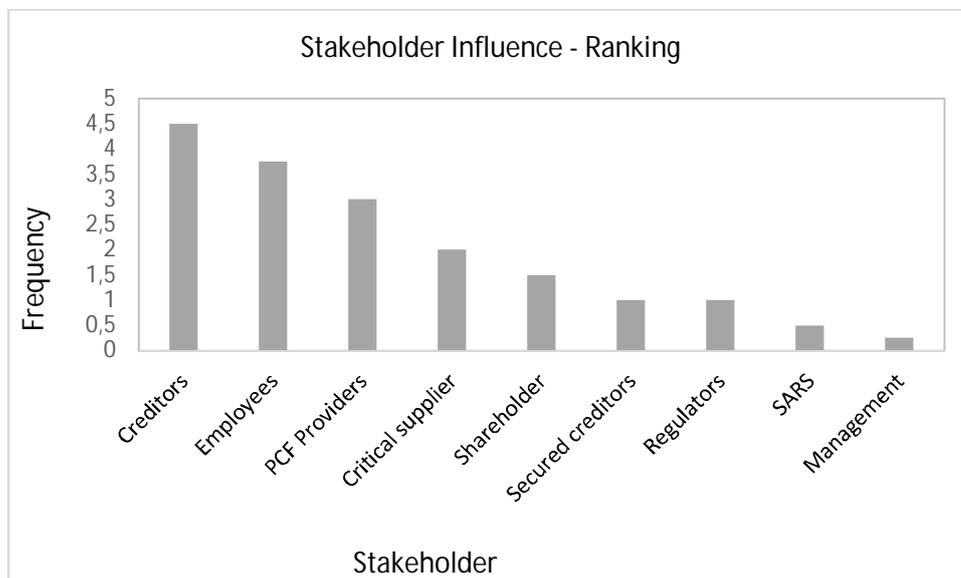
Middle management. Because we have had cases where we had to remove management and directors and middle and upper management needed to fill their place. (Participant 4)

### 5.4.3 Stakeholder influence – ranking

In continuing with the theme of identifying key influential stakeholders, BRPs were requested to rank stakeholders in terms of their influence on a successful business rescue process. Through identifying who the key stakeholders are in section 5.3.3, understanding the BRPs ranking would assist to clarify who the key influential stakeholders are.

**Description:** The results below indicate responses from the 10 participants instead of the 13 interviewed. Three participants were firmly against the ranking of stakeholders as they noted that their rankings differ from case to case depending on the nature of the rescue. The ten that provided rankings provided them based on their general experience from the business rescues that they had undertaken. In their rankings, they took cognisance that variations may occur. The rankings in Figure 2 are based on the top three stakeholders of each participant.

**Observations:** The results of the ranking are presented in Figure 2.



**Figure 2: Stakeholder influence – Ranking**

Figure 2 indicates that the first ranking reflects creditors as the most influential stakeholder. Most of the BRPs ranked creditors as their primary most influential

stakeholder. Employees, PCF providers, critical suppliers and shareholders were considered to be in the top five influential stakeholders.

Secured creditors, regulators, SARS and management were also seen by respondents as influential stakeholders.

#### 5.4.4 Why a stakeholder is considered influential

In identifying the most influential stakeholders, the process has been to determine if the BRPs should prioritise or not prioritise stakeholders as a first step. This was followed by establishing which stakeholder BRPs considered most impactful and a ranking of the influential stakeholders. It is imperative to understand why stakeholders are considered influential. The main themes identified in terms of significance are illustrated below.

- Themes identified:**
- Creditors' ability to vote
  - Creditors'/suppliers' ability to support operations
  - Employees' ability to support operations
  - PCF Providers' ability to support operations
  - Management knowledge and support
  - Others - Customer, regulator and security

**Table 14: Influential stakeholders**

Creditors' ability to vote on the business rescue plan	25,00%
Creditors' / suppliers' ability to support operations	14,29%
Employees' ability to support operations	14,29%
PCF providers' ability to support operations	10,71%
Management / Directors knowledge and support of the BRP	7,14%
Others mentioned: Customers, regulators, security, stakeholder leverage	28,57%

#### **Theme 12: Creditors' ability to vote on the business rescue plan**

**Description:** The business rescue plan prepared by the BRP must be approved by more than 75% of the creditors through a vote of which 50% of the votes must be from independent creditors. Creditors have the power to vote for or against the plan. This aspect makes the creditors central to the business rescue process as they have significant responsibilities and power governed by section 152 of the Companies Act.

**Observations:** The creditors' ability to vote on the business rescue plan was the reason mentioned most by the respondents. The creditors' ability to vote was seen as essential to get the business rescue started, hence creditors dominate the reason why they are seen as influential.

Direct and indirect influence, they can vote on the plan. (Participant 1)

You have got certain creditors, certain employees that you are dealing with. They are helping with developing and influencing a business rescue plan. (Participant 4)

They normally are the biggest by far in quantum, so they have the biggest vote. So, you have to look after them from the security point of view offer them more than they would get from the liquidation. (Participant 7)

When it comes to the plan and voting, your creditors make up 50 percent or your independent creditors, those are your most vital people. (Participant 8)

But you cannot reach any settlement with creditors without the support in value. When it comes to the extent of your claim I need to lobby creditors, even if it's only two creditors that holds 75% of the claim, it's a much easier process. (Participant 9)

First of all, if they have a vote they can kill it. That is a major. The process is driven by creditors. The creditors have to decide, not the practitioners. The practitioner doesn't have the power to just do things arbitrarily. The practitioner has to get creditors on board. (Participant 12)

Because of the voting power. It's as simple as that. The creditors have the ability as do employees. (Participant 13)

### **Theme 13: Creditors' / suppliers' ability to support operations**

**Description:** Suppliers and creditors have been used interchangeably as the suppliers can also be creditors. Equally shareholders can also be creditors and so can funders, as long as an amount is outstanding when the business rescue commences. Theme 13

relates to suppliers providing essential support to the organisation in business rescue by continuing to supply services or goods during periods of distress. As a moratorium will be in place, the continued services by the supplier were seen as one of the key reasons the creditor will be impactful.

**Observations:** Suppliers' ability to continue with services was seen as the second most significant factor in why suppliers/creditors were seen as impactful in the business rescue. The company's ability to continue as a going concern was reinforced by continued creditor support.

Without the trade creditor you don't have the stock to continue trading.  
(Participant 3)

If we remove one of these guys, what will the effect be? If we remove supplier B, will you shut down the factory tomorrow morning? We use that to determine how critical a supplier is. (Participant 4)

Secured creditors, your security held by creditors are very important. The extent of the creditors' claims is important. The fact that creditors are as critical within a specific industry and/or sector is very important. (Participant 9)

Suppliers are in the same position as creditors, definitely because if the company goes into business rescue they stop supplying on credit. They basically insist on cash payments. (Participant 10)

The second one is the influence they will provide in the continuation of the business, like I mentioned the one supplier. (Participant 11)

#### **Theme 14: Employees' ability to support operations**

**Description:** Employees, similar to suppliers, play a pivotal role in providing services when the company is in financial distress. If the employees go on strike or a go slow, productivity will decrease. The company will not be able to fulfil its orders or services to its customers or clients. Therefore, employees play a key role in supporting business operations.

**Observations:** 14,29% of participants included employees in the discussions of why a stakeholder is influential; this theme is similar to the theme of creditors'/suppliers' ability to support operations. This observation reinforces the fact that a stakeholder that is able to support business operations while the company is in business rescue is important.

Yes. And the other one indirect is employees, although they don't vote, if they don't get paid there is no future projections that you have that you can include in the plan. They have a big influence on the assumptions that you put in the plan. The employees have a big influence on the assumptions and the others have an influence on the voting outcome. (Participant 1)

Without the staff you don't have anybody to run your business. Then the staff, because the staff is key, key, key stakeholders. (Participant 3)

To me the stakeholders in any rescue are the employees. We need to preserve the jobs, and they are usually the ones that give you all the information. (Participant 5)

Sometimes I need to rank employees before creditors, because if there are no employees, there is no business. (Participant 6)

Then there is also the influence from the bargaining councils and unions to make sure they keep the staff on board because you can have successful rescue and everything can be voted in, if you put in the plan that we are going to not pay bonuses we are not doing this we are doing away with that building which is used to host their cafeteria, these are the kind of things that will affect the staff. (Participant 11)

We want to get them on our side from an influence point of view, because if there is a big work force with a union, then you got to get their buy in. That only applies if you want to trade out. If it's a wind down, the employees are going to be terminated anyway. (Participant 13)

## **Theme 15: PCF providers' ability to support operations**

**Description:** PCF relates to the finance provided after the business commences business rescue. PCF providers can be employees, creditors, shareholders and financial institutions. The theme excludes the stakeholders already mentioned above.

**Observations:** The PCF provider's ability to provide support is also seen as an essential reason why PCF providers are considered influential in the process. 10,71% mentions offer an explanation why, but this reasoning is not as significant as creditors' and employees' ability to provide business continuity.

So, if for example you have got a financial institution of a big amount outstanding, would you consider that in terms of the influence. (Participant 1)

When you get your money and the process is at the end, the party giving you PCF is particularly important. But you can see they all play a different role, without the PCF provider, you don't have the funds to continue. (Participant 3)

Because they let the business continue to trade and operate. If you don't have the cash, you can't operate. (Participant 5)

I can structure it but where are we going to get money from? Because the banks are disgruntled, in fact one of my questions is: If I cannot phone the bank, that is most of the times due to their overdraft facility prior to my appointment. I am not interested, because firstly they will be capping your facility and/or put a hold on it. So, there is no cash flow, so why would I touch the assignment? (Participant 9)

It was noted that banks are also not very supportive of providing funding to companies under business rescue. Two respondents' views are reflected below.

So, they do consider the transactions, and they're much quicker and it's not like going to an institution. You know I avoid institutions because of their due diligence and it takes ages. That doesn't even work, I don't even waste my time. (Participant 1)

The banks believe the first loss is the best loss. So, they don't believe, I think they are sort of dormant to rescue but they don't like someone else to be in control. I find them to be, most of the time biggest stumbling block, even though they are secured in all likelihood will get their money back. (Participant 5)

### **Theme 15: Management / Directors knowledge and support of the BRP**

**Description:** This theme relates to top management's ability to provide support to the organisation during financial distress. This could be in the form of supporting the BRP's effort to turnaround the company in distress. The skills and knowledge about the company, markets and industry from the top management are relevant to the BRPs to navigate the process of recovery.

**Observations:** Management's ability to support the business was also seen as a theme of significance as four of the thirteen respondents mentioned management's skills and expertise as a reason why top management was influential in the rescue process.

Also, management are a priority because you have to work with them, you can't run the business. (Participant 5)

Middle management is key, I have found that top management is sometimes disconnected who the stakeholders really are. Middle management is usually key because they are the guys, feet on the ground, knowing who the suppliers are, who are the employees, who are the trade unions and who are the guys that is key for me to deliver my product or service as and when it is needed. (Participant 6)

Shareholders and directors, you still rely on them to run the business. We find that when you take on a business we prefer to work with the existing management than to replace the existing management. Because replacing the existing management normally, when you bring someone new in you first need to find somebody new. (Participant 10)

Then you look at the jockey, if you don't have the jockey then it's going to be difficult trading the business. (Participant 11)

Participant 6 made a preference for middle management as opposed to top management. The relevant point here is that management is knowledgeable and able to support the operations.

## **5.5 Results: Proposition three**

**Research Proposition three: Size of the claim, resources, networks, PCF, creditor security and rankings of creditors determine influence during the business rescue process.**

Question 3: What factors contribute to the influence or the power the key stakeholders have in an organisation during periods of business rescue?

The proposition seeks to identify the factors that contribute to the influence of stakeholders during the business rescue process. Before identifying the factors, it is pertinent to understand the process that the BRP follows to assess the influence of the stakeholders. After determining the process, the influence drivers are then identified, and we end with the discussion on the BRP, who is seen to be an orchestrator of the business rescue process and is vital to a successful rescue.

### **5.5.1 Process used to determine influential stakeholders**

The themes that follow below relate to the processes that BRPs follow to determine the influential stakeholders in the business rescue. The results reflect the major themes that emerged from the discussions.

**Themes identified:**

- Pre-assessments
- Voting process
- SARS process

#### **Theme 16: Pre-assessments**

**Description:** This theme refers to the due diligence or pre-assessment done by the BRP to understand the company. Section 141 of the Companies Act provides for the BRP to investigate the affairs of the company. This process is used by the BRP to understand

the key stakeholders and understand which stakeholders will be influential during the business rescue proceedings.

**Table 15: Process to determine influential stakeholders**

Percentage of respondents	100%	Interviewed
Percentage of respondents	38,46%	Referred to a pre-assessment / due diligence
Percentage of respondents	61,54%	Did not refer to a pre-assessment / due diligence

**Observations:** The use of pre-assessments to identify key stakeholders was the most highlighted process by the respondents. The pre-assessments were used to identify key players in the business rescue, identify the voting universe and the dynamics that may play out during the proceedings.

First of all, there is the due diligence. Let's call it the business rescue due diligence process. In other words, the collection, collation of information. The determination of claims, values that is etc. to determine who has got what influence and what can be recognised as valued claims etc. for voting purposes. Then there is the other stakeholders that do not have a voting interest that do have an influence on the outcome of the business rescue and those need to be engaged in. The first group also, you cannot neglect a group. If you neglect a group, they are going to run to court for some reason and try and set aside the process. (Participant 12)

The first is you need to make pre-assessment of a company before you put it into business rescue or help assist the business rescue. And in that assessment, you're going to see who the influential stakeholders are. Because you're going to look at it to see who the major creditors are, is there a chance of compromise, is there a chance of creating cash flow through something. So, the period that you look prior to commencing, there is a requirement in the Act, I think Sec 144, that require you to look into the affairs of the company and then I'm required to put together a business plan. (Participant 2)

What I will do, once you stop working on your ultimate exit strategy, then it will become clear who I will require to make that possible. (Participant 9)

It's in our sort of an initial interaction with all the stakeholders. For instance, in our situation, we have a format that we follow. (Participant 13)

### **Theme 16: Voting process**

**Description:** Voting for the business rescue plan has already been covered as a theme on why creditors are considered influential in the business rescue. The theme in this section relates to the BRPs using the voting process to determine which stakeholder will be instrumental to their plan and implementation thereof.

**Table 16: Voting process**

Percentage of respondents	100%	Interviewed
Percentage of respondents	23,08%	Referred to the voting process
Percentage of respondents	76,92%	Did not refer to the voting process

**Observations:** The voting process was seen as the second most used process to determine the influence of stakeholders. The ability of a stakeholder to influence the approval of the plan through voting was seen as significant in the success of the business rescue as a whole.

Process to follow, I look at it if voting is going to happen. I'll calculate the voting interest, and then I see any, speaking from experience. (Participant 1)

That might be through negative control, say if you have a large creditor, it goes against the plan and cause a plan to fail. (Participant 2)

A stakeholder can influence the adoption of the business rescue plan, or they can influence the successful implementation of the business rescue process as a whole. (Participant 4).

### **Theme 17: SARS process**

**Description:** SARS has been identified as one of the key stakeholders in the business rescue as acknowledged by the BRPs. This theme recognises SARS' influence, as BRPs consider SARS in the process of determining stakeholders who are influential.

**Table 17: SARS process**

Percentage of respondents	100%	Interviewed
Percentage of respondents	23,08%	Referred to the SARS process
Percentage of respondents	76,92%	Did not refer to the SARS process

**Observations:** The SARS process received the same number of mentions as the voting process by the respondents. It appears that the SARS process is linked to the voting on the business rescue plan. SARS may have a swing vote on the plan approval, therefore, the rescue process may need to align with SARS. This process is essential to the whole business rescue process.

Now if it's SARS that's got a swing vote then it does influence how the plan is going to be written. Because they vote according to the Tax Administration Act, so they vote only for the returns outstanding, they don't vote for repayment periods longer than six months. That is an influence. And they won't vote if there is not a VAT clause provision in the plan. Now they have a small percentage, then I exclude those clauses from the plan because it's not important, but if they have a swing vote they will request an amendment and push the agenda through. (Participant 1)

SARS is very often a major creditor in private companies. People often don't pay the tax man when they hit a bump in the road. Then that just escalates. In a lot of our matters SARS has got the swinging vote. (Participant 7)

If you look at someone like SARS. In business rescue they are a concurrent creditor, but when it comes to liquidation they are preferent. Almost every business rescue, it will be better for SARS to put that business in liquidation, because they would get the greater outcome on the vote or outcome on the dividends. However, SARS has never voted, not on one of my business rescue plans have they voted against the plan. (Participant 11)

### **5.5.2 Factors contributing to stakeholder influence**

This section seeks to establish the factors that contribute to stakeholder influence. The interview question requested the respondents to list factors that they perceived to be drivers of influence or power during the business rescue process. The BRPs were

requested to draw upon their experience and give a general view on the factors. Some of the factors were already mentioned as the participants responded to the other questions.

Table 18 illustrates the factors that the BRPs considered to be relevant to a stakeholder having influence during the business rescue process. What is of interest in the findings is that security is ranked second. However, the respondents have not mentioned security to the same extent in the study as the other factors that are ranked second such as suppliers, voting interest, PCF and the ability to support business continuity.

**Table 18: Factors that contribute to stakeholder influence**

Rank	Factor	Frequency
1	Creditor's power from outstanding debt	7
2	Critical supplier - Ability to provide critical goods or services	4
2	PCF - Ability to provide PCF	4
2	Voting interest - Ability to vote for the plan	4
2	Security - Power leveraged through security	4
2	Ability to support business continuity	4
3	Influence because of knowledge of legacy issues	1
3	Regulatory powers. For example, SARS, ESKOM, other regulators	1
3	Directors surety, invested in business want it to work	1
3	Ability to influence implementation of the plan	1

The top factor relates to the ability of the creditors to use the value of the outstanding amount to influence the voting process. This is essential to the adoption of the business rescue plan and is the first major step towards a successful business rescue.

Firstly, the bigger the debt the bigger the mouth. If I am the single larger creditor, I can sway the whole process. There is a caveat to that, if you are the single larger creditor there are still rules. Because as the single largest creditor you cannot now state that I want to be paid before the secured people. It is almost more acceptable in saying I want to be paid first before the other concurrent creditors. (Participant 4)

It depends who your larger creditor is. A lot of instances it's the secure creditor that has the biggest holding, in a lot of instances we have dealt with. And they do have the power to vote for the plan. It also depends on the percentage of their vote. (Participant 5)

It is the size of their claim; it is obviously one of the most important. (Participant 8)

Debt, because his debt is directly proportioned to his voting interest. (Participant 11)

First of all, money that is owed to them. In other words, effectively their voting right. (Participant 13)

The voting interest, ranked second, can be seen as a similar factor to creditors' power from outstanding debt. Voting plays a prominent role as a factor attributed to a stakeholder's influence.

Voting interest, how strong is their vote. Anyone with an individual voting interest of more than 25 percent. Any individual creditor. (Participant 1)

First thing is their ability to influence the vote on a business rescue plan. (Participant 2)

In the plan process the creditor's definitely the one who votes for the plan. (Participant 10)

While factors like PCF and the ability to support business continuity have been covered in detail in the preceding themes, the influence of a stakeholder due to security features as a significant factor. Creditors or banks provide secured funding pre- or post- business rescue. The security they hold may be on assets such as inventory, customers or other fixed assets. Calling upon the security may have a devastating impact on the company's ability to continue as a going concern. The security holder is therefore seen as a stakeholder with significant influence.

First thing security. In business rescue you need the banks. The banks have a lot of power which they leverage through their security. They also have a large ability to take, to fund legal action, so that affects how you treat them, for sure, because they can fund legal action. They have the means. (Participant 1)

Obviously, a secured creditor has more power. A lot of instances it's the secured creditor that has the biggest holding, in a lot of instances we have dealt with. And they do have the power to vote for the plan. It also depends on the percentage of their vote. (Participant 5)

The other factors were ranked third and did not have many mentions include director's surety and knowledge of legacy issues which may have a significant bearing on the success of a business rescue. This is evidenced by the comments of Participant 12.

There may be certain agendas within the business rescue that the practitioner may not be aware of initially that is driving certain behaviour in certain stakeholders and they may be related to legacy issues or alternatively they could be related to trying to manipulate the outcome of the business rescue.

The other factor relates to the directors being supportive of the rescue process, because of their personal sureties.

For management or directors or shareholders is that their personal security is not enforced on that. So, they don't lose everything. So obviously they don't want to lose everything because their business has failed, in their personal capacity. I think that's what drives a lot of the directors and shareholders in business rescue, is that they don't want to lose everything. (Participant 5)

This relates to the directors being supportive of the rescue process because of their personal sureties. The topic of sureties was covered in detail, as participants were asked their views on the influence of personal surety by shareholders and subsequent behaviour by shareholders. Two overarching views were identified on sureties. The dominant view from the BRPs was that personal sureties set outside the business rescue process and the other view was that the sureties did not influence the business rescue process.

Personal surety sit outside of the rescue and personal surety is, as you probably know, it's not affected by the moratorium which comes with a business rescue proceeding. (Participant 2)

It will not affect the rest of the rescue. If you sign personal surety that is a decision that you take, most of these guys don't even know they are signing personal surety, it is just another document that is signed. (Participant 4)

They turn their backs on you (surety holder). That is why I hate to be appointed voluntarily. I want to be appointed by courts. That means I have the support of the creditors rather than management. (Participant 8)

It is critical because of the ruling that said: Even though the company is in business rescue and there is a moratorium on all legal matters against the company. If you are given a surety you can be sued immediately while it is in rescue. These guys, we had one instance where the shareholder director's behaviour was completely skewed towards protecting his surety. He was doing everything he could; you must pay that creditor first. (Participant 13)

While chapter six will not allow specific creditors to be paid first, directors, as indicated by Participant 13, will sometimes attempt to influence the practitioner to act in a manner that puts them at an advantage.

The second view expressed by the BRPs was that personal surety made the director or shareholder focus on saving the business and be supportive of the rescue process. The director may attempt to influence other parties in the business rescue to protect their own interests. The following comments demonstrate surety as a factor to be considered as an influencing driver.

Although personal surety is outside of the business rescue, but it focuses their mind. Believe me it does, because as I said, those guys don't want to lose everything. (Participant 5)

Personal sureties are great, it ties these guys. (Participant 6)

If they have a surety, they are very supportive. They are under supreme pressure. It is all or nothing. The process simply has to work for them. That's in most of the matters the case. Especially if there is a bank involved, the bank doesn't give any of these loans without somebody signing surety. (Participant 7)

So, the more that you are invested or pregnant with this specific entity, the more that you will want to make this work. (Participant 8)

The factors displayed play a prominent role in the influence that stakeholders may hold. While all the factors are important, the participants do not consider the factors in isolation. Due to the business rescue process being dynamic, the BRPs consider the factors in totality.

Nothing is in isolation. You can't view these things in isolation; you need to handle this thing almost like a gearbox, with all different gears. Each gear, even the small one, is very important. You can't view these factors in isolation. One will influence another. (Participant 6)

No, it is fluid, balanced. Look at each matter on their own. There are certain very key ones. Who is the biggest creditor, he is going to have a big say in the matter. Is there security? Yes, there are mortgage bonds, there are general notarial bonds, there is special notarial bonds there is a cession of debtors. Red flag. Key! (Participant 7)

You have to see it as a whole. You have to because each one of these blocks can cause you to fail. Your conversation with each will be in isolation. (Participant 8)

The balanced view was also mentioned by Participant 11.

That is ultimately the point that you start negotiating from, and sometimes you have to tell them in business rescue you might be slightly worse off than you will be in liquidation, but section 7(k) says you need to look at all the people.

The balanced view plays a role in balancing the factors to ensure that all the stakeholders are better off.

Having looked at the factors that drive influence in the business rescue, it became apparent that the BRP's role is pivotal to the whole process.

They are all part of the process. Obviously, the practitioner has a lot of power and the practitioner is a stakeholder as well. (Participant 5)

The role of the BRP in a successful business rescue is examined in the next section.

### 5.5.3 BRP's influence on the success of the business rescue

The themes outlined below relate to the BRP as a stakeholder in the business rescue process. Participants made reference to the competence and ethics of the BRP as a determining factor to the success of the business rescue. The main themes identified from the interviews are specified below.

**Themes identified:** BRP Expertise  
BRP Ethics  
Diener Case

#### Theme 17: BRP Expertise

**Description:** A BRP's expertise refers to the BRP as a professional, being suitably qualified to take on the business rescue process. The necessary skills and expertise are required to handle the dynamic rescue process. The BRP should be competent enough to manage the business rescue process and ensure that an equitable outcome is achieved as required by the act in terms of section 7(k).

**Table 19: BRP Expertise**

Percentage of respondents	100%	Interviewed
Percentage of respondents	61,54%	Referred to BRP expertise and knowledge
Percentage of respondents	38,46%	Did not refer to BRP expertise and knowledge

**Observations:** The participants demonstrated that a suitably skilled practitioner was key to the success of the business rescue. Eight of the 13 participants expressed their view on this topic and observed that their role was pivotal in the whole business rescue process.

So, the background of the practitioner is crucial. (Participant 1)

If you have a BRP who does nothing but fill out a few forms for the management to run the business like they did before, it's going to fail. (Participant 2)

The right business rescue practitioner is fundamental to the success of the business rescue process. (Participant 7)

You get another practitioner who has no clue and just being put in and if you go and sit on the outside and wait for someone to resolve it, it is not going to work. (Participant 8)

Skill set. It takes a very big skill set to be able to rescue a company properly; you need leadership skills, management skills, financial skills, legal skills. You need to be a psychologist. Sometimes a criminologist. There is a huge skill set just to do it properly. (Participant 10)

Any business rescue and every business rescue's success is largely dependent on the business rescue practitioner. (Participant 11)

That is a massive role. There are a lot of people out there in South Africa that have been credited and licenced as business rescue practitioners that are rethreaded liquidators, lawyers or accountants that haven't got the experience of firstly ever having run a business, where business is not just a set of financials, or a set of legal agreements. It is a business with people in it. It is a business with a strategy. It is a business with a product and a service offering and a value proposition. (Participant 12)

The calibre quality is critical. Yes, if he is not experienced. Unfortunately, not all the practitioners are strapped. The success will depend purely on that individual. He is critical to that success or failure. (Participant 13)

## **Theme 18: BRP Ethics**

**Description:** This theme relates to the ethics and values of the BRP in his conduct of the business rescue assignment. It examines the acts of self-interest by the practitioner, as the practitioner may take advantage of the process to make personal gains. The

expectation is that the BRP will act in the best interest of the stakeholders and act in an honest and trustworthy manner.

**Table 20: BRP Ethics**

Percentage of respondents	100%	Interviewed
Percentage of respondents	76,92%	Referred to the BRP Ethics
Percentage of respondents	23,08%	Did not refer to the BRP Ethics

**Observations:** A significant number of the respondents referred to ethical considerations in respect of the practitioner during the interview. Strong words were used to describe the practitioners who they considered rogue and were giving the profession a bad name. Overall, the conduct of the practitioner was considered to be important as a suitable practitioner is key to the success of the business rescue.

Because they are mostly liquidators that are doing business rescue and doing what you call a BRIL, business rescue in liquidation, so they do that because they're using a loophole in the act stating that they can give creditors a better return. (Participant 1)

There are some people who would take on a thing even though they can't rescue it just because it's good for fees. I don't think the Industry Regulator is tough enough. (Participant 2)

I think the practitioner is the one that brings everybody together. And you have to learn to work with everybody and obviously you have to prove that you're trustworthy and transparent. (Participant 5)

There are cowboys in this game and we need to call that by the name. That, in a sense, created a culture where banks don't trust, being the bigger finance institutions, don't necessarily trust the practitioners anymore. Even though he is an officer of the court. (Participant 6)

The unfortunate reality is that we have got the majority of rescue practitioners in my mind are mavericks. They are not looking at business rescue in its true purpose. They are looking into benefiting the directors and the shareholders who they sometimes refer to as their clients, so looking at benefiting themselves, not

to the greater picture. Business rescue practitioners play a very big role. They have got a massive amount of power. Potentially in some instances not enough, and in other instances too much. (Participant 10)

Major abuse is in the business rescue space. That is one of the key areas of abuse. The guys will milk it in business rescue until they can't and they will flip it into liquidation and they will get the mate. (Participant 12)

Just because some guys who are out there, you cannot then say every BRP is a crook. We cannot just because say 5% are abusing their fees, you can't prejudice the guys that are doing it properly. We are very strong on that. (Participant 13)

The above comments allowed for a follow-up question on the fees paid to a BRP and the theme relating to the Diener case became apparent.

#### **Theme 19: Diener Case**

**Description:** In discussing the competence, skills and ethics of the BRP, discussions lead to the question on the fees paid to BRPs. The Diener case, which makes it risky for a practitioner to take on a business rescue which ideally should be in liquidation in order to charge fees, was then discussed. The BRP's fees and expenses are ranked preferably in business rescue.

**Table 21: Diener Case responses**

Percentage of respondents	62,00%	Responded to Diener question
Percentage of respondents	25,00%	Neutral in their response
Percentage of respondents	50,00%	Support the judgement
Percentage of respondents	25,00%	Did not support the judgement

**Observations:** The views of the participants were not unanimous; some of the participants seemed to support the Diener judgement, as this was seen as the right decision to curb unethical BRPs. The neutral responses noted that as much as the judgement may curb unethical behaviour, BRP fees still needed to be paid.

The remuneration is far less than most commercial attorneys and so forth is charging, because we are regulated. It is cheaper. The problem however is two

things, one the cowboys bill for the sake of racking up the bill. And two, it is one thing to have the expense, the concern is when does it go through cash flow. And this is where the Diener case becomes quite influential. (Participant 6)

The only problem with that is that the business rescues that are on the fence, companies that are on the fence is a maybe success. Then they suddenly are deemed as failures from the start and you might just get again your weaker business rescue practitioners who don't understand. Just goes on the same route. It has its pro's and it has its cons. (Participant 8)

The respondents that were for the judgement saw it as beneficial to the industry as it allowed the appropriate companies to go into business rescue as opposed to companies that should be in liquidation being brought into business rescue so the BRP can benefit from the fees.

I think it is actually to the benefit of the industry because it stops a lot of those cowboys just abusing the system and a lot of them were just running these business rescues to generate fees and then it ends up in liquidation in any case. And then they come with a claim and get paid ahead of the creditors. That can't be fair. I think we need to find a middle ground somewhere. (Participant 7)

I hate it because I have lost millions with it, literally. But I like it because it is taking care of a number of practitioners that is taking appointments for the wrong reasons. (Participant 9)

I agree with the way it is at the moment. Under the business rescue the practitioner's fee must rank first. In liquidation you can't really carve away from the secured creditor's security, so to allow, I am not sure I agree that the practitioners fee should be recoverable out of secured creditors security. (Participant 10)

I am happy with it. As a real business rescue practitioner, and I get a lot of flak for this. I always say a practitioner's fee, 50% he must get as and when he invoices and the other 50% on substantial implementation. If a business goes into liquidation you have not done your job, so why must you be paid your full

fees? That is why I get 95% success rate of every rescue plan I have published. I have done 34 of them. (Participant 11)

The other participants were against the judgement, as they identify the practitioner's fees as being ranked top in terms of priority.

I honestly believe that the business rescue fees need to be considered as part of any cost of the administration and that the business rescue practitioner should at least be entitled to recover all his fees at the tariff that is being approved. (Participant 12)

We think that is it critical that the BRP's fees must rank priority because otherwise, why would anybody take on an appointment? They are not involved in the business, and to be ranked as a concurrent creditor is ridiculous. (Participant 13)

## **5.6 Conclusion**

The results in the chapter represent the findings from the semi-structured interviews conducted with the BRPs. The research findings were presented in three sections to respond to the research propositions and the overall research question. The findings from the interviews demonstrated themes that aligned with existing literature and provided additional new insights into the roles of stakeholders in the success of business rescue. The next chapter will provide a discussion of the findings in relation to existing literature to validate the research question and propositions.

## 6. CHAPTER SIX – DISCUSSION OF RESULTS

### 6.1 Introduction

Chapter six addresses the objective of the study by discussing the research findings in detail. The research findings will be evaluated against the literature reviewed in chapter two. The discussion in the chapter will seek to address the research questions and propositions constructed from the literature review. The results will be presented in three sections, taking the same format of the research propositions. The discussion of the findings will reflect the analysis of the key responses derived from the various themes identified in the results in chapter five.

In summary, the discussion format will focus on the below.

Question 1: Who are the key stakeholders involved in the business rescue process that an organisation goes through?

**Proposition 1: Key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six.**

Question 2: Which stakeholders are influential in business rescue processes?

**Proposition 2: Stakeholders with the largest material claim are the most influential in the business rescue process.**

Question 3: What factors contribute to the influence or the power the key stakeholders have in an organisation during periods of business rescue?

**Proposition 3: Size of the claim, resources, networks, PCF, creditor security and rankings of creditors determine influence during the business rescue process.**

### 6.2 Discussion of Results: Proposition one

**Proposition 1: Key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six.**

Research proposition one seeks to identify the key stakeholders in a business rescue and ultimately respond to the view that BRPs consider affected parties as the key stakeholders and may not necessarily attend to other stakeholders who could be

influential in the business rescue process. Stakeholder theory provides a lens to make this evaluation. Contrasting the research themes identified in the findings with the literature, a determination will be made on whether key stakeholders go beyond affected parties as outlined by the proposition.

## **6.2.1 Stakeholder Definition**

### **6.2.1.1 Affected Parties**

Section 128 of the Companies Act defines affected parties as registered trade unions, employees, creditors or shareholders of the company (The Companies Act no 71 of 2008). Many of the participants immediately pointed to affected parties when asked who they consider to be the stakeholders in a business rescue. The proposition seeks to address the notion that stakeholders are only affected parties.

So, stakeholders, I think, refers to the act as affected persons. So, the affected persons in the act refers to creditors, anyone who has a claim against the company, the employees, and the shareholders and the directors. (Participant 1)

That's exactly it, it is all the affected parties. That's what I believe. Your creditors, your secured and unsecured creditors. Your employees, your shareholders, your funders, SARS, everybody. (Participant 5)

While the first instinct from the participants was to describe stakeholders as affected parties, the participants also referred to stakeholders that were not classified as affected parties as defined by the act. Participant 12 clearly articulated the distinction and avoided ambiguity between stakeholders and affected parties.

The plan deals with affected persons, the plan does not necessarily deal with the stakeholders. Because the stakeholders may have no right to the plan at all. It is an extraneous element, an extraneous influence. That part of the stakeholders that is not part of our affected persons, the stakeholders would include affected persons and whoever else can influence business rescue. We need to draw that distinction very clearly. Stakeholder may be a collective noun for anybody or everything that can be affected or affect the business rescue, where affected persons are those that are entitled to participate in the business rescue either as a creditor or affected person by definition of the act. (Participant 12)

Limited literature exists on stakeholders and business rescue (Pretorius, 2013). However, Rosslyn-Smith and Pretorius (2015) acknowledged affected parties as stakeholders but notably recognised that section 7(k) of the Companies Act, which provides the purpose of the act, requires business rescue to balance the rights and interests of all relevant stakeholders. Therefore, other stakeholders are indirectly brought into business rescue without the same rights and powers afforded by the legislation to affected parties (Rosslyn-Smith & Pretorius, 2015).

While the evidence from the findings suggests that participants may only consider affected parties as the key stakeholders, the following themes suggest that the participants recognise the wider stakeholders. The two themes - the broad view and parties influenced by an outcome - will be discussed together, as they are both demonstrative of the consideration of other stakeholders.

#### **6.2.1.2 Broad view and parties influenced by an outcome**

The classical theory by Freeman (1984) recognises stakeholders as any group that is influenced by or may be influenced by the organisation's goals. By default, this definition incorporates a wide range of stakeholders. While later theories went further to define stakeholders as groups that have rights, ownership or a claim, the classical view remains the widely used definition (Fassin, 2009). The findings indicate that although the participant's first thoughts were that stakeholders are defined as affected parties, through further probing, participants made reference to a broad view or parties that are influenced by the outcome of the business rescue.

The classical view is corroborated by the participants with comments such as "I think stakeholder might have a wider definition than an affected person, so it would include directors, suppliers and maybe debtors. It's a little bit wider than the definition of affected person" (Participant 7). Simply put by Participant 12 "so, stakeholders are very wide, far wider than affected persons. Much wider". The respondents recognised the distinction and the broad view of stakeholders in business rescue. Within the context of business rescue, the aspect of influence is demonstrated by two participants clearly with the comments "A stakeholder would be someone who is influenced by the outcome of the business rescue proceedings. Actually, a stakeholder is someone who is influenced by, or was able to influence the outcome of a business rescue" (Participant 2). Additionally, Participant 1 commented "Anyone who will be affected by the process indirectly or directly".

The findings demonstrate that the affected parties are seen as the primary stakeholders, as evidenced by the majority of the participants referring to affected parties when asked about business rescue stakeholders. It could be argued that the BRP's primary focus is the affected parties and that, as noted from section 144 to 146 of the Companies Act, the affected parties have rights and powers that are protected by legislation. This view supports the work by Rosslyn-Smith and Pretorius (2015).

Evidence has also been provided that participants do not stop at affected parties when identifying stakeholders. The recognition of the broad view and the notion that any party that is influenced by or can influence the business rescue is considered a stakeholder aligns with the classical stakeholder definition as indicated by Freeman (1984). Fassin (2009) further recognises that although the classical definition is seminal, it is still widely applicable as demonstrated.

### **6.2.1.3 Stakeholder Identification process**

The process of stakeholder identification is a relevant part of carrying out stakeholder analysis in order to identify key stakeholders. Stakeholder identification supports the process the BRP follows to establish the key stakeholders involved in the business rescue. The results from the findings demonstrate that the majority of the BRPs request information from the company and use financial records to identify the key stakeholders and, to a limited extent, the use of the affected party definition.

From a literature perspective, Donaldson and Preston (1995) identified three approaches to identifying stakeholders: the instrumental, normative and descriptive view. There is limited evidence that the BRPs use the normative view, which focuses on community and co-operation. The descriptive view is demonstrated by the participants' use of the legislation, i.e. affected parties as defined by the act and generic lists provided by the company. The following responses, which can be found in section 5.3.2 support this view.

If it is voluntary, we will get all the information from the directors in the director's statement of affairs plus in conversation. (Participant 13)

As the Companies Act says it is up to the owners and directors of the company to present the business rescue practitioner with all the information of the affected persons. (Participant 11)

Initially you only deal with the affected persons, so as the process unfolds your initial contact is with the directors, who in a private company are normally the shareholders, and then the employees as you get into the company and then obviously the creditors following that. (Participant 7)

The descriptive view is not widely used, as demonstrated in chapter five, with a limited number of BRPs using the affected parties definition as the primary source of stakeholder identification. The instrumental view, which considers the economics and financial views in the determination process of identifying stakeholders according to Donaldson and Preston (1995), and the resource-based view, which focuses on stakeholders who contribute with resources as argued by Pajunen (2006), are more pronounced in the findings. The supporting evidence is demonstrated by the use of company records and financial records. “Even if the company provides you with lists of affected persons and possible creditors, the practitioner must still impose due care by going through the financials and the use of his experience” (Participant 11). The financial records will reflect the stakeholders with a financial impact on the business rescue.

The resource-based view is demonstrated by Participant 5 who said

What I do, I go in obviously, we see who the creditors are, and we ranked the creditors whether they are secured or unsecured. Then we look at the shareholding, obviously the shareholders, if the company has liabilities to the shareholders. We look at the funders, the banks etc. The secured creditors usually are the banks and some other. All the employees, we look at the list of employees.

This view provides a synopsis of the process the majority of the participants undertake when using the financial records as a basis of identifying stakeholders. The request of information from the company and the review of financial records demonstrate the focus on the instrumental and resource-based view in support of the view of the literature.

#### **6.2.1.4 Stakeholders Identified**

To complete the understanding of the key stakeholders in business rescue, the participants provided a list of stakeholders they considered to feature prominently in the

business rescue proceedings. The findings from Figure 1 are summarised in Table 22 below.

**Table 22: Key stakeholders identified by BRPs**

Number	Stakeholder	Frequency
1	Shareholders	13
2	Employees/Unions	13
3	Customers	13
4	Creditors	13
5	Regulators and Government	8
6	PCF Funders	7
7	Financial Institutions	7
8	Directors	7
9	SARS	6
10	Community	5
11	Credit insurance	2
12	Landlords	2
13	BRP	2

Table 22 confirms the discussion that stakeholders in business rescue are wider than affected parties. Affected parties include shareholders, creditors, employees and unions. However, the BRPs mentioned 13 distinct types of stakeholders; stakeholders with one frequency were not included. Therefore, from a BRP perspective, stakeholders in business rescue goes beyond affected parties.

From these findings, all affected parties have a frequency of 13, indicating that all participants did not doubt affected parties being stakeholders. What is surprising, however, is that all participants flagged customers as key stakeholders in the same manner as affected parties. From literature, Freeman (1984) noted general stakeholders to include customers. While in studies regarding turnarounds or business rescue, James (2016) and Levenstein (2016) consider customers as key stakeholders. Business rescue literature does not appear to cover customers and their impact on a successful business rescue. A valid question is whether customers should also be considered affected parties as the findings above put customers on par with affected parties in terms of importance.

The aggregated findings relating to customers evidently demonstrate that customers are considered vital to the success of a business rescue, Participant 13 summarised this view by stating that

we will bring in the customers as well and they are not affected parties in terms of the Act. If we are doing a genuine turn around where we come and rescue the actual business, as opposed to doing a wind down. We will look closely at customers and get customer support.

It can be inferred that the potential economic impact felt by the customer or the company in distress is the reason BRPs consider customers essential stakeholders. The following two comments further illustrate this point.

Customers are stakeholders, especially if they got warranties on products.  
(Participant 3)

A customer that is potentially being owed products, now although a customer is not someone who will have a vote. (Participant 11)

Participants support the view that customers play an essential role as a stakeholder in business rescue. Their views are similar to that of the importance of affected parties. While in general customers are seen to be stakeholders, within the context of business rescue the impact of customers still remains an unexplored area of research.

#### **6.2.1.5 Conclusion: Research proposition 1**

The results of the analysis of findings and literature in respect to the first proposition, which states that key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six, is valid. It can be concluded that key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six. While the disposition of BRPs is to refer to affected parties as stakeholders, through further discussions the BRPs subscribe to the wider definition, which is consistent with literature in respect to the definition of stakeholders. While the listing of stakeholders provided additional evidence that other stakeholders are key to the success of business rescue, an interesting note was that customers were seen in the same vein as affected parties. This aspect could be an area of further investigation.

## **6.3 Discussion of Results: Proposition two**

**Proposition 2: Stakeholders with the largest material claim are the most influential in the business rescue process.**

Research proposition two sets out to identify the stakeholders that are influential in business rescue processes. Literature suggests that creditors and banks are influential during the organisation's decline as they are seen to be powerful due to the resources they possess. The proposition suggests the stakeholder with the largest material claim will be the most influential. In responding to this proposition, this section will discuss the prioritisation of stakeholders, identify influential stakeholders and why they are influential, and discuss the stakeholder rankings regarding influence.

### **6.3.1 Stakeholder Prioritisation and Influence**

#### **6.3.1.1 Prioritisation vs. balanced view**

When participants were asked about their thoughts on the prioritisation of stakeholders, three themes emerged. The first was the prioritisation of stakeholders; the second was the alternative for the BRPs to take a balanced view on their approach to managing stakeholders. The final theme, which was not expected, was employment. BRPs prioritised saving employment and that was their leading priority.

Section 5.4.1 of the findings indicates that most of the BRPs prioritise stakeholders during business rescue. Participant 12 summarises most of the views from the participants with the statement

As a matter of priority. Depending what the burning issues are in a business rescue that need to be dealt with first, that is all part of the prioritisation and initial assessment of the business. So, the business rescue practitioners can get his feet under the desk and can understand and get support to try and create stability and to create a rescue that is going to be successful in its outcome.

This view is reflective of the situation BRPs face during business rescue, as in some instances specific stakeholders may be resourceful and play a role in supporting the practitioner in creating a successful business rescue. This is demonstrated by the view of Participant 9.

I am absolutely reliant on creditors leading me within the process. So, what I can do is tell them the following people are important for me to create a better exit, so I will treat them differently than I will treat somebody in the same class as the creditors, but that is the reason.

The view from the respondents supports prioritisation of stakeholders, and the literature also takes the same avenue. Mainardes et al. (2012) prioritised according to influence and then classified stakeholder into six classes according to their relations with the organisation. Henisz et al. (2014) take the instrumental view in prioritisation, while James (2016) advocates for the management of all stakeholders proactively but acknowledges that it is not always possible thus one may need to prioritise. Miles (2017) supports the prioritisation of stakeholders and identifies four superordinate classes which stakeholders should be categorised into. The views of the participants in favour of prioritisation are in line with the literature, however, it is also important to discuss the views of the participants that take the alternative view, the balanced approach.

Section 5.4.1 notes that approximately a third of the participants take a balanced approach to managing stakeholders in business rescue. This view is expressed by Participant 2 stating, "So, my view, I'm not prioritising. When you look at section 7(k) of the Companies Act, it says that the Business Rescue Practitioners are required to take a balanced view of all stakeholders". The approach taken by the respondent is in line with section 7(k) of the Companies Act, which serves as the purpose of the act. The act requires the business rescue to balance interests and rights of all stakeholders (The Companies Act no 71 of 2008). Within literature, the balanced approach is supported by Harrison et al. (2010) in the context of stakeholder theory by arguing that the broad stakeholder approach results in the organisation achieving a competitive advantage. From a business rescue perspective, Rosslyn-Smith and Pretorius (2015) and Conradie and Lamprecht (2015) recognise the balanced view in line with section 7(k) of the act. The view of not prioritising appears to be in line with the chapter six of the legislation.

Based on the observations from the findings and the literature, it could be suggested that the majority of the BRPs prioritise stakeholders during the business rescue process. They do however take note of section 7(k) of the act which requires them to take a balanced approach. The following views indicate the prioritisation approach, while being aware of the legislation.

You definitely have to prioritise, but it has got to be fair. There is case law where you can't offer one creditor more than the other if they are in the same class just because they might be an essential supplier. (Participant 7)

At some stages of the rescue, you might prioritise certain stakeholders over others, but it has to be a very balanced approach and in the best interest of the company. (Participant 10)

### **6.3.1.2 Employment**

Employment emerged as a theme in discussing the prioritisation of stakeholders. Participant 1 was adamant on prioritising employment. In general, many respondents discussed the prioritisation of employment. This view is supported by the comment, "To save the company, if there are no employees, there is nothing to save. So, I don't normally take on business rescue if there are no employees, because then what's the point?" (Participant 1). The aspect of employment is linked to the objective of business rescue and also one of the indicators of a successful business rescue as put forth by Pretorius (2015). Participant 3 illustrates this view by saying

within business rescue prioritising the interest of employees in particular. The Act does cover the employees first of all in terms of services rendered during the business rescue there are effectively giving you post commencement finance (PCF) that needs to be paid and then the provision around retrenchment is that they're entitled for retrenchment.

Within the literature Levenstein (2016), Pretorius (2015) and Conradie and Lamprecht (2018) are in consensus that a successful business rescue will result in the preservation of jobs. The findings reflect the views of the participants, which are aligned with literature, in that employment is a key aspect of business rescue. BRPs focus on ensuring that they save jobs, whether it be through the prioritisation of stakeholders or taking a balanced approach.

### **6.3.1.3 Impactful stakeholders**

As illustrated by section 5.4.2, when asked who the BRPs considered the most impactful stakeholders, the majority of the BRPs pointed to PCF providers. Creditors were considered to be the next impactful, followed by employees.

#### **PCF Providers**

Considering the PCF Providers as the most impactful stakeholder, the two following statements are a good demonstration of the views of the participants.

The Post Commencement Funder. Most of these business rescues fail or are still born where there is insufficient or no Post Commencement Funding. So, the critical success factor is to have sufficient Post Commencement Funding. In fact, we will not start a business rescue unless you know that there is sufficient funding, because otherwise it will be very short lived. (Participant 3)

If the company doesn't have the cash to do a business rescue and there is not PCF available to do it, then they have left it too late, then I don't take it. Then the directors need to be locked up for reckless trading. (Participant 12)

The evidence indicates that BRPs will not commence the business rescue process if there is no PCF; therefore, PCF has a significant impact on the business rescue process. The views of the participants align to the literature on the impact of PCF. Pretorius and Du Preez (2013) note that PCF is a critical ingredient to a successful business rescue. Levenstein (2016) further notes that PCF is an essential component in successful business rescue and it is of utmost importance to any company in a turnaround situation. The views of the respondents on the importance of PCF are demonstrative of the impact that PCF has on a business rescue. Practitioners may not accept appointment due to lack of PCF. Therefore, the importance of PCF is undoubtedly valuable.

#### **Creditors**

The findings indicate that creditors are seen as the second most impactful stakeholder after PCF Providers. It must be noted that creditors can also be providers of PCF and therefore may be part of PCF Providers. Le Roux and Duncan (2013) take the view that creditors are impactful as a result of the power they have to vote for the business rescue

plan. Decker (2016) and Pajunen (2006) see creditors as impactful due to the resources creditors have when a company is in distress. From the findings, the BRPs acknowledge the role of creditors and their impact. An example of this view is

In most cases it will be the creditors, I think. Whether they accept, at the end of the day they are the ones that vote on the plan. If they are reasonable and so on, accept the business rescue plan and are willing to negotiate and in good faith and constructively understand business rescue, and the dealing with the practitioner who is looking after the interests. Then the creditors are definitely the most impactful, the stakeholder on which the success hinges the most. (Participant 10)

The failure of the creditors to approve the business rescue plan can have a devastating impact on the ability of the distressed company to turnaround. This view is illustrated by Participant 13, "The creditors. You have to have the creditors. If you get their approval, then it flows. If you don't then it's dead". While more respondents listed PCF as the most impactful, the common theme is that PCF and creditors are both critical to the success of business rescue as indicated by the literature and the BRPs interviewed. Their impact on the business rescue can be beneficial or devastating to the whole process.

## **Employees**

The BRPs considered employees as the third most impactful stakeholder. The employees are considered to play a role in the continuity of services once the business is in distress as they assist with keeping the operations going. This view is supported by this key response from Participant 1 "First employees, so, you need funding to pay the employees to motivate them to work, because if they're not going to get their salary, why must they come to work?" Just like PCF, Levenstein (2016) argues that employees are the lifeblood of the organisation as they are essential if the company will successfully turnaround from a distressed state. Trahms et al. (2013) further notes that management plays a crucial role in an organisation's effort to turnaround. The Companies Act does afford employees rights and powers through sections 136 and this can be seen as the reason why employees have an impact on the business rescue process. The findings do demonstrate that employees are important, however, they are not as highly ranked as PCF providers and creditors. This could be indicative that employees, although imperative, are not as impactful according to BRPs.

### 6.3.1.4 Stakeholder influence – ranking

At the core of stakeholder theory is understanding the identification, classification and influence of stakeholders (Mitchell et al., 1997). This section focuses on discussing the findings of section 5.4.3. Respondents were asked to rank stakeholders that they considered key to a successful rescue regarding the influence they exert. The discussion to follow does not only reflect upon the stakeholder ranking in terms of influence but also seeks to understand why participants consider each stakeholder influential. The order of the ranking presented in figure 2 is summarised in Table 23. The key stakeholders will be discussed in detail below, accompanied with explanations why BRP's consider specific stakeholders influential.

**Table 23: Stakeholder Influence - Ranking**

Rank	Stakeholder
1	Creditors
2	Employees
3	PCF Providers
4	Critical supplier
5	Shareholder
6	Secured creditors
7	Regulators
8	SARS
9	Management

#### **Creditors, Critical Suppliers and secured creditors**

##### **Creditors**

The participants have demonstrated that creditors are seen to be influential in the success of business rescue largely as a result of their ability to vote on the business rescue plan and their ability to facilitate business continuity through continued provision of goods and services. Section 5.4.4 demonstrates these reasons as the top explanations why creditors are considered influential. One BRP puts forth,

First of all, if they have a vote they can kill it. That is a major. The process is driven by creditors. The creditors have to decide, not the practitioners. The practitioner doesn't have the power to just do things arbitrarily. The practitioner has to get creditors on board. (Participant 12)

The participant demonstrated the influence that creditors have in the voting process; BRPs cannot ignore creditors if the business rescue plan is to be approved. The ability to support business continuity is also of paramount importance. This view is supported by the following response from Participant 3, “Without the trade creditor you don’t have the stock to continue trading”. It can be inferred that without stock the business cannot sell products to its customers thereby impacting the company’s ability to turnaround from distress.

As affected parties, section 145 affords creditors the ability to amend, approve or reject the plan proposed by the BRP (The Companies Act no 71 of 2008). Creditors play a pivotal role and may be influential in the business rescue process. Le Roux and Duncan (2013) concur with this view, as they indicate that creditors are relatively influential because they have the final vote in the business rescue plan. Pajunen (2006) further argues that creditors enable business continuity and, in addition, provide resources to support the organisation in distress thus supporting the resource-based view of influence.

The participants support the views found in the literature. It is useful to note that creditors are ranked as the most influential stakeholder in the business rescue for their ability to vote and support the business operations.

### **Secured Creditors**

The theme of secured creditors emerged as part of the influence discussion, as the security that creditors hold plays a role in their ability to influence the business rescue process. The views of the participants demonstrate this, “Secured creditors, your security held by creditors are very important. The extent of the creditors’ claims is important. The fact that creditors are as critical within a specific industry and/or sector is very important” (Participant 9). Further emphasis on security was demonstrated by Participant 7’s view, “They normally are the biggest by far in quantum, so they have the biggest vote. So, you have to look after them from the security point of view offer them more than they would get from the liquidation”. The aspect of security is further illustrated by Pretorius (2016), arguing that secured creditors are considerably powerful when compared to other stakeholders, banks are especially seen as key to a successful business rescue. Le Roux and Duncan (2013) argue the contrary, with the view that secured creditors have protection and, in some cases, may not be concerned about PCF because the secured creditors are backed up by the security that can be called upon. While in the literature,

the views may vary, BRPs consider secured creditors influential but not as highly ranked as some other stakeholders.

### **Critical Suppliers**

It must be noted that in the study, critical suppliers and creditors were sometimes used interchangeably by the participants. As critical suppliers can be also creditors if their balances are outstanding at the time the business rescue commences. Critical suppliers provide essential goods and services that the company needs to support its operations. The participants' views on critical suppliers are similar to that of the creditors as demonstrated by Participant 10,

Suppliers are in the same position as creditors, definitely because if the company goes into business rescue they stop supplying on credit. They basically insist on cash payments.

The second one is the influence they will provide in the continuation of the business, like I mentioned the one supplier. (Participant 11)

The views of the participants align with that of Le Roux and Duncan (2013) and Pajunen (2006), confirming that suppliers provide resources that the organisation requires to support its operations.

### **Post Commencement Finance (PCF)**

PCF providers are seen by the participants as the third most influential stakeholder. Their high ranking is corroborated by their ranking as the most impactful stakeholder. The participants point to PCF as valuable for supporting business continuity.

When you get your money and the process is at the end, the party giving you PCF is particularly important. But you can see they all play a different role, without the PCF provider, you don't have the funds to continue. (Participant 3)

PCF is important to support the company's operations and enable the company to pay its costs as they fall due. Rosslyn-Smith and Pretorius (2015) and Levenstein (2016) concur with this view by noting that PCF is necessary to ensure business continuity and allows covering on-going costs of a company in financial distress. The link with literature

is clear; however, it must also be considered that PCF providers like banks are not always supportive of the rescue process. Two participants explain this notion,

So, they do consider the transactions, and they're much quicker and it's not like going to an institution. You know I avoid institutions because of their due diligence and it takes ages. That doesn't even work, I don't even waste my time. (Participant 1)

The banks believe the first loss is the best loss. So, they don't believe, I think they are sort of dormant to rescue but they don't like someone else to be in control. I find them to be, most of the time biggest stumbling block, even though they are secured in all likelihood will get their money back. (Participant 5)

Banks do not easily advance PCF to business in distress, security or surety is usually required by the banks if they do decide to offer PCF (Pretorius & Du Preez, 2013). The challenge highlighted by the participants reflects the challenge experienced with PCF. It could be considered that although PCF is impactful, due to the challenges in obtaining PCF and other avenues that BRPs may pursue, PCF providers are ranked third to creditors and employees respectively as the most influential stakeholders.

### **Employees and Management**

Employees occupy the second ranking in the listing of stakeholder influence according to the respondents. Employees are affected parties as defined by the act and thus have powers and rights protected by section 136 and 144 of the Companies Act. Levenstein (2016) views these powers as contributing to the influence that employees may have as they have to be consulted with during the business rescue process in addition their conditions of employment should not be altered unless agreed upon by mutual consent. Trahms et al. (2013) further notes that the influence of employees and top management is evident, referring to their importance to a company in distress. Pajunen (2006) presented a contrasting view in his study and found that employees are not critical but do pose a threat of striking. The importance of employees and the risk of striking are put forth by Participant 13 through this statement.

We want to get them on our side from an influence point of view, because if there is a big work force with a union, then you got to get their buy in. That only applies

if you want to trade out. If it's a wind down, the employees are going to be terminated anyway.

The statement covers the importance of employees and unions as any industrial action will have a potentially devastating impact on the success of a business rescue. The majority of the participants' views are summarised by the comments:

Without the staff you don't have anybody to run your business. Then the staff, because the staff is key, key, key stakeholders. (Participant 3)

To me the stakeholders in any rescue are the employees. We need to preserve the jobs, and they are usually the ones that give you all the information. (Participant 5)

These statements support the views in literature; Levenstein (2016) further notes that with competent, skilled employees and capable management the organisation will have a chance to surviving business rescue proceedings.

Directors and management are considered influential in the success of the business rescue and are ranked ninth in the listing. This view from Participant 10 indicates the importance of management.

Shareholders and directors, you still rely on them to run the business. We find that when you take on a business we prefer to work with the existing management than to replace the existing management. Because replacing the existing management normally, when you bring someone new in you first need to find somebody new.

While some of the BRPs may not work with senior management or directors, they still need a manager to support their business rescue efforts as illustrated by the Participant 6.

Middle management is key, I have found that top management is sometimes disconnected who the stakeholders really are. Middle management is usually key because they are the guys, feet on the ground, knowing who the suppliers are,

who are the employees, who are the trade unions and who are the guys that is key for me to deliver my product or service as and when it is needed.

This comment reflects the need for managers to assist because of their knowledge and skills. Participant 11 further noted that “then you look at the jockey, if you don’t have the jockey then it’s going to be difficult trading the business”. Participant 11 was referring to a person in the organisation that will provide management and leadership to support the BRP. The importance of management is noted and supports the view of Trahms et al. (2013) that top management is crucial and has an influence on a successful turnaround.

Similar to employees, top management enjoy the rights and powers afforded by section 136 of the Companies Act which may lead to top management being influential (Joubert & Loubser, 2016). The legislation provides them with the ability to exert their influence.

### **Regulators and SARS**

Government and regulators have featured in all the rankings that were carried out in the study. The terms government and regulators were used interchangeably in the study. Although not highly ranked, regulators were viewed as key stakeholders that have an impact on business rescue and are influential in the business rescue process as identified by the participants. Participant 8 put forth this view,

The way I start, first is the balance sheet. I literally take the balance sheet and I look out who are the creditors, SARS if they are owed. I literally pick out all the important ones. Then I go into the specific company, if it is mining or milling or banking, regulators, then I pull out all the regulators.

Within stakeholder theory literature, Mainardes et al. (2012) recognises regulators as one of the key stakeholder classes. Within the context of business rescue in South Africa, no study that focuses on business rescue and regulators was found. Rosslyn-Smith and Pretorius (2015) do note that regulators may play a role in the success of business rescue. This aspect of the discussion is beyond the scope of this particular research study.

As a regulator, SARS was found to have influence in the business rescue process. When classified as a creditor, SARS has voting rights during the business rescue, this view from Participant 7 demonstrates SARS' influence.

SARS is very often a major creditor in private companies. People often don't pay the tax man when they hit a bump in the road. Then that just escalates. In a lot of our matters SARS has got the swinging vote.

The participants view on SARS align to Levenstein (2016) through arguing that SARS is preferent in liquidation but is ranked on par with concurrent creditors in business rescue. Through the Income Tax Act, SARS is a preferent creditor in liquidation (Levenstein, 2016). The influence that SARS has is governed by the swing vote they may have as a major creditor, backed up by the fact that SARS is preferent in liquidation. Their approval or rejection of the business rescue plan will impact the success of the business rescue plan. The appearance of SARS as an influential stakeholder is supported by the legislation and the views of the participants.

## **Shareholders**

Shareholders are part of affected parties as defined by chapter six. From the ranking list, shareholders have been ranked fifth in terms of influence. It must be noted that shareholders may also be creditors if they have a liability as indicated by Participant 5. Some BRPs may consider the views of shareholders above those of other stakeholders, as demonstrated by Participant 10, "You find a lot of business rescue practitioners will probably, a lot of them historically have been found to prioritise shareholders over creditors. Or dance to the tune of the shareholder". Through reviewing section 146 of the Companies Act, it can be noted that shareholders' powers and rights are limited as they do not need to be consulted on the business rescue plan and do not vote for the approval or rejection of the plan unless their shareholding is altered by the plan (Jijana et al., 2016; Levenstein, 2016). The comment from Participant 5 aligns to the notion that shareholders have limited influence and BRPs do not focus on the shareholder when rescuing a company in distress.

Management and shareholders are not my priority, obviously some management, but if they have been part of the problem then you have to deal with them.

This view mirrors the literature supported by the legislation which limits the powers of the shareholder. Pajunen (2006) has an alternative view; shareholders have resource-based power derived from resources they hold and the knowledge they possess. This aspect has not been demonstrated clearly in our findings. Shareholder influence in the business rescue context may differ from that in a turnaround as chapter six section 146 of the Companies Act plays an important role on the influence the shareholder may exert in a business rescue.

#### **6.3.1.5 Conclusion: Research proposition 2**

From the analysis of findings and literature in respect to the second proposition - stakeholders with the largest material claim are the most influential in the business rescue process - it can be concluded that stakeholders with the largest material claim are the most influential in the business rescue process. The findings have demonstrated that BRPs consider creditors to be the most influential stakeholders because of their ability to vote on the approval or rejection of the business rescue plan. The creditor's ability to vote is based on the size of the claim outstanding at the time the company enters business rescue. Participants also indicate creditors' ability to provide resources to the company in distress so as to continue operating as another key reason why creditors are influential. While creditors play a significant role, PCF cannot be ignored as BRPs have also outlined its importance. Employee and regulator influence also play a role in the success of business rescue.

#### **6.4 Discussion of Results: Proposition three**

**Proposition 3: Size of the claim, resources, networks, PCF, creditor security, and rankings of creditors determine influence during the business rescue process.**

Research proposition three sets out to determine the key drivers that determine stakeholders influence. Given that the factors range from the size of the claim to understanding the influence holders of resources may exert in achieving a return on their stake; the proposition seeks to conclude on the main factors that have been identified during discussions with the BRPs.

This section of the discussion sets out to discuss the factors that contribute to stakeholder influence having understood the processes that BRPs go through in

determining influential stakeholders. The section will end with the discussion of BRPs themselves as influential stakeholders.

## 6.4.1 Factors Contributing to stakeholder influence

### 6.4.1.1 Stakeholder influence - Factors

In establishing the factors that BRPs consider in determining the drivers that contribute to stakeholder influence it was important to understand the processes that they follow. The findings identified three methods BRPs consider. The pre-assessments, the voting process and the SARS process, which was unexpected, but appeared to be due to SARS' influence in the business rescue process.

**Table 24: Influence factors by source**

Rank	Factor	Frequency	Source
1	Creditors power from outstanding debt	7	Resource-based
2	Critical supplier - Ability to provide critical goods or services	4	Resource-based
2	PCF - Ability to provide PCF	4	Resource-based
2	Voting interest - Ability to vote for the plan	4	Resource-based
2	Security - Power leveraged through security	4	Resource-based
2	Ability to support business continuity	4	Resource-based
3	Influence because of knowledge of legacy issues	1	Network based
3	Regulatory powers for example SARS, ESKOM, other regulators	1	Legislation
3	Directors surety, invested in business want it to work	1	Resource-based
3	Ability to influence to implement the plan	1	All the above

Section 5.5.2 outlined the factors that contribute to stakeholder influence; Table 24 displays an additional dimension to the rankings by revealing the source of the factors. The resource-based view dictates that stakeholders with resources essential to the organisation have a compelling lever to influence the organisation to recover from decline (Pajunen, 2006). The resource-based view amplifies the instrumental view which identifies stakeholders through their economic or financial impact (Donaldson & Preston, 1995). Table 24 indicates that most of the factors identified by BRPs are resource-based driven factors.

Creditors' power from outstanding debt, security, and critical suppliers has been discussed in section 6.3.1.4. To recap, the stakeholders identified in table 23 are seen to be influential, the factors in Table 24 align with the views of the participants and literature (Le Roux & Duncan, 2013; Pajunen, 2006; Pretorius, 2016; Levenstein, 2016). The resources provided by the creditors play a significant role in terms of the influence they possess in business rescue.

PCF, as explained by Levenstein (2016), is the lifeblood of business rescue. Financial support is a valuable resource as demonstrated by the participants. PCF is a resource-based factor which enhances the stakeholder influence during the business rescue process. PCF is a significant consideration for the BRP in deciding on taking on the appointment to rescue the business and as consideration for supporting business continuity. In continuing with the theme of business continuity, through the ability to support the organisation during its distress period, it should be noted that creditors, suppliers and employees have demonstrated their relevance in assisting an organisation in business rescue to continue operations as discussed in section 6.3.1.4. The resources provided by these stakeholders can be financial or labour related through specific skills and expertise.

The influence a stakeholder may have can be attributed to the knowledge of legacy issues they have. Consequently, this knowledge may have a significant impact on the company's business rescue plan and process. The knowledge of legacy matters, according to the findings, is a factor that contributes to stakeholder influence. Stakeholders such as employees, managers, directors and shareholders may be influential as a result of this factor. The ability to understand the industry, company networks, dynamics, and legacy topics can be aligned to network position-based power as Pajunen (2006) put forth that network position-based power emanates from an intermediary stakeholder with the ability to link other stakeholders and become the focal point regulating information and resources. Participant 11 demonstrates this point with the statement "Then you look at the jockey, if you don't have the jockey then it's going to be difficult trading the business".

Regulators have been discussed in section 6.3.1.4. SARS was provided as an example. SARS has rights and powers of a creditor, however, SARS exercises additional power which emanates from the legislation. SARS also has large in-house capabilities to pursue

legal remedies that may not be easy for other affected parties to do. Participants indicated the power of regulators. While the detailed discussions of regulators are beyond the scope of this study, the study does indicate the power of legislation as a factor that a stakeholder like SARS may have during the business rescue process.

Surety by directors or shareholders was identified by the participants as a factor which results in stakeholder influence. Pretorius and Du Preez (2013) indicate that surety is usually a pre-requisite for the provision of PCF, which is vital for the business rescue success. Levenstein (2016) further states that personal surety given by shareholders or directors in their personal capacity can be enforced outside the business rescue process. Shareholders or directors are therefore put in a position that may make them supportive of the business rescue process and they may be influential as a result of the surety. Participant 5' comment supports the view of personal surety, "Although personal surety is outside of the business rescue, but it focuses their mind. Believe me it does, because as I said, those guys don't want to lose everything". Clarkson (1995) defined stakeholders to include groups that have an interest in an organisation which includes the shareholder or director with personal surety. The holders of the surety will most likely have an interest in the business rescue and may play an influential role in the success of the business rescue. The alternative view is that personal surety is not important to business rescue, as illustrated by Participant 2, "Personal surety sit outside of the rescue and personal surety is, as you probably know, it's not affected by the moratorium which comes with a business rescue proceeding". It is clear that surety as a factor is resource-based. However, from the findings of the study, there is no conclusive evidence that personal surety provided by shareholders or directors is a driver of stakeholder influence.

#### **6.4.1.2 BRP as a stakeholder**

The BRP's objective is to ensure that a company in financial distress is rescued and there is relief to affected parties (Pretorius, 2014). By achieving this objective, the BRP will be able to fulfil the objective of the Companies Act as reflected by section 7(k), which is to "provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders" (The Companies Act no 71 of 2008, p. 44). The role of the BRP is significant; the BRP as a stakeholder plays a pivotal role in the success of business rescue. Participant 6 clarified this view with the comment "You need to balance the interest. Because you become a stakeholder as soon as you are in there, you become a stakeholder".

Pretorius (2014) notes the importance of suitably qualified BRPs on a successful business rescue; the lack of a suitably qualified BRP will have dire consequences on affected parties. This view is supported by Levenstein (2016), indicating that BRPs that are competent, skilled and have sufficient education play a significant role in the business rescue process. The participants' opinions align with the need for skilled and qualified practitioners as demonstrated by comments such as

Skill set. It takes a very big skill set to be able to rescue a company properly, you need leadership skills, management skills, financial skills, legal skills. You need to be a psychologist. Sometimes a criminologist. There is a huge skill set just to do it properly. (Participant 10)

The magnitude of the skill set is further explained by Participant 12, indicating that the BRP must be well rounded.

That is a massive role. There are a lot of people out there in South Africa that have been credited and licenced as business rescue practitioners that are rethreaded liquidators, lawyers or accountants that haven't got the experience of firstly ever having run a business, where business is not just a set of financials, or a set of legal agreements. It is a business with people in it. It is a business with a strategy. It is a business with a product and a service offering and a value proposition.

It is undeniable that the quality of the BRP has a significant impact on the success of the business rescue process.

The skills set is not the only factor relevant in determining the suitability of the BRP, ethical considerations are also relevant. Levenstein (2016) puts forth that in business rescue, opportunists with profit making intention have a limited desire to drive a successful business rescue; referring to BRPs that do not have the intentions of turning the business around. Bradstreet (2010) further elaborates that unethical practitioners are a risk to the business rescue process and limit the ability to access finance to fund the distressed company's operations. Evidence is provided by Participants 6 who recognises having unethical BRPs.

There are cowboys in this game and we need to call that by the name. That in a sense created a culture where banks don't trust, being the bigger finance institutions, don't necessarily trust the practitioners anymore. Even though he is an officer of the court.

The unethical practitioners have created a bad name for the profession and as a result potential PCF providers may not want to support organisations in business rescue. The terms "mavericks", "crooks" and "cowboys" have been used to describe the unethical behaviour of some BRPs. These terms illustrate the perception other stakeholders have about practitioners. Ultimately, such behaviour impacts the BRP's ability to obtain finance essential to the success of business rescue. The influence the BRP has in the process plays a role in managing the business rescue dynamics, as put by Participant 10,

The unfortunate reality is that we have got the majority of rescue practitioners in my mind are mavericks. They are not looking at business rescue in its true purpose. They are looking into benefiting the directors and the shareholders who they sometimes refer to as their clients, so looking at benefiting themselves not to the greater picture. Business rescue practitioners play a very big role. They have got a massive amount of power. Potentially in some instances not enough, and in other instances too much.

The BRPs' image may be tainted by a small number of unethical practitioners, as indicated by Participant 13,

Just because some guys who are out there, you cannot then say every BRP is a crook. We cannot just because say 5% are abusing their fees, you can't prejudice the guys that are doing it properly. We are very strong on that.

The topic of fees resulted in discussions about the Diener judgement. Braatvedt (2017) explains that the judgement may result in checks and balances on unethical BRPs before accepting business rescue engagements. The participants had mixed views on the Diener judgement, illustrating the predicament faced by the profession. Participant 8 explains the predicament as follows;

The only problem with that is that the business rescues that are on the fence, companies that are on the fence is a maybe success. Then they suddenly are

deemed as failures from the start and you might just get again your weaker business rescue practitioners who don't understand. Just goes on the same route. It has its pros and it has its cons.

In summation, the BRP as a key stakeholder in the business rescue process is influential. The quality of the BRP has a significant impact on the success of the business rescue.

#### **6.4.1.3 Conclusion: Research proposition 3**

From the analysis of the findings and literature in respect to the third proposition which states that size of the claim, resources, networks, PCF, creditor security and rankings of creditors determine influence during the business rescue process. It can be concluded that size of the claim as a result of the creditor's outstanding debt, resources, networks, PCF, creditor security, stakeholder's ability to support business continuity, knowledge of legacy topics and regulatory powers determine stakeholder influence during the business rescue process. While the proposition in chapter three included rankings of creditors, this aspect did not appear during the discussions with the participants. In respect of personal surety taken by shareholders or directors, there was no conclusive evidence that surety will be an influence driver as the views of the BRPs and literature are split in the middle.

## **7. CHAPTER SEVEN – CONCLUSION**

### **7.1 Introduction**

This chapter concludes the research study by outlining the key research findings based on the results presented and discussed in chapter five and chapter six respectively. Based on the review of the key findings the chapter will cover the implications for the BRPs. Lastly, the chapter will outline the limitations of the study and recommendations for future research.

### **7.2 Key research findings**

The study objective was to understand the role of stakeholders in the success of business rescue through the lens of stakeholder theory. This entailed defining, identifying and understanding influential stakeholders in the business rescue process.

#### **7.2.1 Stakeholder definition and identification**

Respondents gave insights into the stakeholders considered key in the rescue process. When asked about how they defined stakeholders in business rescue, most of the BRPs' first instinct was to mention affected parties. Affected parties have rights and powers covered by sections 144 to 146 of the Companies Act which enhances their visibility as stakeholders. The ultimate objective of the act, however, is to ensure that the business rescue balances the rights and interests of all relevant stakeholders. Therefore, all stakeholders need to be taken into account. This resulted in the consideration of the broad view of stakeholder identification.

The wider definition of stakeholders was demonstrated by the participants referring to stakeholders that are influenced by the outcome of the business rescue process or a party affected directly or indirectly by the rescue process. The responses of the participants align with the classical definition of stakeholders which recognises that stakeholders are influenced or influence the firm in its attempt to achieve organisational goals. In this study, the objective would be to achieve a successful business rescue.

The findings on affected parties and the broad view of stakeholder definition clarified the proposition that key stakeholders involved in the business rescue process go beyond the affected parties as described by chapter six. The literature around a broad definition of stakeholders and the legislation, namely section 7(k) of the Act which requires the BRP to balance the interest of all stakeholders in the business rescue, means that BRPs have to consider all key stakeholders outside the affected parties who may have an impact on the business rescue. Sections 144 to 146 of the act ensures that affected parties have protected powers and rights and are ultimately treated fairly as required by the law. As a result, BRPs refer to affected parties which they consider primary stakeholders when asked to define stakeholders.

The exercise to get BRPs to identify the key stakeholders based on their experiences revealed a variety of stakeholders that play a role in business rescue. The stakeholders go beyond affected parties as defined by the act. Over thirteen different types of stakeholders were identified as key stakeholders. All affected parties were named as stakeholders by all participants thereby confirming that affected parties are the primary stakeholders. Unexpectedly, customers were given the same level of importance by the BRPs, with all participants naming them as stakeholders in the same vein as affected parties.

This finding raised the question of why BRPs consider customers in the same light as affected parties. The obvious answer is that customers play a role in supporting business operations by buying from a company in business rescue. However, in the study, participants alluded to the fact that customers may have warranties on products or have a service or product still outstanding from the company in business rescue. This finding raised questions about the customer being an affected party directly impacted by the business rescue but without the ability to vote on the business rescue plan. Creditors who provide a service or product get to vote when an amount is outstanding to them when business rescue commences. Should customers be considered affected parties in a case where there are warranties or goods and services paid for before delivery?

### **7.2.2 Stakeholder Prioritisation and Influence**

Most of the BRPs indicated that they prioritised stakeholders in terms of their influence in the business rescue process. Prioritisation is done to handle burning issues and to get the support of stakeholders who may be resourceful and can impact the overall chances of the business in distress. Stakeholder theory literature supports the views of

prioritisation concerning influence and prioritisation in order to classify stakeholders into different categories of interaction with the organisation. On this topic, literature and the views of the BRPs are aligned. While the balanced view aligns with the legislation regarding section 7(k) of the Companies Act, in practice the business rescue process is dynamic. BRPs may be compelled to prioritise stakeholders that may not align with section 7(k). It must be noted that in practice most BRPs do prioritise specific stakeholders, however, they do try to act impartially in an attempt to balance the interests of all stakeholders in the business rescue process.

In respect of the most impactful stakeholders, the BRPs concluded that PCF providers, creditors and employees were the most impactful stakeholders regarding a successful business rescue. Without PCF, BRPs were reluctant to take on a business rescue as PCF is considered a critical ingredient to the business rescue process. Based on most of the views of the participants, PCF is a pre-requisite in the decision on whether to accept an appointment. Additionally, literature and the BRPs acknowledge that PCF is relevant to support the business operations and therefore improves the chance to turnaround a business in distress.

Creditors were considered the second most impactful stakeholders by the participants. The impact of the creditors was as a result of the power they have during the voting on the business rescue plan. Similar to PCF providers, creditors' approval of the business rescue plan is a pre-requisite to commencing the rescue process. Therefore, the ability to vote can stop the business rescue in its tracks.

The employees were seen as the third most impactful stakeholders. Their lack of support for the business rescue could have a devastating impact on the rescue if, through unions, employees decide to take industrial action. Employees are considered the lifeblood of an organisation and play an essential part in the success of business rescue.

Participants were asked to rank stakeholders in terms of influence. Creditors were ranked first, followed by employees, PCF Providers, critical suppliers, shareholders, secured creditors, regulators, SARS and finally management. The creditors, PCF providers and employees do not come as a surprise as these stakeholders already have a significant impact on the business rescue process.

Creditors' ability to vote for the business rescue plan and their ability to continue supporting the business in distress through the continued supply of goods and services makes creditors the most influential stakeholder. In a case where the creditor is secured, the influence may be heightened due to the security held. If for example, the security is on debtors or critical assets, the creditor may become influential and their views are taken into account in the BRPs rescue plan and implementation.

The merits of PCF providers as influential in the business rescue process are clear. The provision of finance allows the organisation to settle its debts and finance its operating costs. PCF providers are third in the ranking which is a testament to their impact on a successful business rescue. Financial institutions are considered as the primary providers of PCF but are not always willing to provide funding and the BRP may seek alternative methods to ensure the business will be able to cover its obligations. For that reason, it could be inferred that the participants may have ranked PCF providers as third as opposed to first.

The influence that employees have on the business rescue has been demonstrated. Employees are ranked second and provide essential services, skills and expertise to support business operations during distress. The high ranking aligns with the BRPs' objective to preserve jobs. Directors and management received a mixed review, the first being that BRPs may side-line directors as they may have been the cause of the distress or are not supportive of the business rescue. The alternative view is that directors and management know the networks, have the skills and have legacy knowledge which makes them key players in the process. The fact that they are employees also provides them with an added advantage as the legislation, through sections 136 and 144, provides them with the rights and powers of any employee. In conclusion, the influence of employees is critical to the success of the business rescue. However, the effect of directors and management is questionable, depending on the business rescue context and the appointed BRP.

In respect of regulators as influential stakeholders, the study identified that regulators have a role to play in the success of business rescue as BRPs identified regulators as key stakeholders that are influential. There is limited literature on this topic; however one regulator was prominent in the findings. SARS was recognised throughout the different aspect of the study and was identified as a key stakeholder in the business rescue process. SARS was one of the top-ranked stakeholders in terms of influence and the

SARS process was identified by BRPs as a supporting process in determining the influential stakeholders. Two aspects are important in the source of power that SARS has, first is the legislation which enables SARS to be a preferent creditor in liquidation while being a concurrent creditor in business rescue and second is that in some cases, SARS has the swing vote due to the amounts owed to them as a creditor. SARS will, therefore, exert its influence and become an influential stakeholder and the BRP will need to canvas SARS support to be successful in the business rescue.

Shareholders were not highly ranked by BRPs in the influence rankings. The suggestion is that shareholders have limited influence in the business rescue process. Their inability to vote for the business rescue plan limits their ability to be influential. Section 146 only permits them to vote in a situation where there may be a variation of their shareholding. It could be suggested that the shareholders will have done all they can before the company goes into business rescue. The views of the participants and literature vary slightly; based on the legislation and most BRPs, shareholders have limited influence in the success of business rescue.

### **7.2.3 Factors contributing to stakeholder influence**

Several factors that contribute to stakeholder influence were identified by the BRPs, as reflected by Table 24. The views of the practitioners indicated that the resource-based view dominates the source of factors that result in stakeholder influence. Resource dependency is key in various aspects of the business rescue process. The voting on the plan dictates that the creditors, through their outstanding debts, vote to approve the plan. Once the plan is approved and is at its implementation phase, critical suppliers, PCF providers and employees play a role in providing resources to support the organisation in distress. Regulators play a role at the plan consideration phase and in the support of business continuity. The legislation also provides a source of power for the regulator to be influential. Network and position-based power is evident when there is a manager who knows the industry, networks and legacy topics which may assist the practitioner to navigate the business rescue dynamics. While they are several factors that contribute to stakeholder power, overall three themes dominate the source of the influence: resources-based power which is dominant, network-position based influence and legislation-based influence.

It became apparent during the discussion phase of the study that BRPs were key stakeholders in the business rescue process. Participants expressed strong views about what a suitable BRP should possess in order to drive a successful business rescue. BRPs should be expertly skilled and possess the appropriate qualifications and business knowledge to turnaround a business in distress. The quality of the BRP may have dire consequences on the success of the rescue.

Ethical considerations also play a role in the BRPs ability to influence the business rescue process. Views from the BRPs indicated that some practitioners acted unethically in order to drive their self-interest agenda of profit-making by charging fees to companies which should not be in business rescue or where the practitioner has no intention to turnaround the business. Although the Diener Judgement may make such practitioners cautious of exercising this unfair practice, the participants had mixed views on the judgement. Ultimately, the presence of BRPs that are unethical has an impact on the ability of the BRP to influence providers of PCF and other affected parties in the BRPs' attempt to rescue the company. A fully qualified, skilled and ethical BRP is the foundation for successful business rescue.

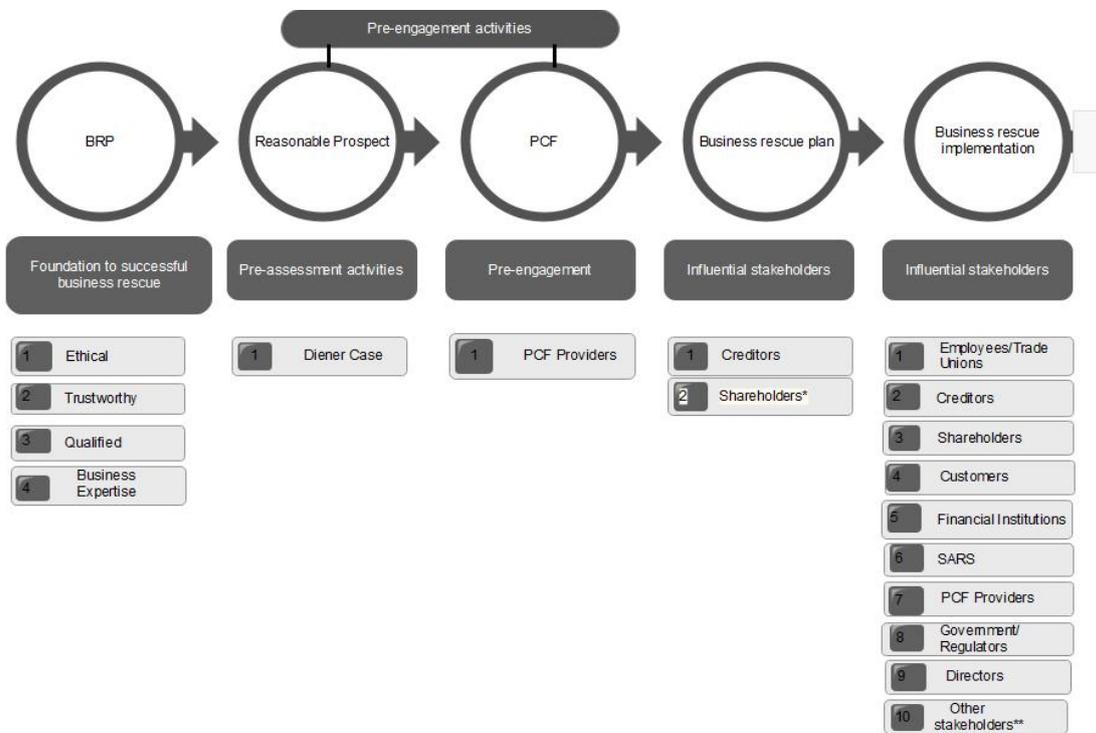
Overall, the study undertook to understand the role of stakeholders in the success of business rescue. The research findings indicated that BRPs prioritise key stakeholders, albeit fairly. Creditors, PCF providers and employees were identified as the most impactful and influential stakeholders in the success of business rescue due to the resources they provide an organisation in distress. The study contributes towards clarifying the roles stakeholders play in business rescue within the South African context. The analysis of the stakeholders was done through the theoretical lens of stakeholder theory. The research findings complement existing literature and seek to demonstrate the actual dilemmas BRPs experience in stakeholder management.

### **7.3 Proposed Framework**

Derived from the insights of this study, this section presents a proposed conceptual framework that illustrates the roles of key stakeholders during the business rescue process. The framework presents a simplified timeline of the business rescue process and the key aspects and influential stakeholders at different points in time.

Creswell (2008) notes that the usefulness of qualitative research is based on the particular description and themes developed in a specific context. Caution must be taken in generalising the results of a qualitative study. The qualitative and exploratory research study undertaken had a sample size of 13, thus the data analysis results should be used cautiously when drawing generalised conclusions. This proposed framework (Figure 3) seeks to provide a foundation for further stakeholder evaluation in the business rescue process.

### Proposed Framework



\*Shareholders only vote on the plan if they are a creditor or if their rights as shareholders are impacted by the business rescue plan.

\*\*Other stakeholders comprise of all other stakeholders and may change from rescue to rescue.

**Figure 3: Business rescue stakeholder analysis framework**

The conceptual framework culminates from the findings discussed in the study. At the core of the framework is the BRP. The BRP has full management control, can make operational and management decision and ultimately takes responsibility for the

business rescue process. The BRP must be suitably qualified and skilled to handle the business rescue process, but importantly, the BRP must also act with integrity, be ethical, and trustworthy to key stakeholders. The BRP forms the foundation to a successful business rescue.

The pre-engagement activities play a role in understanding the business in distress and the BRP's decision on whether to accept the business rescue. The Diener judgement means that the BRP needs to be careful in accepting the assignment as there should be reasonable prospect of rescuing the business. The next phase of the framework reflects the views of most BRP's, that they will not undertake a business rescue without PCF. The PCF providers play an important role prior to the acceptance of the business rescue engagement and in providing funding to support business continuity.

Preparation of the business rescue plan is considered a key activity carried out by the BRP and it is instrumental in a successful business rescue. The final vote to approve the business rescue plan lies with the creditors; therefore, creditors are influential in the business rescue plan adoption and implementation. Shareholders also have to be included in the business rescue plan consideration. Generally, shareholders do not have a vote in approving the rescue plan; they may, however, vote to the extent that they are creditors or may vote to approve a plan if their shareholding is altered as a result of the business rescue plan.

In the implementation phase, the stakeholders who play a role in the rescue process are considered key. For example, employees, regulators, SARS and other stakeholders may be influential in the formulation and implementation of the business rescue plan. The roles these key stakeholders play vary with each business rescue.

The conceptual framework in Figure 3 provides a base for understanding stakeholder analysis in the business rescue process. The framework can be used by BRPs in identifying and prioritising key stakeholders when developing the business rescue plan and the implementation thereof. It may also be used as a basis for further academic research.

## 7.4 Recommendations for BRPs

- BRPs should ensure that they are aware of the holistic approach to stakeholder management. In identifying stakeholders, BRPs should not only focus on affected parties but make use of a broad view of stakeholder identification and management. Stakeholder management should be recognised as an activity that must be allocated time and resources as it has an impact on the success of the business rescue.
- The findings provide guidance on what the BRPs actually do in identifying key stakeholders during the stakeholder identification process. The use of a multifaceted approach which includes gathering details from the company through lists provided by the company, discussions with management and data from internal departments. Such sources of data should be corroborated with financial sources, for example the balance sheet and creditor's and debtor's lists. The BRPs should not only focus on the affected parties approach to identifying relevant stakeholders.
- BRPs should take time to understand the role customers play in the business rescue. The findings indicate that customers play a pivotal role and have been identified in the same vein as affected parties in respect to being a key stakeholder. The BRPs should consider canvassing for customer support as customers play a valuable role in supporting business continuity during distress periods.
- In the act of prioritising stakeholders, BRPs should ensure that they do not lose sight of the purpose of the Companies Act section 7(k) which requires that the interests of all stakeholders should be balanced. The practitioner's actions should be balanced and defensible in a court of law in case the BRP is challenged for treating stakeholders unfairly.
- The findings have demonstrated that different stakeholders are influential during different phases of the business rescue process. For example, PCF providers are important prior to the commencement of the business rescue as the BRP will take into account the existence of PCF before accepting the business rescue. Creditors play an essential role in the voting process. Both PCF and creditors continue to be important in supporting business operations during the implementation of the business rescue. The BRP should recognise that different stakeholders are influential during different stages of the rescue process and focus their efforts accordingly.

- Ethical behaviour has a significant impact on the profession. BRPs should act ethically and with integrity to build trust in the trade so that the profession is respected by various stakeholders, especially the affected parties they interact with to ensure a successful business rescue.

### **7.5 Limitation of the study**

- The conclusions reached are based on the views of 13 BRPs. These views may be influenced by their biases and perspectives, such as their bias towards the profession, their backgrounds and beliefs.
- The study is based on 13 BRPs and generalisations of the conclusions should be approached with caution. It is recommended that further empirical testing be considered.
- The sample consists of only BRPs. The views of other stakeholders, for example financial institutions and attorneys, were not taken into account and may play a role in the outcome of the findings.

### **7.6 Recommendations for future research**

There is limited empirical evidence on the role of stakeholders in business rescue as demonstrated in chapter two. The findings of this study can be enriched by the suggested research topics that would augment the existing business rescue literature. The suggested topics below will support this study and address some of its limitations.

- The roles of stakeholders in business rescue from the perspective of other stakeholders, namely legal practitioners and credit insurers. These stakeholders play a role in the business rescue process and could present views different from the BRPs.
- A quantitative study can be carried out to validate the findings of this study. The influence or impact of key stakeholders in business rescue can be tested statistically. This can be carried out by using existing business rescue plans and determining the role stakeholders played in the success of business rescue.
- Regulators and customers were stakeholders identified in the study for additional research. Regulators play an important role prior to and during the business rescue process. Empirical evidence is required to determine the impact regulators and

customers have. Should customers be classified as affected parties, one could investigate how much monetary loss is incurred by customers in business rescue.

- Finally, in respect to stakeholder identification, the key stakeholders identified in the study can be compared to that different business rescue plans to determine the variability in the stakeholders between successful plans vs. plans that are not successful.

## **7.7 Conclusion**

The study undertook to investigate the roles of stakeholders in the success of business rescue in South African organisations. Through the literature and the discussions with the BRPs, the roles and the influence of stakeholders were determined. The findings indicate the influence that specific stakeholders have and the factors that contribute to their influence. The study therefore provides BRPs with research findings that can be useful for stakeholder management.

The study has contributed to the literature in business rescue through providing a lens by which to analyse the roles of stakeholders and recognise stakeholder influence at different phases of the business rescue. The conceptual framework provides a summary of the salient points of the study that may be useful for BRP's as a tool for stakeholder analysis during the business rescue process. The recommendations for future research seek to take this study a step further by evaluating the findings to provide supplementary research.

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## Appendix 1: Interview Guideline

### Interview Questionnaire

Title of research: Stakeholder roles in the success of business rescue in South Africa

Name of the participant:

Company:

Job Title:

Date:

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Dear Sir / Madam

Once again thank you for agreeing to participate in the research study. Below are the focus areas of the research and the interview questions.

The research seeks to cover the three main questions:

1. Who are the key stakeholders involved in the business rescue process that an organisation goes through?
2. Which stakeholders are influential in business rescue processes?
3. What factors contribute to the influence or the power the key stakeholders have in an organisation during periods of business rescue?

Kindly note with regards to confidentiality and anonymity your name will not be revealed in the report.

Before the process commences, can you kindly sign the attached consent form and provide your approval for the interview to be recorded.

The questions are:

- 1) *What is your understanding of a stakeholder within business rescue?*
- 2) *How do you identify stakeholders?*
- 3) *Within the context of business rescue, who constitutes a stakeholder?*
- 4) What are your thoughts on prioritisation of stakeholders within the realm of business rescue?
- 5) Which stakeholder do you consider most impactful on the success of business rescue?
- 6) How would you rank the listing of stakeholders in terms of influence?
- 7) Why do you consider a stakeholder or a group influential?
- 8) Given that the stakeholders are influential what basis or process do you follow to make your determination?
- 9) What drives stakeholder power in business rescue? Factors do you consider?
- 10) Are given drivers/factors considered in isolation?
- 11) What is your view of the influence of personal surety by shareholders and subsequent behaviour by shareholders?

Thank you for your assistance.

## Appendix 2: Consent Form

### Interview Consent Form

I am conducting research on the role of stakeholders in the success of business rescue in South Africa, and am trying to find out more about identification, classification and power dynamics of stakeholders when business rescue proceedings commence. Our interview is expected to last about an hour and will help us understand how Stakeholders roles in business rescue. **Your participation is voluntary, and you can withdraw at any time without penalty.** All data will be reported without identifiers. If you have any concerns, please contact my supervisor or me. Our details are provided below.

Researcher: Doubt Dumisani Lusinga  
Email: lusingadd@gmail.com

Research Supervisor Signature  
Email: keith@unleashconsult.com

Participant's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Researcher's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### Appendix 3: Ethical Clearance Letter



Dear Doubt

Please be advised that your application for Ethical Clearance has been approved.

You are therefore allowed to continue collecting your data.

Please note that approval is granted based on the methodology and research instruments provided in the application. If there is any deviation change or addition to the research method or tools, a supplementary application for approval must be obtained

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

Kind Regards

GIBS MBA Research Ethical Clearance Committee

## Appendix 4: Consistency Matrix

Proposition/Questions/ Hypothesis	Literature Review	Data Collection Tool	Analysis
<p><b>Proposition one:</b></p> <p>Who are the key stakeholders involved in the business rescue process that an organisation goes through?</p>	<p>Miles (2017) Mitchell et al. (1997) Donaldson and Preston (1995) Pajunen (2006) Trahms et al. (2013) James (2016) Freeman (1994) Levenstein (2016) Fassin (2009) Pretorius (2013) Rosslyn-Smith and Pretorius (2015) Companies Act 71 (2008)</p>	<p>i) What is your understanding of a stakeholder within business rescue? ii) How do you identify stakeholders? iii) Within the context of business rescue, who constitutes a stakeholder?</p>	<p>Thematic analysis</p>
<p><b>Proposition two:</b></p> <p>Stakeholders with the largest material claim, are the most influential in the business rescue process.</p>	<p>Pajunen (2006) Decker (2016) Pretorius and Du Preez (2013) Joubert and Loubser (2016) Conradie and Lamprecht (2015) Harrison et al. (2010) Le Roux and Duncan (2013) Levenstein (2016) Pretorius (2015) Rosslyn-Smith and Pretorius (2015) Trahms et al. (2013) Companies Act 71 (2008)</p>	<p>i) Within the realm of business rescue do you prioritise stakeholders? ii) Which stakeholder do you consider most impactful? iii) How would you rank the listing of stakeholders in terms of influence? iv) Why do you consider a stakeholder or a group influential?</p>	<p>Thematic analysis</p>
<p><b>Proposition three:</b></p> <p>Size of the claim, resources, networks, PCF, creditor security, rankings of creditors determine influence during the business rescue process.</p>	<p>Pretorius and Du Preez (2013) Pretorius (2014) Bradstreet (2016) Levenstein (2016) Pajunen (2006) Companies Act 71 of 2008</p>	<p>i) Given that the stakeholders are influential what basis or process do you follow to make your determination? ii) What drives stakeholder power in business rescue? iii) Are given drivers/factors considered in isolation? iv) What is your view of the influence of personal surety by shareholders and subsequent behaviour by shareholders?</p>	<p>Thematic analysis</p>