

Enhancing creditor decision-making in South African business rescue proceedings: a comprehensive analysis of information requirements in business rescue plans

Enhancing
creditor
decision-
making

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Abstract

Purpose – Business rescue, as a mechanism to aid financially distressed companies in South Africa, has received considerable academic and practical recognition. However, the business rescue plan is an overlooked and, perhaps, underdeveloped aspect of the regime. For stakeholders, this is the ultimate decision-making document. Creditors are the most influential stakeholders in business rescue proceedings owing to their voting rights. For creditors to make informed decisions and exercise their votes meaningfully, the business rescue plan should be transparent and adequately disclose relevant and reliable information. This study aims to identify creditors' primary information needs to enhance the sufficiency and decision-usefulness of business rescue plans, not only to entice the vote of creditors but to enforce accountability from practitioners.

Design/methodology/approach – Using a qualitative research design, semi-structured interviews were conducted with 14 executives from 10 South African financial institutions.

Findings – The findings reveal that comprehensive disclosure of financial, commercial and legal information in business rescue plans was a critical antecedent for stakeholder decision-making. Additionally, leadership and social impact information were influential determinants. This study advances academic knowledge and, for practitioners, adds value to the development of business rescue plans. This can enhance creditors' confidence in supporting the rescue effort and approving the plan.

Practical implications – This study advances academic knowledge and, for practitioners, adds value to the development of business rescue plans. This can enhance creditors' confidence in supporting the rescue effort and approving the plan.

Originality/value – The originality of this article lies in its investigation of how creditors assess the information in BR plans as a precursor to supporting the company's reorganisation in a creditor-friendly business rescue system such as South Africa. This study provides novel insights into the



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decision-making process, particularly how creditors assess BR plans, address information asymmetry and vote on the plan.

Keywords Business rescue, Business rescue plans, Business rescue practitioner, Creditors, Decision-making, Disclosure, Information, Reorganisation, South Africa

Paper type Research paper

1. Introduction

Business rescue, the formal reorganisation procedure in South Africa, is a set of actions to rehabilitate companies experiencing financial distress to restructure themselves for the benefit of all stakeholders – not just the creditors, as would typically be the case under liquidation (Ramnanun *et al.*, 2020). Various stakeholders benefit from the company's success, including creditors, financiers, employees and customers who benefit from the continuity of the business (Lusinga and Fairhurst, 2020). In spite of its importance, anecdotal and empirical evidence suggests a poor success rate of the current business rescue regime, calculated at 18% by the Companies and Intellectual Property Commission (2022). The low success rate of business rescue proceedings has been attributed to several success factors (Conradie and Lamprecht, 2018).

However, the quality of business rescue plans (BR plans) and the information (or lack thereof) contained in them have been increasingly critiqued and partly attributed to the low success rates and worsening reputation of the business rescue regime (Pretorius and Rosslyn-Smith, 2014). The BR plan is designed to bring together the consensus of stakeholders towards the company's reorganisation (Tron *et al.*, 2018). Thus, the BR plan must be transparent and coherent and provide sufficient information to enable full decision-making by affected parties, who must weigh the benefits and costs of adopting or rejecting the BR plan (Cepec and Grajzl, 2021).

Creditors are considered the most influential and disproportionately protected stakeholders during business rescue proceedings because of their ability to vote on the BR plan (Buccola, 2023). Creditors often face significant information asymmetry when financially distressed companies seek to restructure their affairs (Wan and Watters, 2021). Creditors have several rights and obligations in the business rescue process. However, many discrepancies exist in their knowledge, competencies and exposure to BR plans and the rescue process (Le Roux and Duncan, 2013). In some cases, sub-standard BR plans with glaring absences of crucial information are presented to voting creditors, mainly concerned with the probable dividend they will receive, whether in rescue or liquidation (Rosslyn-Smith and De Abreu, 2022).

The BR plan is the central decision-making document in the recovery of distressed companies. Therefore, it is important to identify the most relevant elements and information requirements of a BR plan to assist creditors' decision-making processes (Cepec and Grajzl, 2021). If the BR plan is unreliable, represents only pages with inaccurate information and has the sole purpose of meeting legal and statutory requirements, a company's recovery is unlikely to be successful (Monteiro *et al.*, 2020).

Rosslyn-Smith and Pretorius (2015) contend that in spite of the importance of the BR plan in the business rescue process, academic literature is scant and several of its components require investigation. In addition, it remains unclear what information stakeholders require from the BR plan to enable effective decision-making (Monteiro *et al.*, 2020). This process highlights the critical role of affected persons in the business rescue process of distressed firms, who are now endowed with the authority and decision-making powers to approve or reject the BR plan (Madaus, 2014).

This qualitative study aims to fill a critical research gap by providing new insights into creditors' decision-making processes and information needs when presented with a BR plan. Creditors increasingly demand that BR plans sufficiently disclose material information to enable them to make an informed decision on how to exercise their votes in creditors' meetings (Wan and Watters, 2021). Thus, this study aims to understand how creditors vote by outlining absent but crucial information in BR plans that will facilitate effective decision-making. The specific questions addressed through this study include the following:

- What information do creditors require to be sufficiently disclosed in BR plans to aid their decision to approve or reject the plan?
- What additional information do creditors use to aid their decision to approve or reject the BR plan?

Academic and practical contributions are made in this article. First, the research enriches the debate on business rescue by shedding light on an antecedent that has not yet received sufficient academic attention, namely, the BR plan (Ferri and Ricci, 2021). Consequently, this study provides insights into the decision-making process, information requirements and substantive guidelines that make a compelling case for creditors to approve or reject the BR plan.

Second, the study identifies and details the most important information required by creditors on the BR plan. Business rescue practitioners (BRPs) can use this information to develop BR plans that incorporate transparent, verifiable and detailed quality information required by decision makers. Such insights offer empirical evidence for the approval of BR plans during the creditors' general meeting (Silva and Saito, 2018).

The originality of this article lies in its investigation of how creditors assess the information in BR plans as a precursor to supporting the company's reorganisation in a "creditor-friendly" business rescue system such as South Africa. Deciding on a BR plan is a complex process with many different factors for decision makers. *Financial creditors* (including commercial banks, credit insurers and other lending institutions) have an in-depth understanding of this complexity because of their experience. They offer valuable insights into the nuances of the business rescue process. This study is pioneering in its approach. To the best of the authors' knowledge, this is the first study to gather and analyse perspectives from principal financial creditors involved in voting on BR plans through semi-structured interviews. This study provides insights into the decision-making process, particularly how creditors assess BR plans, address information asymmetry and vote on the plan.

Given the global applicability of the South African business rescue system, this study's contribution is both timely and relevant because in-depth research on a single country offers significant theoretical insights, and the findings can be analysed for similarities and divergences across various jurisdictions, offering a comparative review approach for researchers (Stroie *et al.*, 2023). Practically, this article provides recommendations for policymakers and corporate practice, which may lead to a predictable, transparent and successful regime for all stakeholders.

This contribution is structured in five sections, starting with the literature review and laying the theoretical foundation. This is followed by a description of the research methodology and a discussion of the study's findings in the context of existing literature. The article concludes with recommendations and suggestions for future research.

2. Literature review

2.1 Background

Business rescue proceedings are guided by the appointment of a BRP who is empowered through a fiduciary role to temporarily supervise the company and the management of its affairs, business and property (Matenda *et al.*, 2023). The business rescue process culminates

in the development and implementation, if approved, of a BR plan carried out by the BRP that illustrates how the rehabilitation of the company will be achieved in a manner that balances the rights and interests of affected parties (Kesiman and Thakhathi, 2022).

The BR plan is at the centre of much decision-making and is considered valuable only if it allows stakeholders (especially creditors) to make meaningful decisions (Ferri and Ricci, 2021). The BR plan seeks to convince, by appealing to reason, the notion that, through its approval, the affected stakeholders will remain better off than in liquidation (Madaus, 2014). The BR plan should contain comprehensive details and strategies in which the BRP predicts that the company will be resuscitated, including circumstantial information such as the financial statements, security for assets, all creditors outstanding in order or statutory preference and details of the BRP's remuneration (Rosslyn-Smith and De Abreu, 2022).

Nevertheless, there has been much debate and criticism around the lack of disclosure of information in the BR plan (Madaus, 2014). Transparency is fundamental to the institution of business rescue provisions (Conradie and Lamprecht, 2021b). It is axiomatic that the creditors must be satisfied that there is sufficient disclosure of information in the BR plan to be approved (Cepec and Grajzl, 2021). Recognising the long duration of rescue proceedings, sufficient disclosure of information is crucial in BR plans, not only to entice the vote of creditors but also to ensure accountability by the BRP (Lusinga and Fairhurst, 2020).

2.2 Theoretical framework

This study integrates two complementary theories to address the gap between the stakeholder and information theories. The enlightened creditor value theory (ECV) is a pioneering insolvency theory that has been developed to match the ESV (Jacobs, 2021). The ECV theory considers the need to balance the competing interests of creditors and other stakeholders during business rescue proceedings (Kesiman and Thakhathi, 2022). Therefore, this theory encourages the BRP to prioritise creditors' long-term needs during business rescue proceedings to achieve the best outcome for all stakeholders through business continuity (Gant, 2022).

Simultaneously, this study uses the *decision-usefulness theory*, concerned with "providing information that is useful to present and potential investors, lenders and other creditors, who use that information to make decisions" (International Accounting Standards Board, 2018, p. 7). This theory posits that not all information is necessary, but it should be provided to a specific class of users in a specific format to facilitate decision-making (Deegan, 2006). Lamprecht and Van Wyk (2020) assert that applying the decision-usefulness theory to BR plans can reduce information asymmetry, leading to informed decision-making by creditors regarding the performance, value and future of the financially distressed company. Such reporting precision leads to improved economic efficiencies as creditors can approve BR plans for companies with reasonable prospects (RPs) for recovery (Madaus, 2014).

2.3 Stakeholders and decision makers in business rescue

2.3.1 Business rescue practitioner.

The BRP is considered an orchestrator of a successful business rescue. In preparing the BR plan, seeking post-commencement finance (PCF) is a crucial task for the BRP (Gurrea-Martinez, 2023). In spite of its importance, obtaining PCF is challenging; thus, most BRPs will not undertake a business rescue appointment without securing PCF (Mayr et al., 2023). The BRP is also responsible for organising sufficient creditor support for the BR plan (Decker, 2018). Therefore, negotiations and involvement with creditors in drafting the BR plan are required to ensure the necessary support, as they hold a voting interest (Mayr et al., 2023). Such preparatory negotiations are often subject to confidentiality, secrecy and privilege (Wessels and Guo, 2020).

2.3.2 Creditors. Creditors can vote on, amend, approve, or reject the proposed BR plan. In the event of plan rejection, they can propose the development of a new BR plan as outlined in Section 153 of the Act (Gribnitz and Appelbaum, 2015). These rights presuppose that creditors have access to accurate, reliable and verifiable information to make an informed decision. This is an essential requirement, as all creditors, irrespective of their vote, will be bound by the BR plan (Wan *et al.*, 2020).

It is important to distinguish between two types of creditor constituencies involved in business rescue proceedings. The first type, which is the focus of this study, comprises *financial creditors* such as commercial banks, development finance institutions (DFIs), private equity firms and insurance companies (Ramnanun *et al.*, 2020). During business rescue proceedings, these creditors are usually secured, have voting rights above 25% of the total outstanding claims and have the requisite financial resources and sophistication to process complex financial documentation expeditiously and meaningfully (Eu, 2022).

Financial creditors and other capital providers play a significant role in business rescue (Decker, 2018). Financial creditors have significant bargaining power, rights and control over the rescue process. They may use their power to extract information, conclude favourable contracts and use litigation to maintain a positional advantage (Gant, 2022). These creditors typically form a lenders' committee early in the process to negotiate the terms of the proposed rescue effort with the BRP, including negotiations around advancing PCF (Gurrea-Martinez, 2023). Moreover, the inability of the business rescue regime to minimise losses for financial creditors may increase the levels of non-performing loans in the banking sector, posing a systemic risk with real economic consequences (Gurrea-Martinez, 2023).

New financing is the key to a successful business rescue regime. The BR plan may provide for support from current shareholders or from individuals or organisations who have expressed an interest in investing in the company. The willingness to inject new financial resources to support the recovery is an element of reassurance for the other parties involved. Thus, PCF is regarded as the lifeblood of the financially distressed company. Without PCF, the business rescue effort is doomed to failure. Therefore, it is widely acknowledged in the literature that commercial banks are the primary source of PCF in South Africa, hence the focus of the study (Decker, 2018).

Business rescue proceedings also involve *suppliers* and *trade creditors*. While the larger, more sophisticated financial creditors are likely to have material information about the distressed company, the trade creditors are unlikely to have such access (Wan and Watters, 2021). These trade creditors are usually unsecured and have minimal voting rights in spite of having a legitimate interest in the business rescue proceeding (Rosslyn-Smith and De Abreu, 2022). Trade creditors' participation in rescue proceedings is limited because they are often unable to assess the company's value or process complex financial documentation (Eu, 2022). They are also disincentivised from initiating business rescue proceedings or raising formal objections through the courts, given that the legal costs would be disproportionate to the value of their claims (Le Roux and Duncan, 2013).

Anecdotal and empirical evidence demonstrates that financial and trade creditors raise non-disclosure objections because of the paucity of information provided in the BR plan (Wan *et al.*, 2020). As a result, the only leverage creditors have in plan negotiation is threatening to vote against the plan, abstaining from voting, or objecting to its approval (Nowak, 2018).

2.4 Business rescue plan

2.4.1 Nature of the business rescue plan. The BR plan is multifaceted and has been likened to a fundable business plan (Tron *et al.*, 2018), a governance framework for the provision of

PCF (Gurrea-Martinez, 2023), as well as a strategic informative tool for decision-making by stakeholders (Ferri and Ricci, 2021). According to Section 150(2) of the Act, a BR plan is a legally binding document that must be prepared in the prescribed manner and contain all the information necessary for the affected party to decide whether to accept or reject the plan (RSA, 2008).

While the intention of the Act was not to provide a prescriptive or preformatted template for the BR plan, the Act is vague in its obligations (Snyman-van Deventer and Jacobs, 2014). It does not impose strict standards on information disclosure (Conradie and Lamprecht, 2021b). As a result, there has been a wide variation in the amount and sufficiency of information disclosed across published BR plans, which remain largely inconsistent from company to company (Chen, 2021). Prior court judgments and case law have developed over the years to require the disclosure of material information in the BR plan (Wan and Watters, 2021).

When a BRP presents a BR plan for the company, they expect its creditors to approve it, as a rejection of the plan will subject the company to liquidation proceedings (Silva and Saito, 2018). To make informed decisions, creditors require both comprehensive financial and non-financial information that supports the company's turnaround (Wan *et al.*, 2020). However, if commercially sensitive, certain information may be aggregated or omitted if its dissemination harms the company (Wessels and Guo, 2020).

2.4.2 Creditors' information requirements in the business rescue plan

2.4.2.1 Reasonable prospect statement. A clear, RP statement supported with assumptions and factual support should be included in the BR Plan to establish the distressed company's turnaround potential (Rosslyn-Smith and Pretorius, 2022). RP depends strongly on the outcomes of the feasibility and viability analyses, which inform RPs, as well as the successful involvement of stakeholders in the process (Snyman-van Deventer and Jacobs, 2014). In the BR plan, stakeholders need to determine what is feasible and, through this investigation, be convinced that the plan is achievable and that a subsequent reorganisation or liquidation is unlikely (Denning *et al.*, 2001). Viability in the BR plan should contain sufficient information to allow the stakeholders to assess the proposed turnaround strategy (Mayr *et al.*, 2023).

2.4.2.2 Business rescue value and the proposed liquidation dividend. The BR plan must disclose the business rescue value (BRV) and the proposed liquidation value (PLV) to allow creditors to make an informed decision about whether to support the business rescue or opt for liquidation proceedings (Madaus, 2014). The BRV and PLV depend on the valuation of the distressed company's assets, which can lead to conflicts between different parties (Conradie and Lamprecht, 2021a). These conflicts usually arise from the different valuation approaches and applied techniques. In the context of distressed companies, it may result in significant valuation inconsistencies ranging from less than 20% to greater than 250% (Gilson *et al.*, 2000).

An analysis of 319 published reorganisation plans in Singapore showed that these values are not necessarily disclosed in a manner whereby creditors can assess the reliability of such values (Wan *et al.*, 2020). Therefore, creditors cannot independently evaluate the likelihood of realising the proposed BRV. At the same time, in the case of the PLV, the comprehensive basis for such values lacks pertinent calculations based on reasonable assumptions (Conradie and Lamprecht, 2021a). Prior literature has emphasised the importance of these values to creditors, especially the smaller, unsophisticated creditors who place much reliance on them when voting on the BR plan (Wan and Watters, 2021).

2.4.2.3 Cash-flow projections. Section 150(2) of the Act stipulates that an Income Statement and Balance Sheet must be presented in the BR plan for the ensuing three years

(RSA, 2008). In spite of not being a requirement of the Act, it is expected that the cash-flow projections used to develop the forecasted financials that support the turnaround strategy should be included in the BR plan. The cash-flow projections should incorporate the best estimates, assumptions and projections to support informed decision-making and sound risk management by creditors (Conradie and Lamprecht, 2021a).

The cash-flow projections should include the underlying assumptions used regarding the expected macroeconomic variables. Alternative scenarios, such as the best- and worst-case scenarios, should be considered, taking into account appropriate market developments to justify the company's long-term viability (EBA, 2015). The cash-flow forecasts should be subjected to a sensitivity analysis using stress tests. This is to identify and measure the risk factors and verify the sustainability of the business, which is an essential consideration for PCF funders (Asah *et al.*, 2020).

2.4.2.4 Scorecard of measures to ensure substantial implementation. Finally, a scorecard of measures is required to ensure substantial implementation of the plan, which is subject to sign-off by the BRP (Madigoe and Pretorius, 2022). Scorecards drive operational actions and provide strategic value by assisting stakeholders in making decisions. They require quantitative measurements such as sales turnover, profit, costs and capacity utilisation, among others, to measure performance indicators (Mayr *et al.*, 2023). Specific activities require qualitative measurements associated with achieving the targets and milestones driven by industry-relevant indicators to restore the company's long-term viability (EBA, 2015).

3. Methodology

As the research approach for this study was exploratory, a qualitative research design allowed the researchers to examine the opinions, perceptions, beliefs or experiences of multiple participants on the topic under investigation: the sufficiency of information provided in BR plans as an antecedent to stakeholder decision-making (Plano Clarke and Creswell, 2015).

Purposive sampling was used to select "information-rich" organisations for this study, supplemented with snowball sampling to select participants (Patton, 2015, p. 265). As part of the eligibility criteria, the participating organisations had to have financed companies in business rescue before, during, or after the rescue process. Individual participants from the selected organisations were selected based on the following shared characteristics:

- participants had to hold senior management positions at leading financial institutions with extensive experience in rescue proceedings; and
- participants had to have been directly involved in the administration of at least one business rescue case on behalf of their current or previous organisations.

Using a discussion guide developed from an extensive literature review, the researchers conducted 14 semi-structured interviews with senior managers identified within the ten participating organisations. The interviews were conducted during August and September 2022 at either the participant's offices or using Microsoft Teams, a virtual video platform.

Table 1 presents the profiles and identifying characteristics of the participants. According to the study's demographics, 60% of the participants were men and 40% were women and the interviews had an average duration of 58 min. The sample size was deemed appropriate using the guidelines of Hennink and Kaiser (2022), and data saturation was reached after twelve interviews, whereby no new insights or themes emerged, demonstrating content validity.

Pseudonym	Job title	Organisation	Gender	Duration of interview (minutes)
P1	Principal: Special Asset Management	01	Male	71
P2	Global Head: Risk, Business Support and Resolution	02	Male	60
P3	Executive: Risk, Business Support and Resolution	02	Female	48
P4	Head of Restructuring and Recoveries	02	Male	43
P5	Senior Manager: Risk, Business Support and Resolution	02	Male	60
P6	Workout and Restructuring Executive	03	Male	57
P7	Underwriter	04	Male	67
P8	General Manager: Claims, Collections and Bonds	05	Male	103
P9	Group Head: Recoveries	06	Male	65
P10	Principal: Infrastructure, Water and Telecoms	07	Female	53
P11	Senior Legal Advisor	07	Female	34
P12	General Manager: Workout and Restructuring	08	Male	57
P13	Portfolio and Risk Consultant	09	Male	48
P14	Partner: Turnaround and Restructuring	10	Female	41
Average				58

Table 1.
Details of
participants

Source: Authors' own compilation

Following [Braun and Clarke's \(2012\)](#) guidelines, a six-phase thematic analysis was conducted. The analysis began with data familiarisation by the researchers, followed by generating inductive codes from the interview data that were directly aligned with the research questions. An initial set of descriptive codes was refined through an iterative process, merging redundant codes and resulting in a final round of significant codes. Five key themes were identified and elaborated on in the findings section. Software (ATLAS.ti) was used to assist in analysing the qualitative data.

To ensure the rigour of the qualitative research, the study adhered to [Lincoln and Guba's \(1985\)](#) four trustworthiness criteria: credibility, transferability, dependability and confirmability. *Credibility* was achieved through site triangulation, interviewing participants from various institutions to reduce the impact of organisation-specific factors ([Shenton, 2004](#)). *Transferability* was ensured by providing detailed context descriptions and by achieving data saturation. The study's *dependability* was maintained through comprehensive documentation of the research process. In line with ethical guidelines approved by the University of Pretoria, all research materials were systematically stored to, support the study's *confirmability*. *Authenticity* was further enhanced by incorporating verbatim quotes from participants.

4. Findings

The research uncovered several interesting findings that provide novel insights to address the study's main research questions. The study investigated five primary sources of information (themes) related to two main research questions (see [Table 2](#)). These themes and their related sub-themes are discussed in this section, accompanied by descriptive quotations from the participants and linkages to relevant literature.

4.1 Findings related to research question 1

The first research question focused on the most pertinent information creditors require to be sufficiently disclosed in BR plans to aid in their decision to vote on the plan. Three key

Research questions	Themes	Sub-themes
Research question 1: What information do creditors require to be sufficiently disclosed in BR plans to aid their decision to approve or reject the plan?	Financial information	<ul style="list-style-type: none"> • BRV and PLV • Cash flow projections • PCF • Collateral and size of claims
	Commercial information	<ul style="list-style-type: none"> • Reasonable prospect • Turnaround strategy • Substantial information
	Legal information	<ul style="list-style-type: none"> • Contractual provisions • Reporting obligations • Reporting obligations
Research question 2: What additional information do creditors use to aid their decision to approve or reject the BR plan?	Leadership information Social impact information	

Table 2.
Summary of research
questions and related
themes

Source: Authors' own compilation

themes were identified around this research question, namely, financial information, commercial information and legal information. These three themes and their related sub-themes are discussed below.

4.1.1 Financial information. To make informed decisions, creditors require high-quality, reliable and comprehensive financial information regarding the financially distressed company (Deloitte, 2023). This includes the BRV, PLV and cash flow projections that support the company's turnaround and inform their decision to provide PCF (Wan et al., 2020). This observation is consistent with prior findings in Singapore by Eu (2022) that creditors require comprehensive financial disclosures not just to determine how to vote in the proceedings but also whether to support the rescue by providing PCF. The participants identified three types of financial information required to decide how to exercise their vote.

4.1.1.1 Business rescue value and proposed liquidation value. Contrary to previous research (Le Roux and Duncan, 2013; Rosslyn-Smith and Pretorius, 2015), the participants unanimously agreed that the BRV versus PLV analysis was not the main form of information that guided their voting patterns. However, it is an elementary piece of information to initiate the rescue process and determine the amounts creditors would recover if the company were liquidated. Therefore, the value was only helpful for comparative purposes to measure the extent of their loss should the company be liquidated. Participants mentioned that the difference between the BRV and PLV values is usually a few cents in the rand, and there was no guarantee that the BRV value would be achieved.

The findings further reveal that the BRV does not consider the associated risks of business rescue, which is an essential consideration for stakeholder decision-making (Conradie and Lamprecht, 2021a; Rosslyn-Smith and De Abreu, 2022). Additionally, the liquidation dividend is used to enforce accountability by the BRP to deliver a better outcome for creditors than in a liquidation scenario (Lusinga and Fairhurst, 2020).

Participants confirmed that they required sufficient information to assess the reliability of the BRV and PLV values disclosed in BR plans (Eu, 2022). While it is not formally required by legislation, participants highlighted that, in practice, creditors require that the liquidation dividend be independently determined by an independent liquidator or one of the leading financial advisory or audit firms that are considered trustworthy and can provide comparative figures of the liquidation calculations.

This is consistent with Conradie and Lamprecht (2021a), who in their study of published BR plans found that the liquidation dividend was independently determined to provide comfort and trust to creditors who might accuse the BRP of being biased should the liquidation dividend reflected be superficially low. These calculations empowered creditors to make an informed decision on the likelihood of realising the BRV. The following quote represents this assertion:

[The BRV versus the PRV] is too summarised in the plan [...] So, I want to know the liquidation values and I want to know each asset class. What the recoverability is going to be? On what basis has this been done? On the liquidation side, is it a fire sale value that you need to have like a year to actually sell things properly? What is the timing of the liquidation dividend going to be, and then compare that to BRV? (P6).

In spite of a prior court judgement in *Commissioner for the South African Revenue Services v Beginsel and Rennie NNO* (2013), whereby the court held that the liquidation dividend should be stated at the date of the commencement of the business rescue proceedings and not at the date of publication of the BR plan, one participant questioned the value of the liquidation dividend calculation considering the cost to produce it and its timing effects during the rescue process. Consistent with arguments by Eu (2022) in Singapore's scheme of arrangements, participants argue that distressed companies are already subject to time and financial constraints, and it may not be feasible to expect a comprehensive and wholly accurate financial disclosure such as a liquidation dividend, which would be of a similar standard to that expected of a solvent-going concern entity. In addition, the liquidation dividend would invariably change by the date of the publication of the BR plan, as the value of assets of the company would have also changed (Gilson *et al.*, 2000).

4.1.1.2 Cash-flow projections. There was consensus among participants that the cash-flow projections used in developing the turnaround strategy were the most scrutinised information they required from the BRP for decision-making. Participants, however, did not find a three-year cash-flow projection as valuable in their decision-making and preferred anything from 13-week cash flows to a maximum of a year to ensure enough liquidity in the business in the short term. Anything beyond that was considered “thumb-sucking” and unrealistic, leading to fundamentally flawed projections colliding with analytical predictability problems (EBA, 2015). These findings are corroborated by research conducted by Wan *et al.* (2020), who used a mix of qualitative and quantitative data and case studies from 39 companies using Singapore's scheme of arrangements and concluded that the main objections raised by all creditors during rescue proceedings relate to the lack of adequate disclosure of the financial position of the distressed company.

Participants indicated that the BRP should provide the cash-flow projections as a financial model with all the estimates, assumptions and hypotheses used to develop them. The cash-flow projections and their underlying assumptions were subject to stress-testing, using sensitivity analysis applied to a range of alternative scenarios to verify the reasonableness and accuracy of the financial model (EBA, 2015). This assists in verifying the reasonableness and accuracy of the underlying assumptions by sensitising the financial model using various inputs such as forecasted macro-economic variables (i.e. interest rates,

inflation rate, gross domestic product and exchange rates) and industry-specific risk factors such as crude oil prices, consumer demand and historical seasonality. In addition, sensitivity analysis is applied to company-specific data to assess deviations in volumes, sales estimates, level of unsold goods, returns and deviations in the factors of production (EBA, 2015).

Participants mentioned that they compare the BRPs' cash flow projections with their own internally developed financial model and information about the financially distressed company to check for material items of difference to compare the expected outcomes with the actual results to allow, in the event of deviations, remodelling of the actions still to be undertaken or changes in the BR plan itself. Cash-flow projections are then used for decision-making in several areas, including debt recoverability, PCF repayment and continued trading at profitable levels. The following quotations illustrate this:

I want the financial model from the practitioner so that I can understand the inputs. I can flex them. Create my scenarios, my sensitivities, and also just to check that they've got a model that works. I cannot tell you how many times what sits behind those are completely inaccurate models, and that's not good enough. There was insufficient detail to actually say, how have you put these together? (P14)

4.1.1.3 Post-commencement finance. In spite of its importance in business rescue, obtaining PCF is challenging; thus, most BRPs will not undertake a business rescue appointment without PCF (Mayr *et al.*, 2023). This is because South Africa does not have an active deep secondary market or distressed asset fund to lend to financially distressed companies, albeit at a higher return than commercial banks (Matenda *et al.*, 2023).

Participants confirmed that commercial banks are the primary source of PCF in South Africa, and in line with Deloitte (2022), they identified four primary reasons supporting the reluctance by banks to provide PCF, which include:

- (1) punitive Basel III capital requirements for high-risk lending;
- (2) absence of collateral in distressed ventures;
- (3) lack of RPs; and
- (4) higher monitoring costs of distressed investment.

Participants unanimously agreed that without PCF, a business rescue attempt would not be successful; therefore, the ability to raise PCF is crucial. Participants indicated that BRPs should conduct a pre-assessment and engage with the financial creditors to establish whether they will provide PCF before accepting an appointment. In line with practice, participants stated that BRPs resort to the existing lenders and pre-commencement debt holders for PCF.

Similar to the findings of Wan and Watters (2021) on corporate reorganisations using schemes of arrangements in Hong Kong and Singapore, participants mentioned that they would have already engaged the BRP on their commitment to advance PCF before the creditor's meetings. The BRP would then provide relevant and updated financial information to the financial creditors during the negotiations, which would not be offered to other creditors for practical and confidentiality reasons. Therefore, financial creditors have an informational advantage that they use to inform their decision to vote for or against the plan based on their commercial motivations (Eu, 2022). In line with findings from a study evaluating 296 Chapter 11 reorganisation cases across six jurisdictions in the US conducted by Harner and Marincic (2011), secured creditors wield significant influence over the business rescue proceedings based on the strength of existing loan contracts, which include restrictive covenants and veto rights that allow them to assert control over various corporate actions.

Consequently, the provision of PCF to distressed companies is based on four aspects, as confirmed by Deloitte (2022):

- (1) to improve the recoverability of the existing debt, which will allow for a successful business turnaround with continued trading;
- (2) what the PCF will be used for;
- (3) who else will contribute towards PCF, with the expectation that shareholders will also contribute, demonstrating “skin in the game”; and
- (4) the security that will be provided for the PCF, considering that distressed companies generally have no unencumbered assets to provide for further lending.

There is a risk of becoming a debt-to-equity funder, which participants termed “the lender of last resort” involved in providing PCF, which requires higher capital costs and provisions, which commercial banks infer are more suitable for DFIs (Ramnanun *et al.*, 2020). Participants explained that DFIs are much more skewed towards providing direct equity support and quasi-equity instruments. However, this type of financing caused challenges in business rescue proceedings as these institutions would be classified as both creditors and shareholders in business rescue, resulting in conflict on how to vote on the BR plan.

An emerging observation by two participants who specifically mentioned that contingent liabilities are essential for their assessment of BR plans and the provision of PCF. However, they raised concerns that they are never mentioned in BR plans, in spite of being recorded in the financial statements of the distressed company. In addition, participants emphasised that should these contingent liabilities materialise into a claim, they would affect the BRV. Conradie and Lamprecht (2021a) found that the BR plan should include material risk disclosures to allow an informed stakeholder the opportunity to independently evaluate the likelihood of realising the BRV and PLV.

4.1.1.4 Collateral and size of claims. Being a secured creditor influences the decision on the vote; however, participants were not in favour of liquidating their collateral for several reasons. Valuations in rescue proceedings remain hotly contested and are a crucial criterion for developing BR plans. Valuation techniques affect the book values of assets, and competitors use fire-sale offers to obtain assets at significantly lower prices. Some assets need time to be sold, requiring the regulator to sign off, affecting the time value of money principles in recovering funds (Gilson *et al.*, 2000).

In addition, participants affirmed that executing security was a last resort, as one of two options could play out. First, the distressed company could fight the execution order through the courts, and second, other industry players and competitors would then be aware that the security is under distress and would discount it quite significantly, leading to a “fire-sale” scenario, resulting in both debtors and creditors losing out on the transaction (Rosslyn-Smith *et al.*, 2020).

Participants are also guided by the size of the outstanding claims and collateral, which determines their relative position to other creditors (Asah *et al.*, 2020). This information was used to guide the amount of effort and resources to be expended on specific rescue proceedings, including the provision of PCF. Consistent with findings by Chen (2021), who analysed 314 US Chapter 11 filings, creditor support for the plan is guided by the value of their claims.

Participants also mentioned that unsecured creditors were usually unsophisticated about matters related to business rescue and would rely on the major creditors to flesh out the process and guide their voting pattern. At the same time, as a precious resource available in business rescue proceedings, information is significant to creditors because it allows them to make rational judgements and informed decisions (Lipson and DiVirgilio, 2010). However, in practice, because of the information asymmetry between the creditor and the financially

distressed company, the creditor is often in a passively disadvantaged position (Chen, 2021). Consistent with Le Roux and Duncan (2013), smaller creditors were at a positional and informational disadvantage in rescue proceedings because of their limited resources and power. This finding starkly contradicts the results of Routledge's (2023) study of 142 publicly listed companies undergoing voluntary administration in Australia. The author argued that trade creditors have an information advantage and low monitoring costs because of their close relationship with companies, which enables them to support reorganisation as it provides higher returns and the prospect that trade creditors will secure future business with the customer.

4.1.2 Commercial information

4.1.2.1 Reasonable prospect. The findings revealed that RP is a complex phenomenon and remains an elusive and subjective term, with no formal assessment guidance. Most participants agreed that they do not rely on the reasonable prospect assessment (RPA) provided by the BRP in the BR plan because they used their objective and subjective criteria to judge RP (Rosslyn-Smith and Pretorius, 2022). Participants used internal historical information, the views of other employees who run sector-specific portfolios, and the services of external technical specialists or industry analysts to assist them in performing the RPA to determine if the BR plan is realistic. Consistent with findings by Denning *et al.* (2001) through an analysis of 39 serial bankrupt firms that underwent US Chapter 11 reorganisation, RPA is informed by the fundamental drivers of the business, such as the business environment, market conditions, market share, technology, management and operational abilities, substitutability and demand for your product or service. One participant highlighted that RP was also guided by the potential loss of value of the creditor's claims. Thus, as a secured creditor in rescue proceedings, an alternative would be to pursue the external collateral held.

One participant mentioned that they are guided by case law [*FirstRand Bank Ltd v KJ Foods CC*] on RP, which weighs heavily on court judgements in rescue matters. This is consistent with previous findings by Denning *et al.* (2001): RP is not a once-off test and includes an evaluation of several factors. These include the best interests of creditors, the ability of the company to pay its debts and become a thriving going concern, and considerations of the broader societal impact, including job preservation, which is an important strategic priority for governments and other stakeholders.

Several participants mentioned the need for BRPs to provide alternative BR plans that adjudicate alternative scenarios informing the RP and turnaround strategies. Because of overlapping interests, this would allow different creditors to have a balanced view of the multiple avenues and scenarios proposed to reorganise the company, ultimately affecting their recoverability prospects. The alternative is for creditors to present their own BR plan (Gribnitz and Appelbaum, 2015). One participant asserted that alternative BR plans or proposals are presented only when the rescue proceedings are contentious, usually by a creditor, director, or shareholder. While logical, Wan and Watters (2021) counter-argue that this approach has challenges as determining alternatives can be complex and subjective.

4.1.2.2 Turnaround strategy. Linked to the RP of the distressed company are the turnaround strategies that will be used, including the specific activities to turn around the company's performance. Participants could clearly articulate the financial aspects they focused on in the BR plan to ensure the company's turnaround. These included changes in the working capital and cash conversion cycles: generating additional revenue, cutting costs, reducing overheads, extending credit terms, achieving a profitable margin and ensuring a sustainable capital structure through the injection of new equity. These findings align with Schoenberg *et al.* (2013), who identified cost efficiencies and asset retrenchment for a turnaround.

However, the participants were not as confident in expressing their views on the commercial aspects of the turnaround. They repeatedly mentioned using technical experts and industry analysts to endorse the recommendations put out by the BRP to ensure that these proposed turnaround strategies and measures would be realistic based on the nuances of that company and the industry in which it operates. The suggestion was that the BRP should meticulously identify the “real” cause of distress and not place exogenous reasons such as the Covid-19 pandemic, an economic downturn and the global economic recession as causes of distress.

Participants believed that macroeconomic variables affect businesses. However, it was emphasised that the BRP needs to determine the underlying “internal” causes of distress, including poor management, fraud and a reluctance by the CEO to relinquish control of the business even in times of distress. This deep dive emanates appropriate turnaround strategies for the company’s turnaround. The following quote demonstrates this assertion:

The BR plans that are submitted are merely a regurgitation of the failed business strategy or the failed business approach that got them into business rescue in the first place. When you look at business rescue, there needs to be a disposal plan of non-core assets. If there’s going to be recapitalisation or refunding, we need to see what is being refunded, what that money will be deployed for, what the turnaround time and the turnaround expectation of those redeployed or refinanced assets can generate. We need to know if they are moving out of markets or moving into markets. Whether they’re changing the service or the product mix and whether they’re going to manipulate pricing (P13).

4.1.2.3 Substantial implementation. Another contentious and elusive finding in the study was the measurement of substantial implementation of the BR plan. Participants offered mixed opinions on how to measure substantial implementation. Participants measured substantial implementation through qualitative measures such as meeting timelines, communicating with stakeholders and renegotiating contracts. Quantitative measures include key metrics for reducing the debt load, improving cash flows, meeting performance targets, asset retrenchments, paying off a significant amount of PCF and ensuring a return for the unsecured creditors.

Participants expressed a desire for substantial implementation to be clearly articulated and occur expediently, given the high costs associated with the BRPs’ fees, which may include success fees and ongoing rescue proceedings. Consistent with [Lusinga and Fairhurst \(2020\)](#), BRPs should stay long enough to ensure that all remedial actions as per the BR plan are implemented and that the company’s management can take over successfully.

4.1.3 Legal information

4.1.3.1 Contractual provisions. Participants unanimously criticised BRPs for preparing BR plans synonymous with a legal document with all the preambles, definitions and legal jargon that did not necessarily assist their decision-making. However, they were cognisant that the Act prescribes certain sections. Consistent with [Pretorius and Rosslyn-Smith \(2014\)](#), the BR plan is a legally binding document to hold all stakeholders accountable to ensure the BR plan materialises.

Nevertheless, participants indicated that certain contractual information would have to be updated following the renegotiations and restructuring of existing debt, such as pre-commencement debt documentation, pre-commencement debt terms and conditions and existing contracts to accommodate the BR plan. Participants agreed that one benefit of the rescue process was the ability to cancel unfavourable executory contracts and purchase agreements that would have been detrimental to the company and the turnaround strategy.

4.1.3.2 Reporting obligations. This study found that rescue proceedings were legal in nature, and participants believed that BRPs should conduct an intensive investigation of the business’s

affairs as stipulated by Section 141 of the Act (RSA, 2008). Participants believed that, in some instances, the directors and management of the company were involved in illegal activities such as fraud, misappropriation of funds, money laundering and abuse of the rescue process.

This assertion confirms the findings of Le Roux and Duncan (2013) that some directors extract alternative benefits and conclude transactions that would be voidable in liquidation through the rescue process. Consistent with Matenda *et al.* (2023), participants expressed a desire for BRPs to have similar powers as liquidators legislated in the Act to trace assets, recover hidden funds, investigate any impeachable transactions or reckless trading, hold delinquent directors accountable, hold Section 417 inquiries and report all illegal activities to the authorities. BRPs are then obligated to rectify such contraventions, including recovering misappropriated funds (Madigoe and Pretorius, 2022).

Participants' expectations in such matters required a specific declaration in the BR plan as a necessary disclosure, as opposed to the generic statement by the BRP affirming a faithful representation of the state of affairs. This finding is consistent with a study conducted in The Netherlands by Hollemans and van Dijck (2020), whose interview participants echoed the same sentiment that insolvency practitioners should hold the board of directors – or an individual director – of a company jointly and severally liable towards the company for improper performance of tasks if it is plausible that the improper performance of tasks is an important cause of the insolvency.

4.1.3.3 Confidential information. Consistent with the findings of Wan and Watters (2021) in Singapore and Hong Kong, as well as Wessels and Guo (2020) in Europe, participants confirmed that they were privy to confidential information that could not be disclosed to other stakeholders or be included in the BR plan. Participants asserted that proprietary information about the company, such as financial information (i.e. ratios, forecasts and capital structure), trading information (i.e. costing, pricing and margins) and market-specific information, such as intellectual property and trade secrets, should not be disclosed in BR plans. Participants unanimously agreed that a BRP is effectively a “*super director*” of the company; therefore, their fiduciary obligations are towards the company, and any disclosure of proprietary information would represent gross negligence and be considered a potential liability against the BRP. Chen (2021) asserts that competitors would use that information to their advantage, to the detriment of the distressed company.

Participants emphasised that banks are subject to a confidentiality agreement with their clients and, therefore, would have internal information that assisted their decision-making, and other creditors would not have access to such information. This information included annual financial statements, management accounts and loan documentation. In the case of a bank being the leading transactional banker, they were seen to have the highest informational advantage over all the other creditors, as such information could not be obtained from either the published financial statements or the BR plan.

One participant criticised the role of BRPs in providing confidential information to banks, as opposed to other creditors. This informational advantage led to conflicts, rent-seeking opportunism and displaced trust and confidence in the system (Lipson and DiVirgilio, 2010). The main contention centred around the blurred lines between providing a singular creditor information that goes beyond what is legally permissible but not fraudulent in a mutually beneficial exchange between the BRP and the main creditor. This assertion was frowned upon and seen as an attempt by BRPs to receive support from banks either through the provision of PCF and/or the positive adoption of the BR plan. This finding is aligned with research in The Netherlands by Hollemans and van Dijck (2020) that found that conflicts arose from making use of non-public information and information from

informal consultations with the insolvency practitioner in reorganisation cases, which led to lengthy legal proceedings, hampering an efficient and timely restructuring of the company.

Participants had mixed views on whether a BR plan is a public or confidential document only for the affected parties. Irrespective of their views, consistent with Pretorius and Rosslyn-Smith (2014), there is a lack of crucial information in BR plans to guide decision-making impacting creditors' ability to vote. The following quotation articulates this point:

I have also seen what I would call some shocking information in plans where actually creditors have elected to abstain from voting because there has been insufficient detail incorporated within those plans. And that for me is a bit of a travesty because every creditor has a right to vote and not exercising it because essentially what you're saying is you don't believe in the plan. They don't want to vote against and risk a cramdown, so they choose to abstain (P14).

4.2 Findings related to research question 2

The second research question aimed to identify the additional information used by creditors to support their decision-making processes that inform their vote on the plan. Two distinct themes that were considered influential in determining the voting outcome were revealed.

4.2.1 Leadership information. The suitability of the BRP is also rated as one of the main reasons that business rescue fails, ranking closely behind the lack of PCF as a cause of failure (Matenda *et al.*, 2023). Much work is needed to improve trust between BRPs and their stakeholders, with respondents expressing a clear desire for regular, honest communication and robust regulation (Deloitte, 2023).

An overarching and determinant theme among participants was that before they even considered the information in the BR plan, they wanted to know who the appointed BRP was. Consistent with Deloitte (2022), participants overwhelmingly responded that they preferred to work with several selected BRPs (names withdrawn from the study for confidentiality reasons) with whom they had previously concluded successful rescue proceedings. Therefore, participants expressed a desire to either nominate a BRP or at least be informed by the company's directors or the court before the BRP appointment of who they were so that they could approve or object to their appointment.

Consistent with Pretorius (2018), this finding indicates direct creditor influence in BR appointments and how the remainder of the rescue process will unfold, including the information they want to be included in BR plans and their subsequent vote in the creditors' meeting. This is the study's most "explosive" finding that the voting outcome is directly determined by the BRP appointed. The following quotes illustrate this:

If you don't trust the BRPs, even though they've got an excellent plan, you can vote against the plan (P3).

So, this is very subjective, it's who the BRP is. [The information in the BR plan] does matter. But right from out the box, if I have a sense of who the BRP is and how competent they are and that I don't have anything untoward about them, then we are already 60 or 70% of the way there to being supportive of the plan before I even start reading it. So, I'll be looking for reasons to be supportive. Whereas if I'm uncomfortable with the BRP or I don't know them, I'll be looking for any reason why I shouldn't support this (P2).

Based on the findings, creditors' bias exists in selecting BRPs. They trusted their information if the selected BRPs were on their specific matter. They use heuristics to evaluate the information in the BR plans and subsequently vote on the plan. This confirms the previous findings by Pretorius (2018) that stakeholder salience controls the rescue process because creditors indirectly influence the BRP in a quasi-principal-agent relationship. The bargaining power of

financial creditors is significant and can be coercive when claims surpass 25% of voting rights, representing a veto vote in a creditors' meeting (Eu, 2022). Creditors are thus influential and powerful and have the financial resources to affirm their authority as the key decision makers, including how to vote on the plan and whether to extend PCF. The following quote affirms this:

In a financial institution, we have the resources to monitor as much as we can of that particular entity. We have the legal resources in-house, and we have the money to get external counsel. We've already prepared ourselves for the end of the world, or Armageddon. And we've either in our minds, decided whether this company is worth giving PCF or not to make the business rescue work (P1).

The finding *prima facie* suggests that creditors have significant power and resources to demand access to and make meaningful use of confidential information about the company to make a more accurate and informed decision about whether to support the rescue. If unsatisfied, creditors have the financial resources to raise formal objections through the legal route to achieve their desired outcome (Nowak, 2018). The following quote represents this finding:

So, I think the plan has got to be applicable to everybody. But, at the end of the day, he who has the gold, makes the rules (P6).

Participants mentioned that business rescue is an opportune time to remove the current management and directors. Consistent with Rosslyn-Smith *et al.* (2020), removing obstructive management and delinquent directors may improve relationships with stakeholders. These findings are in line with Gurrea-Martinez (2023), whose research across more than 30 jurisdictions in Asia, Latin America, Europe, Africa and North America asserts that good corporate governance structures are essential for company turnarounds as they encourage greater transparency and accountability, assist companies in expanding access to funding, reduce risk and protect against mismanagement, allowing investors and creditors to aid the financially distressed company. Participants also stated that to implement the BR plan and ensure a successful outcome, they preferred the appointment of a Chief Restructuring Officer (CRO). This is consistent with two turnaround strategies proposed by Schoenberg *et al.* (2013): the reinvigoration of the company's leadership and change management.

4.2.2 Social impact information. Contrary to Gant (2022), participants were empathetic to the needs of the most vulnerable stakeholders: the company's employees, unsecured creditors and suppliers. Thus, a willingness to accommodate concessions such as a haircut in the BRV, extending credit terms and providing PCF were some of the responses considered to achieve holistic fairness for all affected parties. Participants considered the moral dilemma associated with liquidations and pursued business rescue to protect not only employees but also unsecured creditors and suppliers who would receive nothing if the company was liquidated. Consistent with Routledge's (2023) findings in Australia, this moral dilemma was also compounded by the fact that not supporting rescue efforts may be counterproductive and disruptive, as this could also lead to a contagion of failure among interconnected suppliers in trade credit chains. This situation could potentially lead to other insolvencies – especially among non-diversified creditors, who are highly exposed to the debtor's default (Gurrea-Martinez, 2023).

Similar to recommendations from a study in Romania by Stroie *et al.* (2023), an emerging development is the influence of environmental, social and governance (ESG) considerations. When considering the social impact, job preservation was a key determinant; however, participants mentioned that they must minimise losses for their institutions, including

protecting shareholders' and depositors' funds (Asah *et al.*, 2020). The findings of this study align with those conducted in Austria by Mayr *et al.* (2023), whereby participants also pointed out that the potential reputational damage informs this decision to not support distressed companies, ultimately leading to liquidation and job losses. The following quotations support this finding:

We don't want to be a disruptive bank in a business rescue process [...] because there's a reputational risk element [...] You don't want to be pulled into the *Minister of Finance's* offices because you are not being helpful (P1).

So financial institutions generally have what they call the *Newspaper* test. *ABC Bank* closes down business. 20,000 jobs lost. Doesn't necessarily mean they're going to vote in favor, but it will absolutely have been a consideration and the reputational consequences of voting against a decision would've been made fairly high up (P14).

In summary, participants detailed several distinct characteristics that distinguished satisfactory BR plans that enabled informed decision-making, as illustrated by the five themes identified in this study. The following quote perfectly summarises the findings clearly in terms of what constitutes the sufficiency of information in BR plans as antecedents for stakeholder decision-making:

So, I've been involved in *Company ABC's* business rescue and it was done by *Company XYZ* and it was excellent. They gave all the information. Just to give you a sense, we voted in favour of the plan. We supported the plan we have given them PCF. We have also ultimately recovered all our monies. So, [the BR plan] was very clear in terms of the group. In terms of the background, who was what and what do they owe? It was very clear on the forecast what the plan was about. The financial statements were available that if you were to do this thing, this is some of the achievement you can be able to get. It was very clear around the assumptions used. It was very clear about the amount of money required upfront, the PCF. It was very clear about the timelines of when we will be able to realise the value as the lenders. To give you a sense, it's still ongoing even now. There are still one or two assets that still are yet to be concluded in terms of sale, but majority of the lenders have been able to recover their money. So, the plan was very sufficient. And again, it also goes with the competence of the BRPs that were running with it, they knew exactly what they were doing (P4).

5. Conclusion

5.1 Theoretical implications

The findings of this study contribute to the field of business rescue by providing insights into the primary information needs of financial creditors with voting interests. The findings align with previous literature on the importance of financial, commercial and legal information in BR plans. (Conradie and Lamprecht, 2022; Rosslyn-Smith and Pretorius, 2015). One finding on the BRV and PLV analyses contradicted previous findings by Rosslyn-Smith and Pretorius (2015) by indicating the role of this information in the rescue process.

However, the findings revealed two determinant factors that direct the vote: firstly, the BRP's skills, trustworthiness and reputation in the market, which were seen as an endorsement of the BR plan, indicative of stakeholder salience and influence (Deloitte, 2023; Pretorius, 2018). Secondly, the reputational risks of not supporting business rescue underpin the broader societal impact. A new developing consideration, ESG, requires further research (Stroie *et al.*, 2023).

5.2 *Managerial recommendations*

Understanding creditors' information needs and the decision-making processes in business rescue is crucial for all parties involved. The study emphasises the importance of appointing experienced and trustworthy BRPs for successful outcomes. BRPs should be selective in their cases, conducting pre-assessments and engaging creditors early to secure PCF.

BRPs must also ensure they have the right teams, capabilities and resources to conduct the work and see the rescue through to completion. Where they lack the requisite capacity, they need to bring on an external party to perform certain activities, such as valuations, liquidation calculations, cash flow projections and investigating instances of potential wrongdoing in the company. This drives credibility for the rescue effort and will ensure that BRPs have a better chance to gain the creditors' trust from the onset.

BRPs should emphasise consulting, negotiating and communicating through a stakeholder-inclusive approach, which is essential in bringing all affected parties to the table to support the rescue. BRPs should ensure that the BR plan protects not only the interests of creditors but also other vulnerable stakeholders affected by business rescue, including employees and unsecured creditors, to achieve holistic fairness and a successful outcome for all concerned (Gant, 2022).

It is axiomatic to state that BRPs must provide detailed information in BR plans. BRPs must avoid claiming that information in BR plans is their intellectual property, which adds to their competitive advantage (Madigoe and Pretorius, 2022). Therefore, mere compliance with Section 150 of the Act or treating the plan as a purely legal document is considered negative. Thus, where BR plans lack sufficient information for decision-making, creditors would rather abstain from exercising their voting rights, which is not in the spirit of Chapter 6. Therefore, BRPs need to develop BR plans suitable for the creditors with a voting interest, which, although optimistic regarding the prospects for the turnaround for the company, should also disclose the risks of adopting the plan (Rosslyn-Smith and De Abreu, 2022).

The regulator should revisit their licensing criteria and training requirements for BRPs, given the significance placed on demanding the appointment of BRPs who are experienced, skilled and have an excellent reputation in the market. It is recommended that policymakers amend sections of the Act to be more prescriptive and provide a targeted, holistic policy response that will enable a predictable, transparent framework. This will enhance the creditors' confidence to support financially distressed companies during business rescue proceedings.

5.3 *Limitations and directions for future research*

The study had three main limitations. First, it relied on self-report measures through interviews, which may be influenced by social desirability biases and concerns about anonymity. In mitigation, participants were guaranteed anonymity and confidentiality, and pseudonyms were used in the study. The study can be extended to a longitudinal study to observe changes in information requirements and participants' decision-making processes as the business rescue regime evolves. Second, the study's findings cannot be generalised to all creditors with voting interests in business rescue, as the scope was narrowed to financial creditors. Future research should include other creditor constituencies, such as trade creditors, suppliers or shareholders with a voting interest, as their respective lending criteria may yield various findings because of differences in risk appetite and debt recovery mandates. Additionally, replicating this study in different jurisdictions with similar business rescue frameworks would provide a more robust comparative analysis and validate the

reliability of the findings. Third, the study used qualitative research, and a mixed-method approach could be valuable as more quantitative data becomes available; statistical techniques could be used to empirically test relationships and hypotheses for future studies. In spite of these limitations, this study's findings contribute to developing a predictable and viable business rescue regime in South Africa, leading to a higher success rate.

References

- Asah, F.T., Louw, L. and Williams, J. (2020), "The availability of credit from the formal financial sector to small and medium enterprises in South Africa", *Journal of Economic and Financial Sciences*, Vol. 13 No. 1, pp. 1-10.
- Braun, V. and Clarke, V. (2012), "Thematic analysis", in H.M. Cooper and American Psychological Association (Eds), *APA Handbook of Research Methods in Psychology*, American Psychological Association, Washington, DC, pp. 57-71.
- Buccola, V.S.J. (2023), "Sponsor control: a paradigm for corporate reorganization", *The University of Chicago Law Review*, Vol. 90 No. 1, pp. 1-47.
- Cepec, J. and Grajzl, P. (2021), "Creditors, plan confirmations, and bankruptcy reorganisations: Lessons from Slovenia", *European Business Organization Law Review*, Vol. 22 No. 3, pp. 559-589.
- Chen, K.D. (2021), "The role of information disclosure in corporate bankruptcy", SSRN 3953439, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3953439
- Commissioner for the South African Revenue Services v Beginsel and Rennie NNO (2013), "(1) SA 307 (wcc)", available at: www.saflii.org/za/cases/ZAWCHC/2012/194.html
- Companies and Intellectual Property Commission (2022), "Status of business rescue proceedings in South Africa 31 December 2022", available at: www.cipc.co.za/?page_id=4745
- Conradie, S. and Lamprecht, C. (2018), "What are the indicators of a successful business rescue in South Africa? Ask the business rescue practitioners", *South African Journal of Economic and Management Sciences*, Vol. 21 No. 1, pp. 1-12.
- Conradie, S. and Lamprecht, C. (2021a), "A quantitative analysis of valuation disclosure in published business rescue plans", *Southern African Business Review*, Vol. 25 No. 1, pp. 1-28.
- Conradie, S. and Lamprecht, C. (2021b), "Valuation practices under business rescue circumstances in South Africa", *South African Journal of Economic and Management Sciences*, Vol. 24 No. 1, pp. 1-13.
- Conradie, S. and Lamprecht, C. (2022), "A qualitative exploration of the bidding processes used in business rescue", *Journal of Economic and Financial Sciences*, Vol. 15 No. 1, pp. 1-13.
- Decker, C. (2018), "Stakeholders' impact on turnaround performance: the case of German savings banks", *Journal of Small Business Management*, Vol. 56 No. 4, pp. 534-554.
- Deegan, C. (2006), *Financial Accounting Theory*, McGraw-Hill, Berkshire.
- Deloitte (2022), "Deloitte restructuring survey: the battle for trust – improving restructuring outcomes in an uncertain world", available at: www2.deloitte.com/content/dam/Deloitte/za/Documents/finance/za-Restructure-Electronic.pdf
- Deloitte (2023), "Deloitte restructuring survey: a time for action – collective responsibility for the early identification of financial distress", available at: www2.deloitte.com/content/dam/Deloitte/za/Documents/za-Deloitte-Restructuring-Survey-2023.pdf
- Denning, K.C., Ferris, S.P. and Lawless, R.M. (2001), "Serial bankruptcy: plan infeasibility or just bad luck?", *Applied Economics Letters*, Vol. 8 No. 2, pp. 105-109.
- Eu, A.Z. (2022), "Disclosure obligations of a debtor under the Singapore scheme of arrangement: lessons from England and the US", *International Insolvency Review*, Vol. 31 No. 1, pp. 23-44.

-
- European Banking Authority (2015), Draft regulatory technical standards and guidelines on business reorganisation plans under directive 2014/59/EU (BRRD), (Report No. EBA/RTS/2015/12).
- Ferri, S. and Ricci, F. (2021), *Financial Strategies for Distressed Companies: A Critical Analysis and Operational Tools*, Springer, Cham.
- Gant, J.L. (2022), "Optimising fairness in insolvency and restructuring: a spotlight on vulnerable stakeholders", *International Insolvency Review*, Vol. 31 No. 1, pp. 3-7.
- Gilson, S., Hotchkiss, E. and Ruback, R. (2000), "Valuation of bankrupt firms", *Review of Financial Studies*, Vol. 13 No. 1, pp. 43-74.
- Gribnitz, K.J. and Appelbaum, R.L. (2015), *G&a Compass Methodology to Business Rescue and Compromise Offers a Practical Analysis of the Rights and Obligations as Set out in Chapter 6 of the Companies Act No.71 of 2008, as Amended*, G&A Compass Publishing, Johannesburg.
- Gurrea-Martinez, A. (2023), "Debtor-in-Possession financing in reorganisation procedures: regulatory models and proposals for reform", *European Business Organization Law Review*, Vol. 24 No. 3, pp. 555-582.
- Harner, M.M. and Marincic, J. (2011), "Committee capture: an empirical analysis of the role of creditors' committees in business reorganisations", *Vanderbilt Law Review*, Vol. 64, pp. 747-810.
- Hennink, M. and Kaiser, B.N. (2022), "Sample sizes for saturation in qualitative research: a systematic review of empirical tests", *Social Science and Medicine*, Vol. 292, pp. 1-10.
- Holleman, R. and van Dijck, G. (2020), "Come and talk": the insolvency judge as de-escalator", *International Insolvency Review*, Vol. 29 No. 3, pp. 360-378.
- International Accounting Standards Board (2018), "Conceptual framework for financial reporting 2018", IFRS Foundation, London, available at: www.ifrs.org/issued-standards/list-of-standards/conceptual-framework/
- Jacobs, L. (2021), "Corporate insolvency practitioners: ethics and fiduciary duties", in P. Omar and J. Gant (Eds), *Research Handbook on Corporate Restructuring*, Edward Elgar, Cheltenham, pp. 447-464.
- Kesieman, B.S. and Thakhathi, A. (2022), "Preserving state-owned enterprises in South Africa: views and insights from business rescue practitioners in the commercial field of action", in Thakhathi, A. (Ed.), *Transcendent Development: The Ethics of Universal Dignity*, Emerald Publishing, Bingley, pp. 55-78.
- Le Roux, I. and Duncan, K. (2013), "The naked truth: creditor understanding of business rescue: a small business perspective", *The Southern African Journal of Entrepreneurship and Small Business Management*, Vol. 6 No. 1, pp. 57-74.
- Lincoln, Y.S. and Guba, E.G. (1985), *Naturalistic Inquiry*, Sage, Beverly Hills, California.
- Lipson, J.C. and DiVirgilio, C.M. (2010), "Controlling the market for information in reorganisation", *American Bankruptcy Institute Law Review*, Vol. 18 No. 2, pp. 647-695.
- Lusinga, D.D. and Fairhurst, K.J. (2020), "Role of stakeholders in business rescue", *South African Journal of Business Management*, Vol. 51 No. 1, pp. 1-11.
- Madaus, S. (2014), "On decision-making in rescue cases: why creditors and shareholders should decide about a rescue plan", in B. Santen and D.H. Van Offeren (Eds), *Perspectives on International Insolvency Law. A Tribute to Bob Wessels*, Kluwer, A Wolters Kluwer business, Deventer, pp. 215-228.
- Madigoe, T. and Pretorius, M. (2022), "Practices applied by practitioners to achieve management and financial control during business rescue", *Acta Commercii*, Vol. 22 No. 1, pp. 1-11.
- Matenda, F.R., Sibanda, M., Nomlala, B.C. and Gumede, Z.H. (2023), "South African business rescue regime: Systematic review highlighting shortcomings, recommendations and avenues for future

-
- research”, *International Journal of Research in Business and Social Science* (2147- 4478), Vol. 12 No. 2, pp. 100-117.
- Mayr, S., Duller, C. and Baschinger, M. (2023), “Assessment of formal proceedings and out-of-court reorganisation: results from a survey among turnaround professionals in Austria”, *European Journal of Law and Economics*, Vol. 56 No. 2, pp. 1-43.
- Monteiro, G.F.A., Caleman, S.M.D.Q. and Pongeluppe, L.S. (2020), “Firm performance and the strategic components of bankruptcy reorganisation plans”, *Brazilian Administration Review*, Vol. 16 No. 4, pp. 49-62.
- Nowak, J. (2018), “The power struggle: shareholder rights in Brazilian corporate bankruptcy”, *University of Miami International and Comparative Law Review*, Vol. 25, pp. 339-369.
- Patton, M.Q. (2015), *Qualitative Research and Evaluation Methods: Integrating Theory and Practice*, (4th ed.), Sage, Thousand Oaks, California.
- Plano Clarke, V.L. and Creswell, J.W. (2015), *Understanding Research: A Consumer's Guide*, (2nd ed.), Pearson, Boston, Massachusetts.
- Pretorius, M. (2018), “Stakeholder dynamics moderation for distressed firms entering turnaround and business rescue: who and what counts?”, *International Journal of Management and Decision Making*, Vol. 17 No. 3, pp. 299-321.
- Pretorius, M. and Rosslyn-Smith, W. (2014), “Expectations of a business rescue plan: international directives for chapter 6 implementation”, *Southern African Business Review*, Vol. 18 No. 2, pp. 108-139.
- Ramnanun, K., Pillay, S. and Rajaram, R. (2020), “Evaluating sources and forms of post-commencement business rescue finance in Kwazulu-Natal”, *South Africa. Academy of Accounting and Financial Studies Journal*, Vol. 24 No. 6, pp. 1-13.
- Republic of South Africa (2008), “Companies act no. 71 of 2008”, available at: https://static.pmg.org.za/200515Companies_Act_71_of_2008_-_Chapter_6_-Business_Rescue_and_compromise_with_creditors_1.pdf
- Rosslyn-Smith, W. and De Abreu, N.V.A. (2022), “Informing the vote: the business rescue vs liquidation decision”, *Southern African Business Review*, Vol. 25, pp. 1-22.
- Rosslyn-Smith, W.J. and Pretorius, M. (2022), “Establishing turnaround potential before commencement of formal turnaround proceedings”, *The Southern African Journal of Entrepreneurship and Small Business Management*, Vol. 14 No. 1, pp. 1-10.
- Rosslyn-Smith, W. and Pretorius, M. (2015), “Stakeholder expectations of the business rescue plan from a South African perspective”, *The Southern African Journal of Entrepreneurship and Small Business Management*, Vol. 7 No. 1, pp. 1-35.
- Rosslyn-Smith, W., De Abreu, N.V.A. and Pretorius, M. (2020), “Exploring the indirect costs of a firm in business rescue”, *South African Journal of Accounting Research*, Vol. 34 No. 1, pp. 22-44.
- Routledge, J. (2023), “Trade credit supply and financial distress outcomes: evidence from Australian voluntary administrations”, *Journal of Accounting Literature*.
- Schoenberg, R., Collier, N. and Bowman, C. (2013), “Strategies for business turnaround and recovery: a review and synthesis”, *European Business Review*, Vol. 25 No. 3, pp. 243-262.
- Shenton, A.K. (2004), “Strategies for ensuring trustworthiness in qualitative research projects”, *Education for Information*, Vol. 22 No. 2, pp. 63-75.
- Silva, V.A.B. and Saito, R. (2018), “Corporate restructuring: empirical evidence on the approval of the reorganisation plan”, *RAUSP Management Journal*, Vol. 53 No. 1, pp. 49-62.
- Snyman-van Deventer, E. and Jacobs, L. (2014), “Corporate rescue: the South African business plan examined”, *Nottingham Insolvency and Business Law Journal*, Vol. 2 No. 6, pp. 103-115.
- Stroie, C., Duțescu, A., Munteanu, I.F. and Aivaz, K.A. (2023), “The reorganisation decision test: a risk analysis model to increase competitiveness”, *Journal of Competitiveness*, Vol. 15 No. 2.

- Tron, A., Valenza, G. and Caputo, A. (2018), "Corporate crisis management in Italy: Execution, monitoring and performance analysis of recovery business and financial plans", *International Journal of Foresight and Innovation Policy*, Vol. 13 Nos 1/2, pp. 114-135.
- Wan, W.Y. and Watters, C. (2021), "Mandatory disclosure in corporate debt restructuring via schemes of arrangement: a comparative approach", *International Insolvency Review*, Vol. 30 No. s1, pp. s111-s131.
- Wan, W.Y., Watters, C. and McCormack, G. (2020), "Schemes of arrangement in Singapore: empirical and comparative analyses", *American Bankruptcy Law Journal*, Vol. 94 No. 3, pp. 463-506.
- Wessels, B. and Guo, S. (2020), "[Review of the book confidentiality, secrecy and privilege in corporate insolvency and bank resolution, by B. Wessels, and S. Guo]", *International Insolvency Review*, Vol. 31 No. 1, pp. 155-157.

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