SUCCESS FACTORS FOR BUSINESS RESCUE IN SOUTH AFRICA

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ABSTRACT

In 2011 a new Companies Act, No. 71 of 2008 (RSA, 2008), was implemented in South Africa. A feature of this Act was the introduction of business rescue legislation. Although this legislation was implemented in May 2011, statistics indicate that the success rate for business rescues is approximately 12%. The low success rate prompted debate relating to the effectiveness, and continued suitability, of business rescue as a mechanism to rehabilitate financially distressed companies. A feature of the business rescue environment in South Africa is the lack of knowledge, necessitating more research in the field. This study was undertaken with the initial objective of diagnosing and ranking reasons for failed business rescues in South Africa. Thereafter, the study focused on improving the success rate by establishing and ranking a set of factors that will improve the chances of a successful rescue. Due to the importance of the business rescue practitioner in the overall success of a rescue, the research also focused on competencies required to be a successful practitioner. A mixed methods research approach was utilised to address the problem of the low success rate. A survey was conducted with the membership of the Turnaround Management Association of Southern Africa. The survey was mailed to 130 members and the response rate was 54%. The survey was complemented by undertaking an interview with seven of the top ten business rescue practitioners, according to the number of practitioner appointments. The original contribution to knowledge of this study is the ranking of a lack of post rescue funding which has the highest impact on a failed business rescue; the ranking of an accreditation framework for practitioners as the most important factor that will result in a successful business rescue; and the fact that an accounting qualification and effective cash management skills must be possessed by a successful practitioner. The study recommends the establishment of an independent self-regulator to implement the identified success factors for an improved success rate.

The knowledge generated from this research will benefit business rescue practitioners, the financial sector, stakeholders of companies intending to go into business rescue and the Companies and Intellectual Properties Commission.

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LIST OF ACRONYMS AND ABBREVIATIONS

ANOVA	analysis of variance
B-BBEE	Broad-Based Black Economic Empowerment
BRP	business rescue practitioner
CEO	chief executive officer
COO	chief operating officer
CIPC	Companies and Intellectual Property Commission
DTI	Department of Trade and Industry
HSSREC	Humanities & Social Science Research Ethics Committee
IDC	Industrial Development Corporation
IoDSA	Institute of Directors in Southern Africa
IRBA	Independent Regulatory Board for Auditors
KERP	Key Employee Retention Plans
NPC	National Planning Commission
RSA	Republic of South Africa
SAICA	South African Institute of Chartered Accountants
SARS	South African Revenue Service
SCA	Supreme Court of Appeal
TMA-SA	Turnaround Management Association - Southern Africa
TMP	turnaround management professional
UK	United Kingdom
US	United States
USA	United States of America

CHAPTER 1

OVERVIEW OF THE STUDY

1.1. INTRODUCTION

This first chapter provides an overview of the study. It commences with the context of the study by outlining the business and economic developments since the advent of democracy in South Africa. A feature of the South African economy is the use of legislation to promote the establishment and growth of businesses. International and local legislation, such as laws to rehabilitate financially distressed businesses, is also highlighted in the context of the study. Business rescue legislation was introduced in 2011 to facilitate the survival of financially distressed businesses. As the legislation was only implemented approximately five years ago, there is a need for more research into business rescue.

Research has been undertaken on international rescue legislation. However, the research into South Africa's business rescue legislation is limited. The motivation for the study is the generation of knowledge, in the field of business rescue, as a contributor towards the survival of underperforming firms. Knowledge relating to successful rehabilitation is an important resource for a financially distressed business. Due to the low success rate of business rescue in South Africa, the study has focused on the generation of knowledge relating to the successful execution of a business rescue in South Africa. The chapter defines the problem statement and lists the aims and objectives of the study. It also briefly outlines the methodology utilised and the some of the limitations of the study. It concludes with a tabulation of the contents of each chapter.

1.2. CONTEXT OF THE STUDY

South Africa celebrated the birth of a democracy in 1994 when the African National Congress was voted the ruling political party. There have been several successes and criticisms of the government since the advent of democracy almost 22 years ago. Mkhize (2012, p.1) highlighted some of the achievements of the government. The government's successes relate to the construction of approximately three million homes, the electrification of three and a half million homes, a reduction in HIV transmissions, the provision of free basic education to millions of learners and the creation of a National

Development Plan. Notwithstanding these successes, there have been numerous criticisms of the South African government. These relate mainly to the poor quality of education, the worsening unemployment levels and poor infrastructure (Mobius, 2012). The government has acknowledged many of these shortfalls in the National Planning Commission's Diagnostic Overview, prepared with the objective of determining South Africa's challenges and identifying their causes. The Overview indicates that South Africa's main challenges are unemployment, corruption, crumbling infrastructure and poor educational outcomes (NPC, 2011, p.7). A key proposal of the National Planning Commission (NPC) to overcome these problems is for the State to work together with business and civil society to create a better economy for its citizens (NPC, 2011, p.30).

An important debate that has surfaced, as a result of the challenges identified and the intended response of the government to actively be involved in the creation of a better economy, relates to the role of the State in the economy and the extent of its involvement. According to Bertucci and Alberti (2001, p.15), in the context of globalisation, the role of the democratic State is to be proactive and strategic in order to reverse poverty and underdevelopment. They believe that it is important for a democratic State to provide strong institutions of governance; create credible and independent judicial institutions; establish effective legal frameworks for economic activity and to facilitate a competitive economic environment. Evans (1996, p.1124) suggested the possibility of a State-Society synergy that involves the State's mobilisation of communities to assist in enhancing the development potential of the nation. Yeung (2000, p.132), however, initially questioned the practicality of State intervention in the development of the economy and assessed the possibility of the State taking a back seat approach that is consistent with Adam Smith's "Invisible Hand" solution. Yeung's (2000) study concluded that every economy encompasses the State and that the State is embedded in the economy. A key recommendation of his study was that the State-Economy relationship be conceptualised as a process of interdependence and interconnectedness. Morlino (2002, p.4), focusing on the core dimensions of an effective democracy, argued that a functional government must be responsive to the social, political and economic needs of its citizens. A manner to accomplish this is by implementing laws that will achieve economic equality. Pettinger (2012, p.12) summarised the opposing views relating to State involvement in the economy by emphasising the need for the State to intervene in the economy to address inequalities and overcome prolonged recessions. He also suggested, when advocating against State involvement, that the market is best at determining how best to operate and that any form of State intervention will result in the reduction of personal freedom.

The above views relating to the involvement and intervention of the State in the economy reflect the contrast between the proponents of a free economy and one that involves the State. There are several established democracies that have actively participated in the economy in order to improve the welfare of citizens. In England and the United States of America (USA), the State has developed a range of legislation that allows for the stimulation of business whilst protecting the welfare of its citizens. In South Africa, the involvement of the State in the economy is regulated by the Constitution. The overriding objective of the Constitution is to improve the quality of life of all citizens and, from an economic perspective, the Constitution states that every citizen has the right to choose their trade, occupation, and profession freely. The Constitution further states that practising a trade, occupation or profession may be regulated by law (Act No.108 of 1996)(RSA, 1996). It is on this basis that the South African Government has regulated the economy since the advent of democracy in 1994, mainly due to the realisation that political freedom must be accompanied by economic liberation. According to Hetherington (as cited in Ladzani, 2001, p.1), "Political liberation is important, but you cannot eat politics. Economic liberation feeds people. Economic liberation allows everybody to create wealth; to earn their own living; to feed, clothe, and house their families and buy better education for their children." For South Africa to prosper, political liberation must be accompanied by an improvement of the economic conditions in the country.

In the period from 1994 to 2015, the South African Government recognised the importance of economic liberation. Consequently, it introduced numerous frameworks, policies and laws that provide citizens with their constitutional right to conduct trade freely whilst simultaneously ensuring that the practice of trade is regulated by law. Examples of these business regulations include The National Small Business Act, Act No. 102 of 1996, The Competitions Act, Act No. 89 of 1998, The Broad-Based Black Economic Empowerment (B-BBEE) Act, Act No. 53 of 2003 and The Consumer Protection Act, Act No. 68 of 2008. Each of these laws was aligned to be consistent with the Constitution, by providing individuals and businesses the freedom to conduct a trade but simultaneously creating a legislative framework to regulate business activity in a fair manner.

1.3. LEGISLATION TO REHABILITATE UNDERPERFORMING COMPANIES

There is significant legislation in South Africa and in certain other countries, such as England and the USA, comprising laws introduced to rescue underperforming businesses so that they can be rehabilitated into sustainable entities. Legislation for the rescue of business under the threat of liquidation or closure is vital in order to prevent the adverse impact of job losses resulting from the worsening global economic climate (Loubser, 2004, p.137; Pretorius & Du Preez, 2013, p.168). The Global Economic Crisis of 2007 to 2012 resulted in severe deterioration in the global economy. According to Pstebayeva (2012), the crisis was characterised by failure of businesses, decline in consumer wealth and prolonged unemployment. Although the global economy has demonstrated signs of improvement, the business confidence in many countries is still very weak.

In 2008, the South African economy was not immune to the effects of the global economic crisis and the country experienced a loss of business confidence and closure of numerous businesses. Steytler and Powell (2010) estimated that nearly a million jobs were lost in 2009 and that the country lapsed into a recession for the first time in 17 years. Binns-Ward (2011), commenting on the detrimental impact of business closure, linked the closure or liquidation of a business to the adverse economic and social losses to its stakeholders. This adverse and disruptive impact on the community in which that business operates highlights the necessity of legislation aimed at avoiding these negative consequences.

In order to minimise the impact of these negative consequences, several countries have regulatory mechanisms, implemented by the State, to prevent the closure of businesses and mitigate these negative consequences. Such regulatory legislation was introduced in South Africa and certain other countries, like England and the USA, to rescue financially distressed businesses so that they could be reborn and transformed into sustainable entities. In England, liquidation and closure of companies was regulated by the Insolvency Act of 1986. The Act was introduced as a result of a review by Sir Kenneth Cork in 1982 of the existing Insolvency Law and recommendations that the Cork Committee made for an overhaul of the legislation (Loubser, 2010, p.164). An important finding of the Cork Report was that many insolvent companies were forced into closure because no rescue mechanism was available to rescue businesses that demonstrated the potential to survive the threat of closure. One of the key recommendations of the Cork Report was the introduction of a formal rescue mechanism to prevent the liquidation of companies and the preservation of jobs in business (Loubser, 2010, p.165). Consequently, the recommendation resulted in the adoption of a formal rescue procedure that was contained in the Insolvency Act of 1986. Due to several deficiencies in the English rescue process, such as cost and suitability to small and medium sized businesses, the mechanism had limited utilisation (Museta, 2011, p55). The Enterprise Act of 2002 replaced a number of provisions under the Insolvency Act of 1986 and thereby improved the chances of success for the survival of the underperforming company as a going concern (Museta, 2011, p.76).

In the USA, Chapter 11 of the United States (US) Bankruptcy Reform Act of 1978 enables companies experiencing financial difficulty a moratorium on the payment to creditors for 120 days until a reorganisation plan has been adopted by the company (Bharath, Panchaegesan & Werner, 2013, p.1). The overriding objective of Chapter 11 is to protect and rescue businesses experiencing difficulty by means of financial restructuring that is binding on all parties (Du Preez, 2012, p.25). There is wide acceptance that the business rescue mechanism embodied in Chapter 11 is efficient and effective and it is viewed as a mechanism that is supportive of the company that is being restructured (Bezuidenhout, 2012, p.16; Bharath *et al*., 2013, p.34).

Due to the need to rehabilitate financially distressed businesses, South Africa also utilised a mechanism for the rescue of underperforming businesses. Prior to the adoption of the Companies Act, Act No 71 of 2008 (RSA, 2008), a mechanism known as judicial management was utilised for the purposes of restoring financially distressed companies to sustainability (Bradstreet, 2011, p.353). The primary aim of the judicial management procedure, introduced in the Companies Act, Act No 46 of 1926, was to enable the rescue of a company and thereby prevent liquidation and the negative consequences thereof (Bezuidenhout, 2012, p.8).

The judicial management process from the Companies Act of 1926 was also incorporated into the Companies Act, Act No. 61 of 1973 (RSA, 1973). This allowed for a company to be placed under judicial management when, in terms of Section 427, a company was unable to pay its debts or meet its obligations. In those circumstances, if there was a reasonable probability that the company could become a successful concern, then the court provided a judicial management order allowing for the appointment of a judicial manager. Unfortunately, under the judicial management regime, there was a low rate of success in restoring a business to a going concern (Lamprecht, 2008, p.184). Olver (1980, p.353) estimated that less than 20% of companies that used the judicial management process avoided liquidation. Although the intention of the judicial management legislation was the prevention of liquidation and restoration of a company as a going concern, many viewed the process as similar to liquidation and even as a formal mechanism to liquidate a company (Lamprecht, 2008, p.187). Rajak and Henning (1999, p.267) referred to the judicial management process as a form of unsupervised winding up. Another important observation relating to judicial management is that the South African courts adopted an attitude that judicial management was only to be allowed under exceptional circumstances and that the courts only approved an application for judicial management in extraordinary circumstances (Kloppers, 2001, p.376). Due to the observation that most judicial managers were insolvency practitioners, this favoured the liquidation of businesses rather than their rescue (Loubser, 2004, p.155).

Bezuidenhout (2012, p.10) summarised some of the main problems relating to the use of judicial management as a business rescue mechanism. These include the fact that judicial management was seen as an abnormal and lengthy measure; that often the alternative of choosing a faster liquidation process was favoured; that judicial management was an expensive process due to extensive court proceedings; and that smaller companies could not apply for judicial management. These factors significantly contributed to the reduced utilisation and success of judicial management as a corporate rescue mechanism and this is probably the reason why judicial management was referred to as a 'spectacular failure' (Smits, 1999 as cited in Bezuidenhout, 2012, p.12).

In addition to the judicial management mechanism, there were several other sections of the Companies Act, Act No. 61 of 1973 (RSA, 1973) that required a change in order to meet the changing business and economic environment in South Africa. These related mainly to the type of companies that can be formed, the management and administration of companies and the liability of directors (Harvie, 2009, p.29). However, the fundamental reason for the required change was that the framework of South African company law was built on a foundation that was put into place in Victorian England in the 19th century. As a result, many sections of the Companies Act of 1973 did not meet the changing business environment (Department of Trade and Industry, 2004, p.4). In response to the need for a more acceptable corporate rescue mechanism in South Africa, the Department of Trade and Industry (DTI) issued the South African Company Law for the 21st Century: Guidelines for Corporate Law Reform in 2004. These guidelines expressed the need for a change in company law due to increased global economic challenges and risks. A focus of the guideline was on the need for a different business rescue provision enabling businesses that face difficulties to resume normal commercial dealings (Department of Trade and Industry, 2004, p.45).

Due to the deficiencies of the Companies Act of 1973 and the widespread conclusion by academia, popular media, interest groups and civil society that a reform of the Act was necessary, a task team was established to consider and develop suitable changes to the Act (Department of Trade and Industry, 2004, p.50). The brief of the task team was to draft, publish and consult on a new Companies Act. The Draft Companies Bill of 2007 was published and tabled in parliament in June 2008 (Harvie, 2009, p.4). In light of the deteriorating economic situation and challenges to economic growth and job creation highlighted in the introduction, an overriding purpose, according to Section 7 of the Bill, was to provide for the creation and use of companies in a manner that enhanced the economic welfare of South Africa. After widespread consultation, the Companies Act, Act No. 71 of 2008 (RSA, 2008) was signed into law by President Zuma in May 2011.

In light of the shortcomings in relation to a suitable business rescue mechanism of the previous Companies Act of 1973, highlighted by the Department of Trade and Industry's Guidelines for Corporate Law Reform in 2004, the Act contained several provisions for the protection of creditors and employees. The most important of these provisions is the business rescue legislation that forms part of Chapter 6 of the Companies Act of 2008 (Harvie, 2009, p.52). According to Rushworth (2010), a member of the International Reference Team for Company Law Reform in South Africa, a key focus of the business rescue legislation was that of saving jobs by providing financially distressed companies with breathing space while restructuring their affairs and also to protect a company from creditors' claims during the business rescue process. In order to meet this objective, Section 128(b) of the Companies Act allows for the rehabilitation of a financially distressed company by providing for the following:

- A temporary supervision of the company, its affairs, business and property;
- A temporary moratorium on the rights of claimants against the company and its property;
- The development and implementation of an approved plan to rescue the company by restructuring the business in such a manner that maximises the possibility of the company's continued existence.

The business rescue process is a non-judicial, commercial process, which seeks the ultimate rescue of a company in financial distress (Wilson & Du Preez, 2013, p.1).

The context of the study highlighted the need for an improvement in South Africa's economic landscape political gains made since 1994. The government responded to this need by implementing legislation to promote and grow the business sector. Due to global risks and the need for an improved rescue mechanism, a new Companies Act was implemented in 2011. An important feature of the new Companies Act was the inclusion of business rescue legislation. This legislation facilitates a successful rehabilitation of a financially distressed company, thereby allowing for the continued existence of businesses.

1.4. EXISTING RESEARCH

The available knowledge in business rescue is characterised by the lack of sufficient research (Pretorius and Roslyn-Smith, 2014, p.135). Loubser (2010) completed a Doctorate of Law thesis in which she undertook a comparative study between aspects of the South African business rescue legislation and the statutory rescue provisions in England and Germany. Her research did not involve the collection of empirical evidence, but rather a comparison of how the rescue law in each country handled or regulated each section relating to business rescue.

A chapter of the thesis is dedicated to the suggested improvements and recommendations. These main findings relate to the appointment in writing of a business rescue practitioner prior to a company applying for business rescue (p.340) and recommending the establishment of a regulatory authority to oversee the appointment of a business rescue practitioner (p.361). A limitation of the research is that a comparison was not undertaken with the Chapter 11 US Bankruptcy Code, considered to be one of the more progressive business rescue mechanisms in the world.

Museta (2011) completed a Masters of Law degree by scrutinising developments in South African company law since the progression from judicial management to business rescue. He also undertook a comparative analysis between the business rescue mechanisms in South Africa, the United Kingdom (UK) and Australia and highlighted key differences among the business rescue mechanisms utilised in these countries without making recommendations for change or improvement. His conclusions were that business rescue represents a significant improvement of the judicial management process and that the major shortcoming of the business rescue legislation in South Africa, in relation to the Australian and UK legislation, is the absence of a centralised accreditation body for the testing of business rescue practitioners (Museta, 2011, p.78). The absence of accreditation criteria for business rescue practitioners is a major shortcoming of business rescue legislation. This practice is contradictory to other professional associations in South Africa, such as the accounting, legal and medical professions, which have strict accreditation criteria. In order for the business rescue sector to grow and be successful, the practitioner must have the necessary competencies to effect a successful rehabilitation for an organisation. The establishing of a framework for accreditation will enable a business rescue practitioner to develop these competencies.

Bezuidenhout (2012) undertook a review of new business rescue legislation in South Africa. The research, both quantitative and qualitative in nature, focused on identifying key success areas relating to business rescue. He analysed information supplied by the Companies and Intellectual Property Commission (CIPC) to identify success rates relating to business rescue applications and also undertook a qualitative study on 78 business rescue cases that involved a major financial institution in South Africa. The study highlighted several important aspects such as the fact that numerous business rescue practitioners are not skilled at managing the rescue process and that the construction and consumer services were the highest contributors of successful business rescue. A limitation of the review was that it focused on the short period between May 2011 and June 2012. Consequently, it was not possible to determine the true extent of the success of business rescue as, at the time of conducting the research, many of the companies were still in the process of business rescue.

Du Preez (2012) undertook research into the availability of post commencement finance for the business rescue process and to identify factors that will result in the successful advancement of post rescue finance in South Africa. She undertook a qualitative study by interviewing 18 business rescue experts to assess the current environment relating to post commencement finance and to unearth conditions that will improve access to post rescue finance. She found that the key success factors for the ability to improve the access to post rescue finance included upfront engagement with financiers before filing for business rescue, the availability of security, the impact of the actions and profile of the business rescue practitioner, and that the distressed business must file for business rescue much earlier (Du Preez, 2012, p.159).

Several studies were undertaken by Pretorius in recent years to enhance existing, and develop new knowledge, in the field of business rescue. These studies focused on the constraints in relation to post commencement finance (Pretorius & Du Preez, 2013), the expectations for a business rescue plan (Pretorius & Rosslyn-Smith, 2014) and the competencies that are required by a successful business rescue practitioner (Pretorius, 2013a & 2014). Pretorius' studies identified barriers that exist in the funding of a distressed company, recommended content that will make business rescue plans commercially viable and established certain skills that are required to be a successful business rescue practitioner. A common recommendation of his studies is the need for further research and establishment of knowledge.

The importance for further research into business rescue was also emphasised by Kgomo (2013). He stated that "The New Companies Act, 1971 of 2008 came up with novelties or innovations that did not exist in the old Companies Act. Among these innovations is the so-called business rescue. Our courts have already started pronouncing themselves on this new phenomenon; however, in my considered view, there is still a long way before the organised profession completely muster all the nitty-gritties, explore all the nooks and crevices of the new Companies Act and lay or cast a well-travelled path that would engender and ensure consistency and surefootedness in the implementation of this new baby".

The need for further research resulted in the CIPC commissioning a comprehensive report into business rescue failures, post commencement finance, and practitioner performance since the implementation of business rescue. The report was produced by the University of Pretoria's Business Enterprises and released in March 2015. An important conclusion of the report was the need to undertake more research into business rescue (Pretorius, 2015, p.5).

1.5. FOCUS OF THE STUDY

The need to undertake more research to "muster all the nitty-gritties, explore all the nooks and crevices" of business rescue legislation is justified in the context of the effectiveness of business rescue. According to Section 128, a business rescue facilitates the development and implementation of an approved plan to restructure the affairs of a company in a manner that maximises the likelihood of a company continuing to exist as a solvent entity. However, if it is not possible for a distressed company to continue in existence, then the business rescue should result in a better return for the company's creditors or shareholders than would result from immediate liquidation of the company. Binns-Ward (2012) stressed that the overriding objective of business rescue is to serve public interest by providing a remedy directed at avoiding the adverse consequences of liquidation by salvaging the business of a distressed company. This public interest can be served by sustaining jobs and improving the communities in which businesses operate. If the continued existence of a firm is not possible, then it is desirable to secure a better return to creditors than would be achieved in immediate liquidation. The importance of the continued existence of a firm, as opposed to premature closure or liquidation, is highlighted in Chapter 2 of this study. For the purposes of this study, a business rescue success refers to the development and implementation of an approved plan so that the business continues to exist.

Statistics released by the CIPC indicate that there is a low success rate in achieving the successful rehabilitation of distressed companies. The CIPC administers the business rescue legislation on behalf of the DTI. Statistics released by the CIPC indicate that 1 589 companies commenced business rescue from the inception of the Chapter 6 legislation until the 31st January 2015 (Voller, 2015). The results of these cases of business rescue are reflected in Table 1.1 (Voller, 2015, p.5).

Table 1.1: Business rescue statistics

	NUMBER	% OF TOTAL
BUSINESS RESCUE PROCEEDINGS ENDED	711	45
Termination of business rescue	204	13
Substantial implementation of business rescue plan	198	12
Liquidation	141	9
Company set aside business rescue	11	1
Nullities	157	10
BUSINESS RESCUE PROCEEDINGS ACTIVE	878	55
TOTAL BUSINESS RESCUES THAT COMMENCED SINCE INCEPTION OF BUSINESS RESCUE LEGISLATION	1 589	100

Source: Adapted from Voller, R. 2015. *Administration of Business Rescue: CIPC Perspective.* Companies and Intellectual Property Commission, Pretoria.

Table 1.1 illustrates that of the 1 589 business rescues that commenced since the inception of the business rescue legislation, 711 (45%) were completed. The table also reflects that 189 business rescues, comprising 12%, that commenced since 2011 resulted in the substantial implementation of the business rescue plan. A company emerges successfully from business rescue when it completes the Form CoR 125.3. The form is referred to a "Notice of Substantial Implementation of Business Rescue Plan". Completion of the Form CoR 125.3 indicates that, in accordance with Section 128 of the Companies Act, the business rescue facilitated the development and implementation of an approved plan to restructure the affairs of the company and resulted in its continued existence. There has been no improvement in the business rescue success rate of between 12% and 15% since

2013 (Conradie & Lamprecht, 2015, p.2). Table 1.1 also reflects that 9% of the business rescues commenced resulted in liquidation. However, Pretorius (2015, p.34) estimated that approximately 31% of the 204 business rescues termination also resulted in liquidation, thereby increasing the figure reflected in the table.

The success rate of approximately 12% indicates that since the inception of business rescue legislation, the majority of financially distressed companies entering into business rescue failed to achieve the primary objective of a successful rehabilitation and continued existence.

The low success rate of business rescue has prompted debate on the effectiveness and suitability of business rescue as a mechanism to rehabilitate financially distressed companies. In assessing the future role of business rescue as an effective corporate rescue mechanism, Pretorius (2013b) estimated a 35% chance of a “Liquidation Comeback”. This refers to a scenario whereby business rescue legislation is not utilised, resulting in financially distressed companies being liquidated. This scenario is attributed mainly to the poor skills and competence of the business rescue practitioner. In this scenario, the financial sector does not fund a business rescue and a liquidation mindset will prevail. It appears unlikely that business rescue will survive to become an effective corporate rescue mechanism unless there is a “Game Changer” in the business rescue sector. This change will only materialise if there are competent business rescue practitioners, quick courts and accessible post rescue funding (Pretorius, 2013b).

The prevention of a Liquidation Comeback scenario and the realisation of a Game Changer can be facilitated by undertaking more research into the field of business rescue. Business rescue is considered to be relatively new and more research is required to improve the effectiveness thereof (Pretorius and Roslyn-Smith, 2014, p.135). The knowledge generated from research can be used to prevent the possibility of liquidation as an inevitable outcome of a financially distressed company.

Existing literature identifies certain factors which translate into a successful business rescue. These factors include the effective planning of a business rescue (Institute of Directors in Southern Africa, 2009), the management of the business rescue process (Levenstein, 2011), access to funding during business rescue (Du Preez, 2012), and effective communication with stakeholders (Van der Burgh, 2013). However, there is an absence of research on the identification and ranking of a common set of factors relating to businesses, either in business rescue or intending to file for business rescue, which can contribute towards a successful business rescue. Furthermore, available literature does not identify the impact of the demographic factors, skills and qualifications of a business rescue practitioner on the success of a business rescue.

The availability of a common set of success factors can be utilised by different stakeholders of business rescue as follows:

a) By management and creditors to properly plan a business rescue and thereby increase the chances of success before an entity is placed into business rescue.

b) By the banking sector to assess the chances of a successful rescue before committing funds to a rescue.

c) By the CIPC in planning a regulatory framework for the accreditation of business rescue practitioners, to understand the role of the business rescue practitioner in the success of a business rescue.

The focus of this study was to diagnose reasons for failed business rescues and to establish factors that will result in successful business rescues.

1.6. PROBLEM STATEMENT

South African business rescue legislation was implemented in 2011 with the intention of rehabilitating financially distressed companies. Statistics from the CIPC (Lotheringen, 2013; Voller, 2015) indicate that the success rate of companies that file for business rescue is approximately 12%. The success rate indicates that many of the companies entering into business recue are liquidated, which is contrary to the objective of business rescue legislation. Existing research does not identify and rank a common set of factors that will result in a successful business rescue.

This study will answer the question “What are the factors that result in a successful business rescue in South Africa?”

1.7. AIM AND OBJECTIVES

The aim of this research study was to establish factors relating to the planning and execution of a business rescue that impacts on the success of business rescue.

The objectives of the study were to achieve the following:

a) Establish and rank factors that impact on failed business rescues in South Africa.

b) Compile and rank factors that result in successful business rescues in South Africa.

c) Assess the importance of the role of the business rescue practitioner in successful business rescues in South Africa.

d) Develop a set of competencies required to be a successful business rescue practitioner in South Africa.

1.8. RESEARCH DESIGN

The research objectives were met by utilising a complementary mixed methods approach. This approach firstly entailed the use of a questionnaire to obtain information on factors concerning business rescue successes and failures. An electronic questionnaire comprising 37 questions was answered by the membership of the Turnaround Management Association - Southern Africa (TMA-SA). The questionnaire was structured into three sections to facilitate the establishment and ranking of factors that impact on a failed business rescue, factors that result in a successful business rescue and the competencies that are required to become a successful business rescue practitioner. Permission to conduct the study was obtained from the executive of the TMA-SA. Ethical clearance for the study was granted by the University of KwaZulu-Natal’s Humanities & Social Science Research Ethics Committee. The questionnaire was submitted electronically to the entire membership of the TMA-SA. It was completed by 71 of the 130 TMA-SA members. Twenty-six of the 71 respondents to the survey had been appointed as business rescue practitioners.

The data obtained from the completed questionnaires were analysed using descriptive statistics and measures (such as the mean, mode and median). Cross tabulations were conducted to determine whether relationships exist between certain factors and business rescue successes and failures. This facilitated the testing of hypotheses for the research objectives.

The quantitative methodology was complemented by an interview-based qualitative study. The qualitative methodology facilitated an understanding of the challenges and difficulties experienced during a business rescue. The interviews were undertaken with seven of the top ten business rescue practitioners. These practitioners were ranked according to the number of business rescue appointments by the CIPC. The interview facilitated new insights and interpretations of the business rescue process from the perspective of an experienced business rescue practitioner. It focused on utilising the personal experiences of the business rescue practitioners to improve the success rate of business rescues in South Africa. The seven interviewees had been appointed as practitioners to 354 business rescues.

The use of a mixed methods approach allowed for the triangulation of results, whereby common themes relating to the business rescue failures, successes and competencies of successful business rescue practitioners were identified. The main objective of triangulation is to ensure that different research methods lead to the same results (Sekaran & Bougie, 2013). The study reflected a high degree of overlap between the quantitative and qualitative approaches.

1.9. LIMITATIONS OF THE STUDY

There were limitations relating to the study, including the following:

a) Business rescue legislation was implemented in May 2011. According to Pretorius and Rosslyn-Smith (2014, p.135), a significant limitation of studies undertaken in this field relates to the limited local pool of academic literature. This limitation provided justification for undertaking empirical research to achieve the objectives of the study.

b) The response rate to the online survey of Turnaround Management Professionals was approximately 54%. The limitation was addressed by undertaking interviews with business rescue practitioners. The sample frame utilised was the listing of Top Ten Business Rescue Practitioners released by the CIPC in 2015.

1.10. OUTLINE OF THE STUDY

The study has been structured into six chapters as reflected in Table 1.2.

Table 1.2: Outline of the study

CHAPTER	CONTENT
1	This chapter contains an overview of the research undertaken. It contextualises the study within the ambit of business developments, and challenges, since the dawn of democracy in South Africa. It presents the justification for undertaking the study. The problem statement, aim, objectives and research design are presented, together with the limitations of the study.
2	This chapter presents the findings of the review of existing knowledge in the field of business rescue. The chapter identifies certain important limitations to existing literature that justifies the undertaking of empirical research.
3	Chapter 3 presents the methodology utilised to achieve the objectives of the study. It details the approach, sample frame and sample size of the study. The chapter also provides details of the statistical analysis and hypotheses.
4	The analysis of the quantitative data is presented and discussed in this chapter. The findings are highlighted in reference to the research objectives and hypothesis developed in Chapter 3.
5	The analysis of the qualitative data is presented and discussed in this chapter. The adoption of a mixed methods approach facilitated a level of triangulation, the results of which are presented in this chapter.
6	The final chapter of the study summarises the results of the study in relation to the objectives. There are specific recommendations for the business rescue sector to facilitate the survival and improved success of business rescue in South Africa. The chapter also contains details of the limitations of the study and makes recommendations for further studies.

1.11. CONCLUSION

Chapter 1 has presented the context and motivation for the study. According to the Theory of the Firm, companies exist in order to achieve a profit. However, there are companies that experience a decline in profitability due to financial distress. Under these circumstances, a business faces the prospect of premature closure. The premature closure of businesses has a negative impact on the community and economy, such as job losses and poverty. Recognising the importance of the continued existence of businesses, the South African government introduced legislation to rehabilitate financially distressed businesses. Due to the low success rate of the legislation, this study has sought to identify success factors for business rescue. This first chapter has presented the objectives, methodology and limitations of the study, and provided an outline of each chapter of the study.

The research study commenced with a review of existing literature in business rescue. This review is presented in Chapter 2.

CHAPTER 2

SURVIVAL OF BUSINESS RESCUE

2.1. INTRODUCTION

Chapter 1 highlighted the importance of business rescue legislation to rehabilitate underperforming businesses. The intention of the legislation was to promote the continued existence of businesses within the fairly recently established South African democracy. Although business rescue legislation was implemented more than five years ago, the success rate thereof has been low. The CIPC estimated that the success rate of business rescues is approximately 12 to 14 % (Lotheringen, 2013). More recent statistics released by CIPC indicate that the success rate has not improved since 2013. The success rate of business rescues undertaken between the implementation of Chapter 6 legislation and January 2015 was approximately 12% (Voller, 2015). This low level of business rescue successes warrants further research and investigation to identify factors that contribute towards the success of a business rescue. A process recommended to achieve the research objectives, as listed in Chapter 1, is to initially conduct a literature review to assess the current state of knowledge relating to business rescue (Saunders *et al*., 2003, p43). A literature review will enhance the researcher's perspectives of business rescue and will improve the effectiveness of establishing a common set of factors that contribute towards a successful business rescue (Leedy & Ormrod, 2001, p.71).

As the South African business rescue process was only recently introduced in May 2011, there is a scarcity of literature in the field. Pretorius and Rosslyn-Smith (2014, p.135) emphasised the limited availability of local academic literature on business rescue and noted that this non-availability serves as a significant limitation in a business rescue study. Consequently, the review of the literature is descriptive in nature. A descriptive study is designed to initially collect information that describes the characteristics of situations, persons or events and thereby enable the researcher to understand the given situation. Thereafter, the descriptive review offers ideas for further probing or research (Sekaran & Bougie, 2013, p.99). For this study, an understanding was facilitated by initially focusing on the financial distress of companies and the remedies available for rehabilitation. As a legislated business rescue is considered to be an important procedure for the rehabilitation of financially distressed companies, this study reviewed business rescue processes (local and international), the difficulties experienced in the application of business rescue legislation and the factors of success.

2.2. RATIONALE FOR BUSINESS EXISTENCE

Researchers have attempted to construct different models of the Theory of the Firm in order to explain the rationale for the continued existence of a business. These attempts have resulted in the establishment of models that are sufficiently generalised in trying to explain the behaviour of all firms within the economy, irrespective of the size of the business or the degree of competition that the firm faces (Curwen, 1983, p.16). The firm is frequently described as an economic institution where its objectives, decisions and activities are the result of fundamental market forces (Spulber, 2009, p.11). The firm is also referred to as a point of coordination for transactions between its different stakeholders (Flemming, Heaney & McCosker, 2005, p.31). For almost a quarter of a century the focal point of neoclassical economic theories that make up the Theory of the Firm is the assumption that a firm is established to maximise profits (Anderson & Ross, 2005, p31). Jensen and Meckling (1976, p.3) likened the firm to a "black box" which is operated in order to adhere to relevant market conditions relating to inputs and outputs, thereby maximising profits or maximising returns to shareholders (Correia, Flynn, Uliana & Wormald, 2011, p.13). In order to achieve the intended objective of profit maximisation, several factors of production are required by business entities. Economists have traditionally classified these factors of production into three specific areas, i.e. land, labour and capital (Wernerfelt, 1984, p.171). Each of these factors plays a critical role in determining the profitability of the firm, thereby allowing for its continued existence.

In the mid-1980s there was an extension of the traditional view, relating to the utilisation of factors of production to maximise profits, towards one whereby the firm is conceptualised as a broader set of resources that are strategically utilised to enhance the performance of a firm (Priem & Butler, 2001, p.22). The resource-based view of the firm was introduced by Wernerfelt in 1984 to highlight the influence of proper utilisation of company resources on its competitive strategy and profitability (Priem & Butler, 2001, p.23). According to this view, a firm's resources comprise of its assets; tangible and intangible, human and non-human; possessed or controlled by the firm, that permit it to devise and apply performance-enhancing strategies (Halawi, Aronson & McCarthy, 2005, p.75). Barney (1991, as cited in Curado, 2006, p.2) classified a firm's resources into three distinct categories, namely physical capital, human capital and organisational efficiency. He noted that the effective utilisation of these resources will enhance the competitive advantage and profitability of a firm. Examples of resources include brand names, in-house knowledge, employment of skilled personnel and capital (Wernerfelt, 1984, p.172). The resource-based view of the firm focuses specifically on the inside of the firm to explain the profit and value of the organisation. The view states that differences in performance of firms occur when successful organisations develop and harness resources that others do not have (Curado, 2006, p.2).

The resource-based view provides a framework for understanding the contributions of a firm's assets to its performance and the role of management in deploying resources (Park, Gardner & Wright, 2001, p.5). Due to the interest in the role of a firm's resources as a foundation for the firm's strategy to enhance its profit-earning potential, there is a need for the firm's resource gaps to be identified and filled (Grant, 1991, p.205). Grant (1991, p.115) provided a five-step framework for the identification of resource gaps as an aid to effective strategy formulation (Figure 2.1).

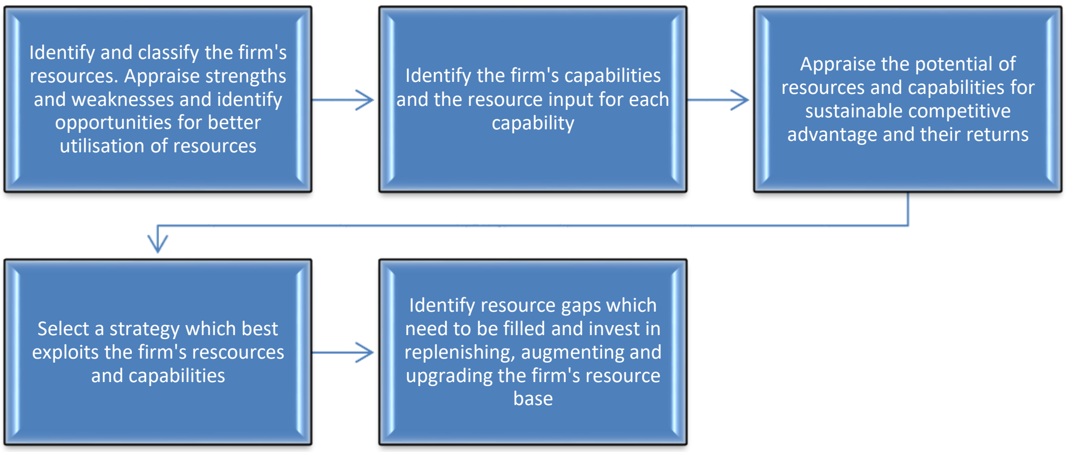

Figure 2.1: A resource-based approach to strategy analysis: A practical framework

Source: Adapted from Grant, R. 1991. A Resource-Based Theory of Competitive Advantage: Implications for Strategy Formulation. *California Management Review,* vol. 33, no. 3, p. 114–135.

The framework in Figure 2.1 can be employed by a firm to earn a profit by cooperation and coordination of the firm's resources into a capability (Grant, 1991, p.117). Grant (1991, p.119) defined the capability as the capacity of a team of resources to perform a task or activity. The resource-based view of a firm is also referred to as the inside-out perspective whereby the firm’s strategy is designed around its resources and capabilities to take advantage of opportunities in the external environment (Louw & Venter, 2010, p.23). This perspective allows a firm to leverage and “stretch” its resources and capabilities to earn a profit, thereby facilitating the continued existence of a company.

A logical extension to the resource-based view of a firm is the knowledge-based view of the firm. This view emphasises the importance of knowledge as a resource (Curado, 2006, p.5). Nonaka (1991 as cited in Curado, 2006) highlighted the importance of knowledge when concluding that the only true and lasting competitive advantage in a firm is the knowledge developed by that firm. Accordingly, knowledge-based resources must become the focus of research in order that a sustainable competitive advantage is developed in the modern globally competitive economy, where knowledge is considered critical (Curado, 2006, p.5). The ability to develop, leverage and process knowledge is central to business success (Halawi *et al*., 2005, p.75). Muneer, Iqbal, Khan and Long (2014, p.43) noted that in the modern global economy, the most important source of innovation is the firm’s knowledge. This emphasis on knowledge as a critical resource of a business justifies the need to undertake research into financially distressed firms.

The development of knowledge relating to the initial failure and subsequent rescue of a firm will serve as an enabler for a distressed firm to return to profitability and sustainability. When companies are established, an inherent expectation is that they will survive in the long run. However, many businesses fail due to mismanagement and adverse economic forces. Figure 2.2 illustrates the impact on profit when a company experiences a decline.

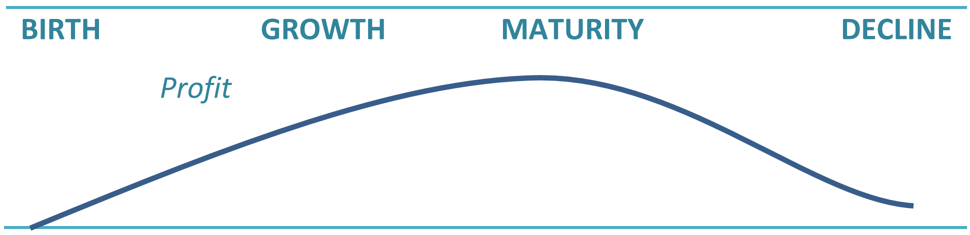

Figure 2.2: Life cycle of a dying organisation

Source: Adapted from Baird, S. 2014. An Empirical Investigation of Successful, High Performing Turnaround Professionals: Application of the Dynamic Capabilities Theory. Unpublished Ph.D.-dissertation. Georgia State University, Atlanta, GA.

It is evident from Figure 2.2 that when certain companies reach maturity they go into decline. Operating under decline implies operating under distress, which if not rehabilitated, will lead to death and closure of the business (Baird, 2014, p.17). The closure of any business has negative consequences for its owners, employees, and ultimately the economy and society (Binns-Ward, 2011). The business rescue process, if applied successfully to an organisation in decline, results in a phase additional to the above Figure 2.2, to symbolise a rebirth or resurrection to life (Baird, 2014, p.19). As illustrated in Figure 2.3, the renewed increase in profits results in a rebirth which is referred to as the New Life Cycle Stage V, Rebirth (Quinn & Cameron, 1963 as cited in Baird, 2014, p.20).

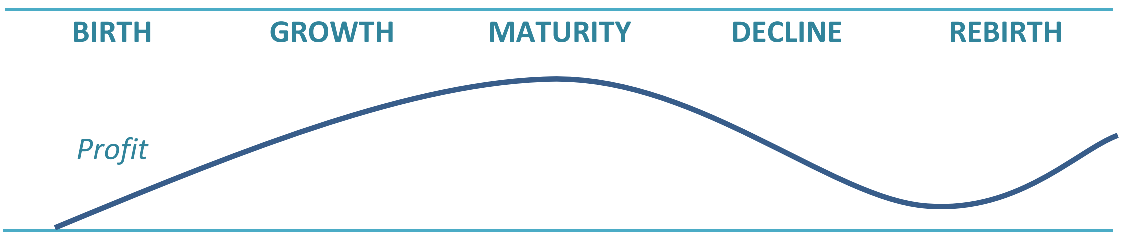

Figure 2.3: New life cycle signifying rebirth

Source: Adapted from Baird, S. 2014. An Empirical Investigation of Successful, High Performing Turnaround Professionals: Application of the Dynamic Capabilities Theory. Unpublished Ph.D.-dissertation. Georgia State University, Atlanta, GA.

It is evident from Figure 2.3 that the organisation is reborn when it recovers from decline, operates under normal conditions and achieves a return that is acceptable to its shareholders (Pretorius, 2009, p.11). A rebirth can be achieved by the development of knowledge resources and capabilities relating to the field of business rescue. Baird (2014, p.3) concluded that the identification or acquisition of knowledge, best practices or secrets of success contributes to the rebirth of dying or distressed organisations. The acquisition or enhancement of a firm's knowledge resources in relation to the planning and performance of a business rescue process will result in improved profitability and thereby facilitate a resurrection and continued existence of the firm. According to Dickinson and Sommers (2008, p.7), an investment in innovation through research and development should yield higher profitability. These findings illustrate the benefit of undertaking research into organisational decline.

The need for research into organisational decline was initially highlighted by Whetton in 1980. He emphasised the scarcity of studies into the management of organisational decline and the need for research to mitigate the impact of an emerging era of retrenchment. He proposed a joint agenda for research, teaching and consulting to rectify the neglect. The threat of organisational decline has increased since Whetton's (1980) efforts to increase research. Due to the continued weakness of the global economy, the persistent threat of decline remains a highly relevant global concern (Trahms, Ndofor & Sirmon, 2013, p.1278). Therefore, theoretical and empirical investigations into organisational decline continue to be essential over 35 years after Whetton (1980) highlighted the need to study the topic. Research in this field will further the goal of better understanding organisational decline as the results will help to improve an organisation's response to a decline (McKinley, Latham & Braun, 2014, p.88). As business rescue legislation focuses on distressed companies, the field forms an important focal area for research.

Business rescue legislation was only recently adopted in 2011 and more research needs to be undertaken in relation to the field (Pretorius & Rosslyn-Smith, 2014, p.135). The enhancement of knowledge about the practical process of planning and performing a business rescue, specifically in relation to the establishment of factors of success, will provide a distressed company with the knowledge-based resources to obtain a profit and, ultimately, survival. Pretorius (2013a, p.8) supported a strategy-as-practice approach as a mechanism to address the gap between theories of strategy and actual practice. Such an approach focuses on the doing of strategy and asks questions such as "How is it done? Who does it? And what do they use to do it?" (Pretorius, 2013a, p.8). This approach was utilised for this research study in order to address some of the theory gap that exists between the knowledge resources in a firm and the execution of a successful business rescue. The acquisition of new knowledge and enhancement of existing knowledge relating to business rescue will provide better resources to a distressed company. The research into business rescue will facilitate a successful rehabilitation, thereby making an immense contribution towards the prevention of business closure and towards a more vibrant South African economy.

2.3. FINANCIAL DISTRESS

Financial distress was originally classified and defined by Beaver in 1966 as bankruptcy, insolvency, liquidation, a default on loan obligations or the inability to meet dividend payments (Muller, Steyn-Bruwer & Hamman, 2012, p.24). Outecheva (2007) undertook an empirical analysis of distress risks and compiled several definitions of financial distress. Some of these definitions are reflected in Table 2.1 below (Outecheva, 2007, p.14).

Table 2.1: Definitions of financial distress

RESEARCHER	DEFINITION OF COMPANY FINANCIAL DISTRESS
Hendel (1996)	A likelihood of bankruptcy, which depends on the level of liquid assets as well as on credit availability
Brown, James and Mooradian (1992)	A company is financially distressed if it intends implementing restructuring measures with the aim of avoiding a default
Andrade and Kaplan (1992)	A default on a debt situation and an attempt to restructure the debt in order to prevent the default situation
Purnanandam (2005)	An intermediate state between solvency and insolvency

Source: Summarised from Outecheva, N. 2007. *Corporate Financial Distress: An Empirical Analysis of Distress Risk.* Unpublished Ph.D.-dissertation. University of St. Gallen Graduate School of Business Administration, St. Gallen.

Based on the definitions by Beaver and those in Table 2.1, financial distress is characterised by a lack of resources that results either in an involuntary business closure or an attempted restructure. Financial distress occurs when a firm's promises to creditors are broken or are honoured with difficulty. It may result in dismantling and selling the firm's assets (Senbet & Wang, 2012, p.7). Whilst the liquidation of a business is one of the adverse outcomes of financial distress, many financially distressed firms can be financially rehabilitated. Wang and Shiu (2014, p.233) noted that some financially distressed firms will experience a rebirth. This rebirth or resurrection phase is commonly referred to as a turnaround (Baird, 2014, p.19). There are many countries that have adopted a legal framework to facilitate the turnaround and continued existence of financially distressed firms. The South African business rescue legislation defines financial distress as a situation in which a company is reasonably unlikely to be able to pay all of its debts as they become payable and due within the immediate ensuing six months, or it appears to be reasonably likely that the company will become insolvent within the immediate ensuing six months (Section 128). The aim of the legislation is to facilitate the rehabilitation or turnaround of a financially distressed company. According to Corporate Renewal Solutions (2012 as cited in Du Preez, 2012, p.16), informal turnarounds have the greatest success due to the informal nature of the process and the fact that it is not subject to legislation. As the process to rehabilitate the distressed company becomes more formal and legal, the situation becomes more inflexible and expensive.

Blazy, Martell and Nigam (2011, p.2) concluded that a private or informal restructuring, although less costly and quicker than the legislative process to rehabilitate business, is not always a preferred solution. There are several reasons why stakeholders will sometimes prefer a costlier and formal legislative procedure. These relate to the "holdout problem", whereby individual creditors holdout from accepting an agreement in the hope that other creditors will accept an agreement for a proposal. In addition, there may be different objectives between various creditors leading to the formation of coalitions and conflicts of interest which prevent a common agreement on the rescue of a company. Another reason for creditors preferring a formal court approved rehabilitation is the perception that there is a lack of transparency which can only be restored by a court (Blazy *et al*., 2011, p.6-7). In recent years, there has been an increase in international insolvency systems that adopted formal mechanisms to aid financially distressed companies engaged in reorganisation (Pretorius & Rosslyn-Smith, 2014, p.109).

Although there is an absence of literature that connects the turnaround process to the business rescue process, literature relating to a successful turnaround can be applied to the business rescue process due to the common objective of the recovery of a distressed company (Du Preez, 2012, p.18). In addition, Pretorius (2014, p.4) acknowledged that there is potential overlap in the processes, tasks and activities of an informal turnaround and a business rescue. Most importantly, the common objective of a business rescue and a turnaround seeks the rehabilitation or recovery to normal trading conditions, thereby preventing liquidation.

According to Figure 2.4, there are three possible outcomes to financial distress.

Figure 2.4: Possible outcomes of financial distress

As illustrated in Figure 2.4, when a South African company experiences financial distress, it will either be liquidated, undertake an informal turnaround or file for a legislated business rescue. The preferred route for a financially distressed company is to prevent a liquidation.

2.4. LIQUIDATION

A liquidation is seen as the ultimate exit strategy for a financially distressed company. It prevails when management believes that there is no future prospect for the business. It is often the last resort and takes place at a loss to stakeholders (Louw & Venter, 2010, p.366). Due to the important role of earning profits in the economy, it is important that any downturn or decline in the performance of a firm is immediately addressed in order that the threat of business closure is mitigated. As noted by Singh (2011, p14), the number of underperforming firms facing threat of closure is constantly increasing and becoming a huge concern for both industrialised and developing nations. Singh's observations are supported by recent liquidation statistics, as listed in Table 2.2.

Table 2.2: Compulsory liquidations in South Africa

BUSINESS CATEGORY	2013	2014	% CHANGE
COMPULSORY LIQUIDATIONS OF COMPANIES	117	222	+ 90
COMPULSORY LIQUIDATIONS OF CLOSE CORPORATIONS	94	144	+ 53

Source: Compiled from Statistics South Africa (StatsSA). 2015. *Statistical release P0043: Statistics of Liquidations and Insolvencies.* [Online]. Available WWW: http://www.statssa.gov.za/publications/P0043/P0043July2015.pdf (Accessed 6 April 2016).

According to Table 2.2, there was a substantial increase in the number of compulsory liquidations of companies and close corporations between 2013 and 2014. A compulsory liquidation takes place when the affairs of a company or close corporation are wound up by an order of the court (StatsSA, 2015, p.9). The increase in compulsory liquidations is contrary to the objectives of business rescue, which seeks to prevent the closure of a business. Binns-Ward (2011) commented on the detrimental impact of business closure by stating that the closure or liquidation of any business is accompanied by adverse economic and social losses to the stakeholders. Legislation is important to prevent the disruptive impact and negative consequences that business closure has on communities in which these businesses operate. Due to the widespread negative impact that a firm's closure or liquidation has on the economy and country, it is important to implement measures that restore the financial stability of a business (Manimala, 2011, p.3). If successful, these measures will result in the continued existence of the firm and prevent the negative impacts of a liquidation or forced closure as a result of financial distress. One of these measures is to implement an unlegislated turnaround.

2.5. TURNAROUND

A turnaround is defined as an organisational recovery from decline (Kandwalla, 1992, p.1); a substantial and sustained positive change in the performance of an organisation

(Bibeault, 1999, p.81); a recovery of an organisation's economic performance following an existence-threatening decline (Balgobin & Pandit, 2001, p.301); a process for bringing an organisation from sickness to health (Manimala, 2011, p.3); or a recovery from decline that threatens an organisation's existence to resume normal operations and achieve a performance acceptable to its shareholders (Pretorius, 2009, as cited in Du Preez, 2012, p15). These definitions emphasise a return to normal trading from a distressed condition.

The identification of the fundamental attributes of successful turnaround strategies is an important area of research for scholars who attempt to provide information to turnaround managers (Pearce & Robbins, 2008, p.121). As a result, researchers have identified several actions and strategies in order to achieve the intended objective of rehabilitating a business and to prevent further declines in performance. Turnaround services are provided at the tail end of its usefulness and life cycle, when a business is on the verge of closure or liquidation. In attempting to improve the success of a turnaround strategy, researchers have focused on the identification of processes, activities and frameworks to implement a successful turnaround strategy (Baird, 2014, p.3).

Bibeault (1999, p.92) described the turnaround process as a five-stage process comprising of the management change, evaluation, emergency action, stabilisation and finally the return to growth. Although these findings are more than 15 years old, they serve to highlight that the turnaround process can be segmented into identifiable stages and that the conclusion of a successful turnaround results in a return to growth. The successful return to growth as an important stage in the turnaround process was also highlighted by Balgobin and Pandit (2001, p.302) when expanding the turnaround process. These stages are decline and crisis, triggers for change, recovery strategy formulation, retrenchment and stabilisation and return to growth (Figure 2.5).

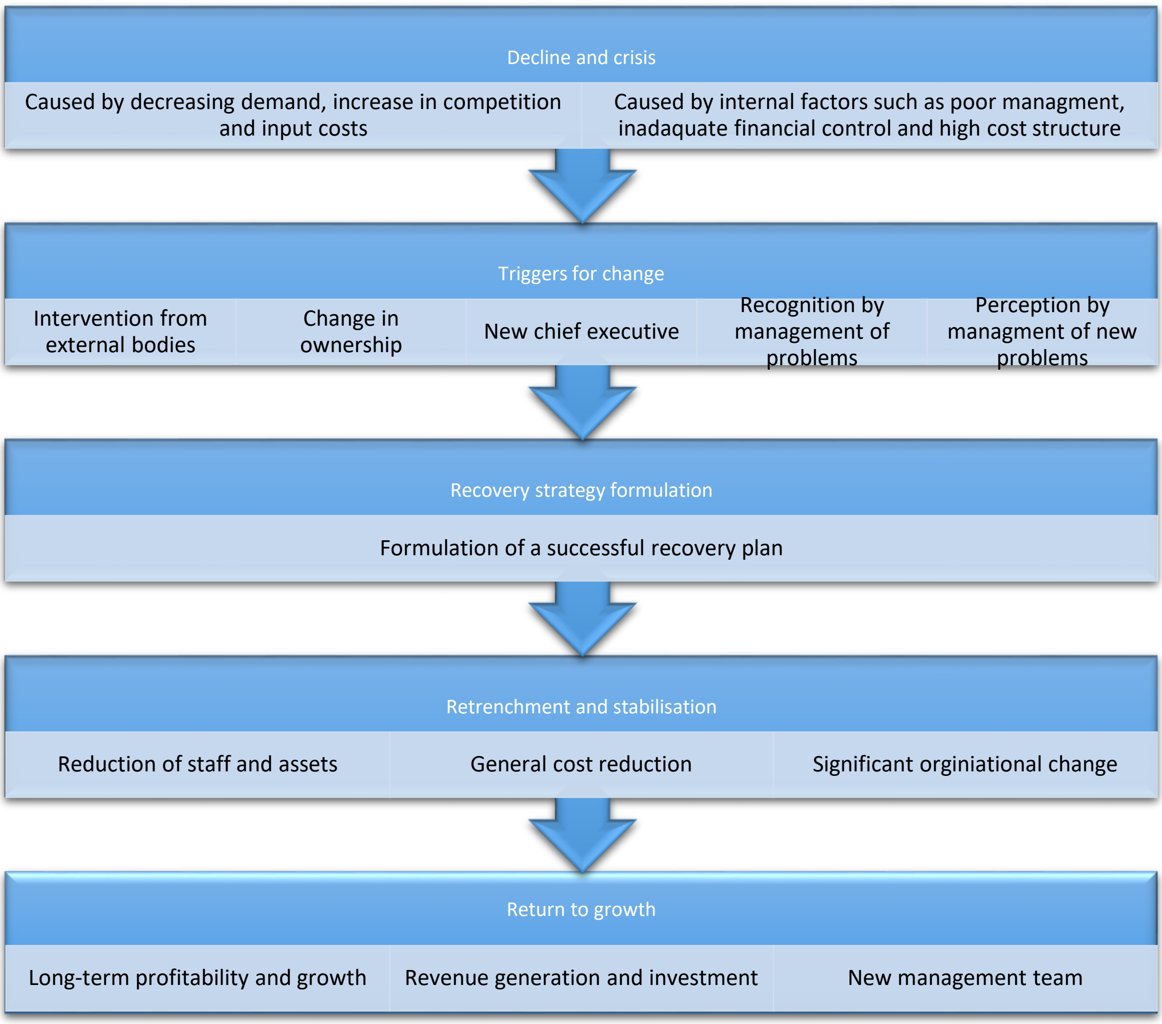

Figure 2.5: Stages of a successful business turnaround

Source: Balgobin, R. & Pandit, N. 2001. Stages in the Turnaround Process: The Case of IBM UK. *European Management Journal,* vol. 19, no. 3, pp. 301–316.

According to Figure 2.5, the first stage of a turnaround is caused by an onset of decline and crisis. Factors such as high costs and decreasing demand result in an onset of financial distress that threatens the existence of a company. At this stage, companies can either liquidate or undertake a turnaround. The nucleus of the turnaround framework in Figure 2.5 illustrates the formulation of a successful recovery plan. It supports the observation that effective business planning increases the performance of a venture (Brinkman, Grichnik & Kapsa, 2010, p.25).

A key aspect of the turnaround framework in Figure 2.5 is the focus on staff reduction or retrenchment as a precursor to returning to growth. In order to achieve a reduction of costs, staff must be retrenched. Pearce and Robbins (2008, p.122) noted that empirical research supports cost cutting in the form of retrenchment and asset reductions in order to stabilise the firm's financial performance and return to growth. This vital component of a successful turnaround, involving the reduction of staff, contradicts the current practice and objective of business rescue. One of the primary objectives of the rescue legislation is the preservation of jobs (Rushworth, 2010). A hallmark of an effective turnaround strategy involves aggressive retrenchment to prevent organisational decline and achieve stabilisation (Pierce & Robbins, 2008, p.129). The outcome of a successful turnaround strategy is a return to growth stage. This stage is characterised by long-term profitability and increased revenue generation and investment.

The successful return to growth is the final phase of an effective turnaround strategy (Bibeault, 1999; Balgobin & Pandit, 2001). A successful turnaround facilitates the rebirth of a financially distressed company (Pretorius, 2009 as cited in Baird, 2014, p.26).

2.5.1. Turnaround success factors

There are certain common features of a successful turnaround. Bibeault (1999, p.112) expanded on his strategy of a five-phase process by highlighting factors that lead to a successful turnaround. An important success factor is the use of early warning signals to identify a financial decline (Bibeault, 1999, p.61). An example of an early warning signal provided by Bibeault (1999) is the use of an Altman Z score bankruptcy prediction model that predicts the possibility of business failure up to two years ahead of a financial crisis (Bibeault, 1999, p.61). The early warning model suggested is as follows:

$$Z = 1.2X_1 + 1.4X_2 + 3.3X_3 + 0.6X_4 + 1.0X_5$$

Where:

X_1 = Working Capital/Total Assets
X_2 = Retained Earnings/Total Assets
X_3 = Earnings before Interest and Taxes/Total Assets
X_4 = Market Value of Equity/Book Value of Total Debt
X_5 = Sales/Total Assets
Z = Overall Score.

According to the above model, a company that has a Z score of less than 1.81 has a high probability of failure within the next two years, whereas a company with a Z score higher than 3 has a low possibility of bankruptcy. The use of this model can enable the filing for business rescue as soon as a company's score approaches the 1.81 mark. Recent research confirmed the international relevance of the Altman model as predictor of financial distress in the modern global economy. Altman, Iwanicz-Drozdowska, Laitinen and Suvas (2014) concluded that the prediction accuracy level of the model is approximately 75% when applied to financial information from different countries. Calculation of the Z score will facilitate companies with the early detection of possible failure and with the commencement of rehabilitation. There have been several methodologies in recent years that have built on the work of Altman which utilise the multiple discriminant analysis. However, the restrictive assumptions of these models, limit their validity (Lai, Yee, Cheng, Ling, Leng, 2015, p.344).

Other factors of a successful turnaround include a competent team with the necessary authority to make changes, and a written plan that can be used to design and monitor the turnaround (Bibeault, 1999, p.97). Bibeault (1999) also suggested that the time frame for a successful stabilisation should take approximately six months to a year.

Bibeault's (1999) success factors are supported by Bormann, Kramm and Polensky's (2010, p.86) research which highlighted the importance of early planning and preparation to improve the chances of success. They recommended the use of a core document that highlights the comprehensive turnaround plan, obtaining funding for the turnaround and the use of expert interim management. Other researchers, such as Balgobin and Pandit (2001, p.304), have highlighted the importance of effective communication and human aspects of the turnaround. The success factors identified from their study relate to the effective management of stakeholders and improving motivation amongst employees. These findings are supported by Manimala (2011, p.22) who noted the importance of employee engagement, cost management, customer refocusing, lean management, operational efficiency, corporate restructuring and image building when undertaking a successful turnaround. Booz and Company (2010, p.11) identified key success factors relating to turnaround projects. Their research indicated that successful turnaround projects are those that secure liquidity, improve performance and strengthen the strategic position of the firm (Booz & Company, 2010, p.13). Singh (2011, p.29) focused on the role of the government and related agencies in the turnaround process and suggested that these bodies create a conducive legal and economic framework for the successful turnaround of businesses. She further suggested that banks and financial institutions adopt a liberal and proactive response in the funding of a turnaround by being more involved in the turnaround process and by closely monitoring the progress of the turnaround.

Blazy, Martell and Nigam (2011, p.22), attempting to establish a statistical model to measure the chances of a successful turnaround, found that the most important success factor relates to the size of the organisation. They concluded that successful turnarounds are more likely to occur in companies that possess greater total assets. In addition, successful firms have a higher asset to debt ratio and more positive cash flows than firms that fail. It was also found that the chances of success are greater when management is more competent and reliable and that the average successful turnaround takes approximately one year.

Although the literature indicated that an informal turnaround is more effective (Corporate Renewal Solutions, 2012 as cited in Du Preez, 2012, p.16), it was found that many stakeholders prefer the route of a formalised legislated turnaround process (Blazy *et al*., 2011, p.2). Many international solvency systems have established a formal process to rehabilitate companies experiencing financial distress (Pretorius & Rosslyn-Smith, 2014, p.109). The USA and England rescue mechanisms were selected for review as:

- the business rescue mechanism of these countries represents the latest developments internationally;
- there are similarities in law between South Africa and England; and
- the USA regime is credited with initiating the modern changes associated with business rescue (Du Preez, 2011, p.10).

2.6. USA RESCUE MECHANISM

Chapter 11 of the 1978 Bankruptcy Act of the US allows a company experiencing financial difficulty substantial protection against its creditors. This protection is in the form of a moratorium on payments. The moratorium is effective until a plan of reorganisation is adopted by the company (Bharath *et al*., 2013, p.1). Under Chapter 11, a debtor in possession, referring to mechanism whereby management remains in control of the business, continues to operate the business. Major decisions are approved by a bankruptcy court. A key focus of Chapter 11 is the preservation of the going concern value over the liquidation value by means of a plan of reorganisation (Jones Day, 2007, p.6). Chapter 11 provides managers of a distressed firm with an unparalleled ability to control the reshaping of the firm's capital structure (Baird, 2011, p.1).

2.6.1. Overview of USA rescue mechanism

The USA rescue mechanism serves to resurrect an ailing business. This is achieved primarily by encouraging financial restructuring that is binding on all parties (Bracewell & Giuliani, 2012, p.1). Its commencement may be voluntary, where it is filed by the debtor or company, or involuntarily, where it is filed by the creditors. When a creditor involuntarily files a petition, it involves an amount of risk as the court may order the petitioners to pay compensatory and/or punitive damages if it finds that the petition was filed in bad faith (Mindlin, 2013, p.2).

A US Chapter 11 rescue commences when a debtor company files a petition with the bankruptcy court accompanied by a list of creditors and a summary of assets and liabilities. The company does not have to prove insolvency as companies have many reasons, other than insolvency, to file for bankruptcy. Examples of these include a massive tort liability, adverse outcome of litigation and anticipated liquidity problems (Jones Day, 2007, p8). Applications must be in good faith and creditors may apply to have the petition dismissed where this is not the case (Jones Day, 2007, p.8). The first 120 days offers the debtor in possession an exclusivity period to propose a reorganisation plan and thereafter any creditor can do so (Pretorius & Rosslyn-Smith, 2014, p.113).

In terms of the management of the company, trustees are not appointed unless management is dishonest or the court feels that it is in the interest of the creditors to appoint an independent trustee. In the absence of a trustee the debtor remains in possession of its own business and hence the term "debtor in possession". While continuing to manage the business, debtors develop a plan of reorganisation, which is the centrepiece of a Chapter 11 reorganisation plan. The debtor has exclusive right to propose a Chapter 11 plan and seek creditors' approval of the plan for a period of 120 days. If the exclusive period ends, then creditors or a committee of creditors can propose their own plans or compete with a debtor's plan (Mindlin, 2013, p.3). When a Chapter 11 rescue is successful, the company emerges from the process as a healthy company (Association of Business Recovery Professionals, 2011, p.1).

2.6.2. Success factors of the USA rescue mechanism

Mindlin (2013, p.18) highlighted some of the features of Chapter 11 that contribute to its success. An important feature is the active role of creditors. He noted that an official committee of creditors is appointed in most sizeable Chapter 11 cases. In addition, advisors to the creditors' committee are paid by the company after the court's approval of their fee applications. Apart from the committees, Mindlin (2013) noted that large creditors play an important role in the case. Bankruptcy judges are experienced specialists who possess sound commercial judgement as they have handled thousands of cases and have practiced as bankruptcy lawyers for many years.

Another key feature highlighted by Mindlin (2013) is the availability of Chapter 11 funding. This funding results in companies having a better chance of meeting their liquidity needs after filing. Exit financing is also easily available. Many investors are eager to acquire companies that have entered Chapter 11. In addition, there is good access to information. Mindlin's (2013) view is supported by Bharath *et al.* (2013, p.10) who emphasised the increase in the availability of funding for a Chapter 11 reorganisation as a success factor. They also highlighted the emergence of Key Employee Retention Plans (KERP), which enable key, high-earning employees to receive court approved bonuses to induce them to remain with the firm during the reorganisation (Bharath *et al.*, 2013, p.13). Many creditors have concluded that providing these incentives to management was preferable to the time-consuming and disruptive process of recruiting new managers. Other factors cited include management's exclusive right to propose a reorganisation plan within 120 days.

Warren and Westbrook (2009, p.629) concluded that a key success factor of a Chapter 11 rescue is the speed at which cases are resolved. Their study highlighted that a typical Chapter 11 turnaround was resolved in about nine months and that the average time for the resolution of a case was about 11 months. Bracewell and Giuliani (2012, p.24) highlighted the use of pre-packaged plans. This involves an arrangement whereby the debtor's plan, on the first day of court proceedings, is accompanied by votes confirming the plan. This arrangement is achieved as the debtor coordinates with major creditor groups prior to filing for Chapter 11 and a plan is agreed to in advance. One of the distinguishing factors is that management continues to run the business (Association of Business Recovery Professionals, 2011, p.1).

In summary, a review of the USA Chapter 11 indicated that the success factors relating to rescue provision are the continued involvement of management in the business, the establishment of specialist bankruptcy courts, involvement of creditors in the process, the utilisation of specialist advisors, punitive measures to prevent wrongful filing and process abuse by creditors, and the time frame of 120 days to come to a scheme of arrangement, utilisation of judges and specialist lawyers. Another international formal rescue mechanism that is popular is the English system of Administration.

2.7. ENGLISH RESCUE MECHANISM

The English formal mechanism to rescue a financially distressed company is referred to as administration and is considered the best contender to rank with Chapter 11 (Pretorius & Rosslyn-Smith, 2014, p.116). According to Museta (2011, p.57), the primary goal of administration is to rescue a financially distressed company as a going concern. If this primary goal is not achievable, then administration seeks a better result for the creditors or the distribution to secured or preferential creditors in the event of a liquidation. A key difference to the USA's Chapter 11 is that the English system involves the appointment of an administrator to oversee the process and therefore utilises a "practitioner-in-possession" principle, as opposed to the USA's debtor-in-possession (Pretorius & Rosslyn-Smith, 2014, p.116). The process of administration is legislated according to the Enterprise Act of 2002.

2.7.1. Overview of English rescue mechanism

The Enterprise Act aims to achieve a successful resurrection of a financially distressed company by the creation of breathing space during which a company is given time to formulate a plan for a reorganisation (Jones Day, 2007, p.8). Loubser (2010, p.56) noted that administration is only possible when approved by the courts and that such approval relies heavily on the information supplied by the prospective administrator. The notification process does not require the general body of creditors to be informed and is limited to the company, applicant and prospective administrator, who must be appointed before the application.

The strictly regulated system of appointment of the administrator is an important feature of the success of the process (Loubser, 2010, p.197; Museta, 2011, p.59). An important feature of the appointment is the strict prohibition of an administrator who is not a member of a professional body or authorised by the Secretary of State (Loubser, 2010, p.198). Acting as an administrator without the required qualification is an offence which may be sanctioned by imprisonment or a fine (Museta, 2011, p.59).

Management of a company in administration is required to carry out their statutory duties during the administration period (Museta, 2011, p.61). Within eight weeks of the administrator’s appointment, a proposal for achieving a rescue of the business must be presented and such proposal requires a simple majority vote of those creditors present voting. An administration expires after 12 months unless the court approves an extension (Jones Day, 2007, p.15). Loubser (2010, p.246) noted similarities between the South African Chapter 6 rescue legislation and the UK system of Administration, such as the appointment of a practitioner/administrator, and advised the use of changes in the South African legislation to address current shortfalls to the appointment of a business rescue practitioner. These shortfalls relate to the absence of a system of accreditation for business rescue practitioners.

When businesses experience financial distress, a liquidation or forced closure can be prevented by undertaking an informal turnaround or a legislated rescue. The evaluation of turnarounds, the USA Chapter 11 and the English Administration procedure highlighted certain factors of success. These are summarised in Table 2.3.

Table 2.3: Success factors relating to turnarounds and formal rescues

MECHANISM FOR REHABILITATION	SUCCESS FACTOR
Turnaround	• The utilisation of early warning signals to anticipate a financial crisis • A competent management team with adequate authority to implement changes • A well written turnaround plan • A time frame of at least six months to a year • Early planning and preparation • Availability of funding for the turnaround • Effective communication with all stakeholders • Motivating employees • Emphasis on strategy • Proactive involvement by government and related agencies • Proactive involvement of banks and financial institutions • Companies possessing higher total assets and more cash flow
USA Chapter 11 rescue	• Active role of creditors' involvement in a creditors committee • Specialists courts, well qualified and experienced judges and lawyers • Availability of funding for distressed companies • Key employee retention plans • Management's exclusive right to propose a reorganisation plan in the first 120 days • Average duration of a turnaround is approximately one year • Management continues to oversee the business • Early planning of the rescue by means of a pre-packaged plan
UK Administration	• Strict regulation relating to appointment of an administrator • Early planning of process • Simple notification process that does not require notification of entire body of creditors • Early warning systems used to detect financial distress • Management continues with their statutory responsibilities

The utilisation of these factors reflected in Table 2.3 in the planning and performance of turnarounds (both informal and legislated) will enhance the knowledge of the process and improve the chances of rehabilitating a distressed company. A key finding that emerged is the need to properly manage the turnaround or rescue. The informal turnaround stresses the need for a competent management team. Both the USA and English rescue mechanisms highlight the effective management of the process as a success factor. The English mechanism facilitates this effective management by prescribing a regulatory process for the appointment of the administrator. It is evident that there is an emphasis on the management of the formal and informal rehabilitation.

2.8. SOUTH AFRICAN BUSINESS RESCUE PROCESS

The business rescue process, introduced in 2011, affords companies that experience financial distress "breathing space" from claims by its creditors whilst it restructures its affairs (GCF Research Institute, 2011, p.5). The provision of this breathing space provides temporary relief to the distressed company and enables it to make changes to its ownership, management and operations that will allow for its rehabilitation and survival. In this manner a company that successfully implements the business rescue will be able to avoid the impact of closure. The business rescue process prescribed is discussed next, in three phases, as illustrated in Figure 2.6.

Figure 2.6: Sequence of business rescue process

Figure 2.6 illustrates the flow of the rescue process from the inception or the application for business rescue until the implementation of the business rescue plan. The researcher reviewed each of these three phases in order to identify and establish weaknesses in the process that contribute towards a failed rescue, thereby meeting the objectives of research objective one. As indicated in Figure 2.6, the first phase to be discussed next is the commencement of the business rescue.

2.8.1. Commencement of business rescue proceedings

According to Chapter 6 of the Companies Act, Act No.71 of 2008 (RSA, 2008), business rescue proceedings can commence either voluntarily by a company in accordance with a Section 129 company resolution or by an affected person applying for a court order in terms of Section 131.

In terms of Section 129, a company can voluntarily begin business rescue proceedings if the board has reasonable grounds to believe that the company is financially distressed and there appears to be a reasonable prospect of rescuing the company. The section further states that the Section 129 resolution to commence proceedings is only effective when it is filed with the CIPC. In terms of Section 131, any affected person of the company may apply to the court for an order to commence business rescue. An affected person is defined in Section 128 as a shareholder or creditor of the company, any registered trade union representing employees of the company and, if any of the employees are not represented by a registered trade union, each of those employees or their respective representatives. When an application for business rescue is undertaken in terms of this section, the court may provide an order to place the company under business rescue provided it is satisfied that the company is financially distressed; that the company has failed to pay over any amount in terms of an obligation or contract with respect to employment-related matters; and that there is a reasonable prospect for rescuing the company.

2.8.1.1. Financial distress

An important criterion for the application of business rescue is that the business must be financially distressed. Although the intention of business rescue legislation is to encourage companies to apply for business rescue when experiencing financial difficulty, the conditions stipulated for the application restrict a distressed company from early application and commencement of business rescue. According to the definitions contained in Section 128, a company is classified as financially distressed if it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become payable and due within the immediate ensuing six months or it appears to be reasonably likely that the company will become insolvent within the immediate ensuing six months.

Limiting the application of the procedure to companies that are reasonably unlikely to pay their debts in the ensuing six months or reasonably likely to become insolvent in the ensuing six months prevents companies that are proactive in detecting or anticipating financial distress in an ensuing period of more than six months. Loubser (2010, p.58) noted that six months is a very small time period and that the requirement for financial distress, to be effective and proactive, should be at least 12 months so that a business rescue can be applied for earlier. Her view was supported by KPMG who felt the period to anticipate financial distress should be at least 12 months to enable early detection of financial distress (Loubser, 2010, p.58). The earlier review of turnaround success factors highlighted the importance of early identification of financial decline. Bibeault (1999) suggested the use of the Altman Z score prediction model to facilitate the detection of financial distress approximately two years before the actual distress. Bormann *et al*. (2010) concluded that early planning and preparation will improve the chances of executing a successful turnaround.

Early detection and its corresponding timeous response to financial distress is viewed as a success factor in restoring financial viability (Borio, 2012, p.5). As noted by the court in Welman vs Marcelle Props CC, business rescue proceedings are not for the terminally ill or for the chronically ill, rather they are meant for ailing corporations which can be rescued and become solvent (Geach, 2014). Bussiere and Fratzscher (2006, p.956) believe that it is desirable to diagnose economic vulnerabilities as early as possible in order to plan a successful remedial response, thereby ensuring that a business does not become terminally or chronically ill. Although Levenstein (2011, p.4) recommended that companies, on the first sign of financial distress, apply for business rescue, this is not possible under the current regime if the distress is anticipated to occur in the ensuing period of more than six months. Waiting for the six-month period may result in the conversion from an ailing company to a chronically or terminally ill company which will reduce the chances of a successful rescue. Therefore, it is essential that the commencement of business rescue occurs as early as possible in order to enhance the chances of success (Institute of Directors in Southern Africa, 2009, p.2).

The benefits of an early commencement of a business rescue are illustrated in the successful business rescue of Shelly Point Hotel (Muller, 2014). The hotel entered into business rescue due to the owner's early anticipation of working capital difficulties. A business rescue application was undertaken before the financial difficulties became significant. The filing of business rescue enabled Shelly Point Hotel to procure post rescue finance and reduce expenditure (Muller, 2014). The company also enhanced its marketing activities and appointed new management, thereby allowing for a successful rehabilitation. In this case, the early commencement of business rescue facilitated the timeous arrangement of post rescue finance and a successful rescue.

2.8.1.2. Rights of affected parties

Although Section 131 affords an affected person an opportunity to commence business rescue proceedings, a practical difficulty of this section is that every affected person has the right to be part of the court proceedings. As noted earlier, the definition of an affected person is extremely wide. Conferring of this right on affected persons leads to protracted hearings and escalating costs which will ultimately discourage its use (Loubser, 2010, p.84). The complexities of informing all affected persons and the negative impact on the business rescue process were illustrated in the case of Engen Petroleum vs Multiwaste (Pty) Ltd whereby the court held that all reasonable steps must be taken to notify affected persons by delivering a copy of the court application to them. The business rescue application was dismissed due to the non-compliance of informing affected persons of the application (Geach, 2014). The earlier review of the English rescue mechanism noted the simplified notification process whereby the general body of creditors do not have to be informed of an application for rescue (Loubser, 2010).

Due to the complexity and costs involved in applying for a business rescue by means of a court application, the more common route followed to commence business rescue is in terms of Section 129 whereby the company files a resolution for business rescue. Figure 2.7 illustrates the applications for business rescue undertaken in 2012 and 2013 and indicates that a majority of business rescue commencements were by means of company resolutions rather than court applications by affected persons. This statistic supports the contention by Loubser (2010) that the complexity and costs of informing affected parties discourages the use of the business rescue by affected parties.

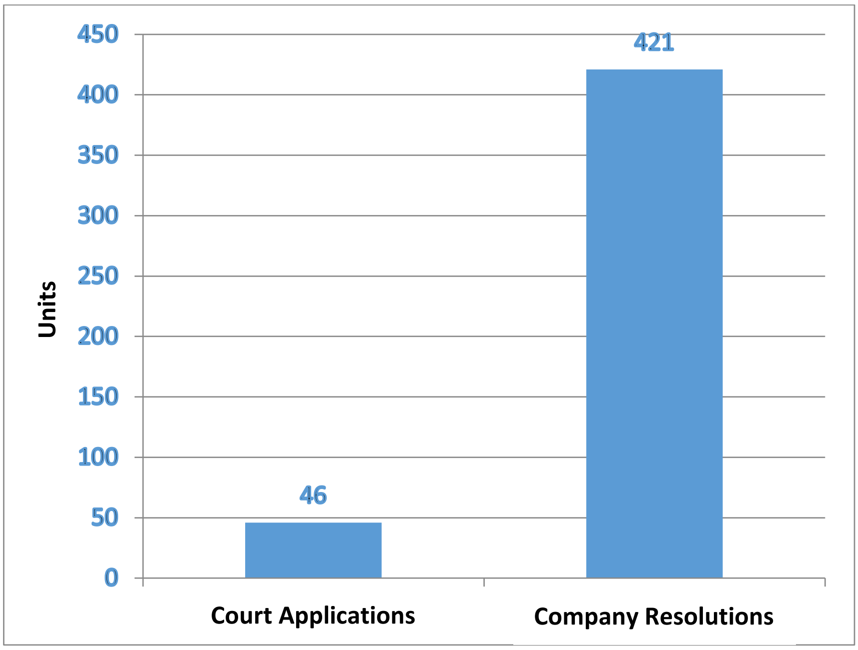

Figure 2.7: Applications to commence business rescue

Source: Adapted from Lotheringen, A. 2013. *Going Out of Business Rescue or Getting Rescued. What are the Odds?* [Online]. Available WWW: http://www.tma-sa.com/events/event-presentations/60-presentation-by-amanda-lotheringen-of-cipc-october-2013/file.html (Accessed 4 December 2015).

It is evident from Figure 2.7 that less than 10% of the applications for business rescue are in the form of a Section 131 court application. The low number supports the assertion that the requirements of keeping all affected persons involved and informed will discourage its use and hence the opportunity to rehabilitate a financially distressed company.

2.8.1.3. Time frames

In addition to the onerous requirements, and the associated costs, of informing all affected parties of the details of a Section 131 court application for business rescue, there are other areas of the application process that affect the success of a business rescue. An example of this is the tight deadlines that have been imposed to file company resolutions with the CIPC on commencement of business rescue. In Climax Concrete Products vs Evening Flame Trading 449 (Pty) Ltd and others, the court held that the company resolutions did not comply with the time frame prescribed and therefore held that the application for business rescue was irregular and of no force or effect. The resolution to commence business rescue proceedings was therefore set aside (Geach, 2014). As illustrated in this case, a delay in meeting any of the stringent deadlines renders the business rescue a nullity. According to business rescue statistics reflected in Table 1.1, approximately 10% of business rescues were terminated due to proceedings being declared a nullity. These time frames indicate the need for a financially distressed company to adopt a proactive stance in the application for business rescue. A study by Nedbank on the impact of the business rescue process highlighted the need for the company applying for business rescue to be proactive rather than reactive. The study emphasised the importance of following a hands-on approach by engaging with all stakeholders prior to the application of business rescue (Van der Burgh, 2013). Le Roux and Duncan (2013, p.62) observed that a major concern of creditors is that they are often unaware that the business applying for business rescue is experiencing financial problems. The authors suggested effective communication between the company applying for business rescue and its creditors as a means to effectively address this problem. This concern can also be mitigated by following the advice of Van der Burgh (2013) and enabling effective communication of financial difficulties between the distressed company and its stakeholders prior to filing for business rescue.

The CIPC has indicated that in order to ensure that key considerations of the business rescue process are not overlooked, it is important to undertake as much of the financial analysis prior to the filing of business rescue (Terblanche, 2014, p.3). Internationally, it has been found there have been several recent innovations to the Chapter 11 reorganisation in the USA and one of these relates to the increasing number of Chapter 11 filings that are pre-packaged and pre-negotiated with creditors (Bharath *et al*., 2013, p.1). This reinforces the importance of planning a business rescue prior to an application to formally commence the process.

Pretorius (2012) established the relationship between a successful business recue and the time taken to complete a business rescue. Figure 2.8 illustrates the impact that time has on the success of a business rescue.

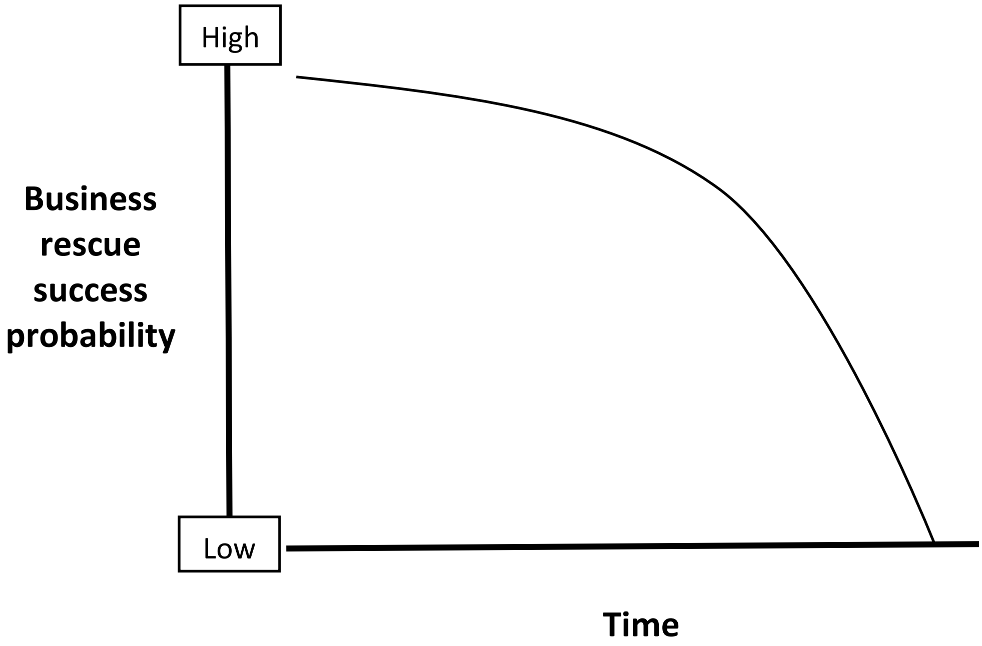

Figure 2.8: Relationship between probability of business rescue success and time to completion

Source: Pretorius, M. 2012. *Business Rescue Plans – Overview.* s.n., s.l.

It is evident from Figure 2.8 that to improve the chances of a success, a business rescue must be completed as soon as possible. Any delay in the business rescue process reduces the chances of a successful rescue. The relationship highlights the importance of a carefully considered and planned business rescue application. It serves to support the assertion by Terblanche (2014) and Van der Burgh (2013) that much of the consultation and important decisions, such as the selection of the business rescue practitioner, should be undertaken prior to the application and commencement of business rescue. It is evident that time spent on these activities after the commencement of business rescue reduces the chances of a successful business rescue.

These principles are consistent with international research by the Association of Business Recovery Professionals (2011). Their study established that, when comparing Chapter 11 success rates to the UK business rescues, it is clear that a greater chance of a successful business rescue exists in the USA due to the company management's willingness to plan and prepare for a rescue in the early stages of business difficulty. Due to the stringent time frame stipulated by business rescue legislation, and the need for the rescue to be completed as quickly as possible, it is vital that a company contemplating business rescue commences with the planning of the process prior to the application for business rescue (Bharath *et al*., 2013, p.1). Therefore, as soon as a company contemplates the commencement of business rescue, it is essential to immediately commence pre-negotiating important aspects such as the appointment of the practitioner, rescue plans and funding of the rescue (Institute of Directors in Southern Africa, 2009, p.2).

2.8.1.4. Abuse of business rescue

An important distinction between the two methods of application for business rescue relates to the fact that if a company has commenced liquidation proceedings it can only apply for business rescue by means of a Section 131 court application and not by a company Section 129 company resolution. Whilst there may be merits or flexibility to the Section 131 arrangement by providing a company in liquidation the opportunity to resume operations as a going concern, such an opportunity also allows for the abuse of the business rescue process. Lovells (2014, p.1) noted that a business rescue that merely seeks to delay liquidation proceedings prejudices the creditors of the company. The example utilised by them to illustrate possible abuse of the process is where directors use a business rescue application to interrupt an insolvency inquiry into the affairs of the company during liquidation. Such a situation will result in an unnecessary delay in liquidation hearings and have a detrimental impact on the success of the business rescue. Although such abuse of the rescue process is reduced by the requirements of proving that a reasonable prospect exists for rehabilitation, Wassman (2014, p.5) noted that the possibility for a frivolous application exists which will result in the abuse of the rescue process. There is a growing concern in the business rescue industry of such process abuse by shareholders and creditors to utilise business rescue as a mechanism to gain time for asset stripping before an eventual liquidation (Pretorius, 2014, p.2; Visser, 2013, p.1). In such instances, the abuse of the process, in addition to a failed business rescue, results in a reduced liquidation dividend to creditors of the company.

Museta (2011, p.26) provided another example of abuse of the business rescue process by citing the possibility of a trade union applying for business rescue only because the application will confer the union with a right to inspect relevant financial information, such as financial statements. This information can then be used to improve the union's bargaining position during wage negotiations. If the union is not intent on pursuing the business rescue until the successful implementation of an approved business rescue plan, the rescue will be terminated and classified as a failure.

The process to commence business rescue thus highlights how certain factors can contribute to a failed rescue. These factors are the onerous requirement that all affected parties have a right to be involved in the business rescue and the cost implications, preventing an application for business rescue if the period of financial distress is greater than six months, the potential for abuse of the process and tight procedural deadlines.

2.8.2. Business rescue practitioner

Bradstreet (2010, p.201) highlighted the importance of effectively managing the business rescue. His contention was that the functions and terms of appointment of the practitioner are of utmost importance when assessing the overall merit and success of the business rescue process. The appointment of a strong business rescue practitioner is a key success factor in business rescues (Bezuidenhout, 2012, p.25). His research established that the key success factors in a rescue are strong and strategic leadership, a strategic plan, a measureable action plan and a motivated management team. Levenstein (2011) concurred with these views by emphasising the vital role of the business rescue practitioner in the success of a business rescue. The assertions about the practitioner's contributions to the success of the business rescue are supported by international research. For example, research into the Finnish Restructuring of Enterprises Act identified management of the restructure, combined with cash generation, as being significantly more important in the successful rescue of a business (Collett, Pandit & Saarikko, 2014, p.134). The authors' earlier review of factors of success relating to turnarounds illustrated the importance of the effective management of turnarounds.

Accordingly, the next section deals with the appointment and responsibilities of a business rescue practitioner. It serves to establish factors about the appointment and functioning of the practitioner that contribute towards the failure of a business rescue. The review of the commencement of business rescue contrasted the Section 129 company resolution and Section 131 court application process. If business rescue is commenced by a company resolution, the company must appoint a business rescue practitioner within five days of filing the resolution. In addition, the company must file a notice of the appointment within two days of making the appointment and must publish the notice of the appointment of the business rescue practitioner within five business days after that notice was filed with the CIPC. If the business rescue commences by court order then, in terms of Section 131(5), the court may appoint an interim practitioner until the first meeting of creditors, wherein that interim appointment must be ratified by the holders of the majority of the independent creditors' voting interest. A practical difficulty experienced in both methods of appointment is the short time frame to implement statutory requirements.

2.8.2.1. Appointment

A business rescue practitioner must be appointed within five days in the event of a Section 129 commencement. A justification for ensuring that there are stringent deadlines for the appointment of the business rescue practitioner is to counterbalance the possible negative impact that the business rescue process may have on the rights of creditors (Roodt Incorporated Attorneys, 2014, p.1). However, the requirement to appoint a business rescue practitioner within five days is onerous and affects the success of a business rescue due to the possibility of non-compliance. It is therefore vital that consideration be given to the selection and engagement with the practitioner before the commencement of the business rescue, irrespective of whether the appointment is by company resolution or court application.

2.8.2.2. Appointment by court resolution

If business rescue commences by court application, Section 131(5) states that the court may make a further order to appoint an interim business rescue practitioner. Loubser (2010, p.91) noted that the court is not obliged to appoint a business rescue practitioner in the case of a rescue commencing by court application and that if the court decides not appoint a practitioner on application, there could be a situation where the rescue process commences without a business rescue practitioner. This delay in the appointment of a business rescue practitioner results in a situation where a company is under business rescue, but with no-one to supervise the business rescue. Such a situation causes immense harm to the process and prejudices the successful implementation of the business rescue plan (Levenstein, 2011, p.33). Once again, this section serves to highlight the importance of a well-planned business rescue that focuses on the identification and selection of a business rescue practitioner before the application for business rescue. It is also important to ensure that the business rescue practitioner is suitably qualified for the appointment.

2.8.2.3. Qualifications

Section 138 of the Act deals with the qualifications of the business rescue practitioner and states that a person may only be appointed as a business rescue practitioner if that person is a member in good standing of a legal, accounting or business management profession accredited by the CIPC. In addition, a person can only be appointed as a business rescue practitioner if they are not disqualified from acting as a director and are not subject to an order of probation. Currently a business rescue practitioner's appointment must be approved by the CIPC that needs to issue an interim conditional licence for the specific company that has applied for business rescue (Terblanche, 2014, p.3).

There are no clear criteria or prerequisites in terms of skill or experience for appointing a business rescue practitioner, other than those highlighted in the discussion on Section 138 (Pretorius, 2013a, p4). As the authority that regulates the appointment of business rescue practitioners, the CIPC urgently needs to adopt a framework for the licensing of business rescue practitioners (Pretorius, 2013a, p.24). Although the CIPC is considering the establishment of an accredited competency framework for the licensing of business rescue practitioners to address the issue, a stipulated time frame has not been provided yet (Terblanche, 2014, p.3). Given the emphasis on the importance of the management of business rescue and the focus on the business rescue practitioner, it is concerning that the South African regulatory authorities have not established a regulatory authority for the accreditation of business rescue practitioners. The regulatory authority can function on a similar basis as that of the auditing profession which has specific skills and practical experience requirements (Pelser, 2012, p.1). The appointment of a regulatory body is especially important in light of some of the complaints about certain business rescue practitioners who lack the skills to successfully rehabilitate a company that experiences financial distress (Pretorius, 2014, p.2). Such a body could ensure that there is a well-defined set of accreditation criteria to ensure that the practitioner is equal to the task of the stipulated responsibilities.

2.8.2.4. Responsibilities and remuneration

The responsibilities of the practitioner are defined by Section 140 of the Act which states that the practitioner of the company has full management control of the company in substitution of its board and pre-existing management. This control will entitle the practitioner to appoint and remove any person from office of the company. However, it also ensures that directors and management can continue in office and fulfil their mandate to the business (Museta, 2011, p.29). According to Section 140, an important responsibility is to develop a business rescue plan to be approved by the creditors and, if approved, to implement that business rescue plan. In order to fulfil these important responsibilities, the practitioner is remunerated in accordance with Regulation 128 of the Companies Act.

This regulation allows a business rescue practitioner to charge a maximum rate of R15 625, R18 750 and R25 000 per day for a small, medium and large sized company respectively. The structure of the remuneration, based on the time spent on the business rescue, has resulted in business rescue stakeholders voicing their concerns about the exorbitant fees that practitioners charge and the poor quality of performance (Pretorius, 2013a, p.2). These fees result in an escalation of the costs of business rescue and reduce the funds available for a successful rescue (Visser, 2013, p.1). Some practitioners are incorrectly placing companies in business rescue, managing several companies in business rescue simultaneously, or filing for termination of business rescue too late in order to earn unwarranted fees (Du Preez, 2012, p.143).

In addition to the daily fees, a practitioner may be entitled to further remuneration in the form of a contingency fee if a desired result is obtained or for the adoption of the plan within a particular period. There may be instances where the changing of a contingency fee will impact on the independence and objectivity of the practitioner. This will provide a reason to remove the practitioner from the appointment, thereby adversely impacting on the rescue.

2.8.2.5. Removal

The business rescue legislation allows for the removal of a practitioner. Section 139 of the Act deals with the removal and replacement of a practitioner and states that the practitioner can only be removed by a court order for reasons relating to the following: incompetence or failure to perform the duties of a practitioner; failure to exercise a proper degree of care in the performance of the practitioner's duties; engaging in illegal acts or conduct; conflict of interest or lack of independence; if the practitioner is incapacitated and unable to perform the functions of the office and is unlikely to regain that capacity within a reasonable time. In such an instance of removal, or death or resignation of the practitioner, the company or the affected creditor who nominated the practitioner must appoint a new practitioner.

Whilst the legislation provides grounds for the removal of the practitioner, there is no flexibility in the reappointment of a new practitioner in relation to a court appointed practitioner. As noted by Loubser (2010, p.92), the creditor that brought the original application for the rescue and appointment of the first business rescue practitioner will be responsible for the appointment of a new practitioner.

A major oversight in the appointment of a business rescue practitioner is the absence of a procedure for the accreditation of business rescue practitioners. An accreditation process will alleviate some of the concerns relating to the competency of business rescue practitioners, the exorbitant fees charged by the practitioner, the inability to complete the task on time and shortcomings relating to practitioners adhering to the reporting requirements (Voller, 2011). An important task of the practitioner is to prepare a rescue plan for the approval of creditors before it can be implemented.

2.8.3. The business rescue plan

According to Section 150 of the Act, the business rescue practitioner must, after consultation with the creditors, other affected persons and management, prepare a business rescue plan for consideration and possible adoption at a meeting. The development of the plan, approval thereof by the creditors and the subsequent implementation to rehabilitate the financially distressed company, have been identified as a major innovation of the business rescue process (Loubser, 2010, p.115). An important feature of the plan is that it affords businesses the opportunity to avoid liquidation by involving affected parties in its compilation and approval. To assist affected parties in the analysis and voting on the plan, the plan must be structured to include the vast amount of relevant information and must adhere to the requirements of Section 150 (Museta, 2011, p.37).

2.8.3.1. Legal information required for preparation

The structure of the plan is prescribed by Section 150 of the Act. The plan must comprise of three components, namely the background, proposals and assumptions. These components enable a creditor to decide whether to accept the plan for the implementation of business rescue. Section 150 of the Act prescribes the minimum information that must be contained in the plan before it can be published for voting by affected creditors. This information is reflected in Table 2.4.

Table 2.4: Information required for the business rescue plan

PART A: BACKGROUND	PART B: PROPOSALS	PART C: ASSUMPTIONS
• A complete list of the assets and creditors of the company • Probable dividend that would be received by creditors in the event of liquidation • List of the holders of the company's issued securities • Written agreement concerning the practitioner's remuneration	• The nature and duration of any proposed debt moratorium • The extent to which the company is to be released from the payment of its debts and the extent to which the debt is proposed to be converted into equity • The ongoing role of the company and the treatment of existing agreements • The property of the company that is proposed to be available to pay the creditor's claims • The order of preference with which the creditors will be paid if the proposal is adopted	• A statement of the conditions that must be satisfied for the proposal to come into operation and be fully implemented • The effect that the plan will have on the number of employees and their terms and conditions of employment • A projected balance sheet and statement of income and

PART A: BACKGROUND	PART B: PROPOSALS	PART C: ASSUMPTIONS
• Whether the plan includes a proposal made informally by a creditor of the company	• The benefits of adopting the proposal as opposed to the benefits received by the creditors if the company is liquidated	expense for the ensuing period of three years if the proposal is accepted

Source: Adapted from Republic of South Africa (RSA). 2008. *Companies Act,* no. 71 of 2008. Government Printer, Pretoria.

The required information listed in Table 2.4, will enable affected parties to decide whether or not to support the business rescue plan. In addition to the above information, Section 150 requires that the proposal must conclude with a certificate by a prescribed officer or an authorised director. This certificate must state that any factual information appears to be correct, complete and up to date and that the projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.

The business rescue plan, prepared in accordance with Section 150, represents a contract between the creditors and the rescue practitioner. It therefore forms an integral part of the entire business rescue process (Pretorius, 2012, p.11). When presented to creditors for voting, the plan will be open to scrutiny and evaluation to assess whether the company can be rehabilitated into a commercially viable entity. It is therefore important that a business rescue plan must not only seek to achieve legal compliance with the Act, but must also address the commercial matters that are important to achieve a rescue.

2.8.3.2. Commercial viability

According to Pretorius and Rosslyn-Smith (2012, p.12), the business rescue plan must include information about the rescue strategy, implementation measures that will facilitate decision making and, most importantly, information to facilitate the important goal of obtaining post commencement finance. An important principle of goal-setting theory holds that planning improves most subsequent human action (Locke & Latham, 1990 as cited in Shane & Delmar, 2004, p.768). Based on a multitude of studies, the major finding of goal-setting research is that individuals who are provided with specific goals perform better than individuals with non-specific or no goals (Lunenburg, 2011, p.1). This theory suggests that the effective development of a business rescue plan, with specific goals, will enhance the important activities of the company that is being rehabilitated (Shane & Delmar, 2004, p.768).

A well-developed business plan has been highlighted as a tool that has an important positive impact on the achievement of venture development milestones (Gruber, 2007, p.801). Brinkman *et al.* (2010, p.25) concluded that effective business planning increases the performance of new ventures and that the absence of proper business planning structures and procedures limits the effectiveness of the return on the business plan. Considering the positive impact that a business plan has on the financial success of the business, it is concerning that an evaluation of business rescue plans in 2011 reflected an absence of supporting evidence and assumptions relating to financial projections (Pretorius, 2012, p.21). This is counterproductive to the principle of goal setting, especially considering the importance of a business plan as a mechanism to raise finance and the importance that investors place on business plans (Brinkman *et al*., 2012, p.25). The evaluation found that plans contained very little information relating to cash flow and the impact of the successful rescue on employment (Pretorius, 2012, p.21).

2.8.3.3. Analysis

The evaluation of business rescue plans undertaken by Smith (2011 as cited in Pretorius, 2012, p.22-23) indicated that most of the business rescue plans that had been prepared contained an insufficient amount of information concerning the requirements of Section 150 (Figure 2.9).

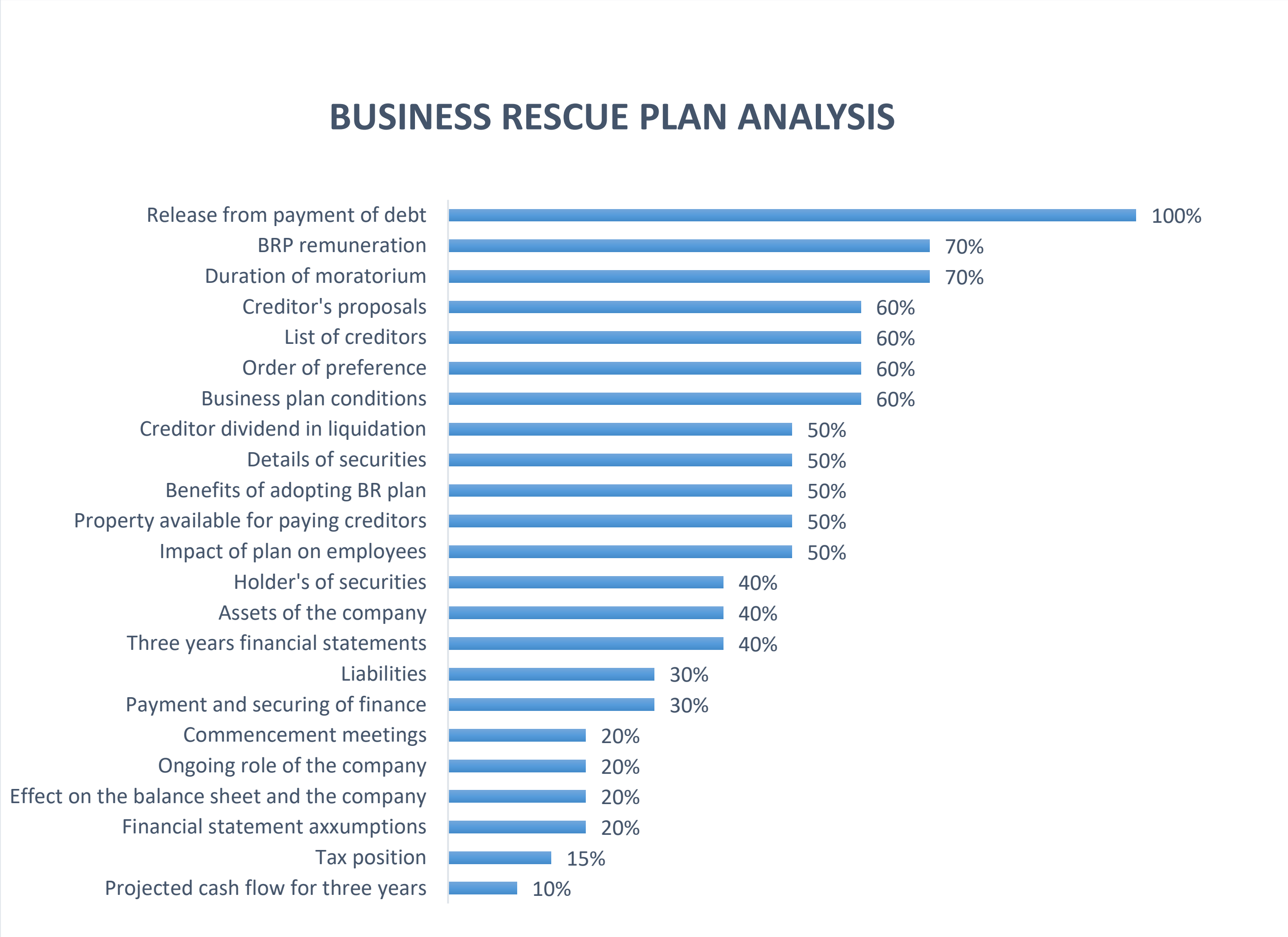

Figure 2.9: Analysis of business rescue plans

Source: Adapted from Pretorius, M. 2012. *Business Rescue Plans – Overview*, p. 22.

Figure 2.9 reflects the percentage of the analysed business rescue plans that provide information relating to the requirements of Section 150. It is evident from Figure 2.9 that business rescue plans analysed in 2011 did not comply with the basic minimum requirements of Section 150 of the Act. For example, the above findings illustrate that less than 50% of business rescue plans contained sufficient details about projected cash flow statements, balance sheets and income statements. It is evident that very few plans complied with Section 150 and that, even worse, they did not comply with the basic requirements of business plans (Pretorius, 2012, p.1). This has negative consequences for the success of the business rescue. Shane and Delmar (2004, p.781) analysed 223 ventures initiated by Swedish entrepreneurs and concluded that these ventures would have been less likely to be terminated if an effective business plan had been completed before commencing operations.

In an effort to improve the understanding of the expectations of the business rescue plan, Pretorius and Rosslyn-Smith (2014, p.127) assessed the business rescue planning process in the USA, the UK, Canada and Australia. The assessment provided the following important guidelines for the development of business rescue plans. These guidelines suggest that, in addition to meeting the legal requirements, a business plan must serve:

- as a tool for feasibility declaration,
- as a medium of communication,
- as an enabler of transparency,
- to highlight contractual obligations, and
- to attract and secure post commencement funding (Pretorius & Rosslyn-Smith (2014, p.127).

Due to the immense value that planning activities have on the success of a business, it follows that businesses devote ample resources in the preparation of a business plan that meets the requirements outlined by Pretorius and Rosslyn Smith. In this regard, there is concern that Section 150 requires the business rescue plan to be prepared within the short time period of 25 days from the date of appointment of the business rescue practitioner. Loubser (2010, p.126) noted the importance of the preparation of an effective business rescue plan and suggested that the period of 25 days was too short a time period to complete this important task. The contention that the 25-day period is too short is justified when considering the level of detail that the business rescue plan must contain. The tight deadline imposed by the Act will inevitably result in a substandard plan that does not meet the above objectives of Business Plans as established by Pretorius and Rosslyn-Smith (2014). Whilst there has been an argument for completing the business rescue as quickly as possible to prevent prejudicing the rights of creditors (Roodt Incorporated Attorneys, 2014, p.1), it has been conceded that the negative impact of the time lost on planning can be offset by the beneficial effects of planning activities (Gruber, 2007, p.801). These planning activities will enhance the ability of the financially distressed entity to source post rescue finance.

2.9. POST COMMENCEMENT FUNDING

Post commencement finance refers to the funds that are lent to the company after the commencement of business rescue (Pretorius & Du Preez, 2013, p.169). In an effort to encourage financial institutions and other lenders to finance a company in business rescue, Section 129 of the Companies Act of 2008 stipulates that funds lent to the business as post commencement finance will have preference over other funds borrowed by that company, including those secured by assets, in the event of liquidation. Although Section 129 of the Act has been written to encourage the funding of businesses in business rescue, the CIPC has noted that there is still scepticism from the formal credit sector, especially banks and the South African Revenue Services, to provide funding for a company that has been placed under business rescue (Lotheringen, 2013; Du Preez, 2012, p.13).

The South African financial services sector is at odds with research that demonstrates the importance of funding for a distressed company. Carter and Van Auken (2006) compared a sample of firms that filed for bankruptcy with those that survived. They identified significant differences between businesses that failed and those that were rescued. An important finding of their study was that those firms that were liquidated rated cash flow as being significant and that access to cash by a distressed company can prevent liquidation. Although these findings were made approximately nine years ago, they are consistent with findings of later studies by Vriesendorp and Gramatikov (2010), Du Preez (2012), Pretorius (2012) and Mindlin (2013). These studies emphasised the funding of a business in distress as an essential aspect of business survival and rescue.

An important success factor for the rescue of any underperforming business is the availability of funds to sustain its operations (Vriesendorp & Gramatikov, 2010). Furthermore, within the context of a company in business rescue, it is vital for the business rescue practitioner to secure funding for that business (Du Preez, 2012, p.1). Pretorius (2012) indicated that a lack of post rescue finance is one of the key reasons why business rescues fail. Mindlin (2013, p.20) highlighted key features of the USA Chapter 11 Bankruptcy Code that have contributed towards its success. He noted the readily available funding to distressed business as one of the key features. Often businesses are encouraged to file for rescue because accessible funds allow for those businesses to better meet their liquidity requirements. In the UK, many firms were adversely affected by the reduction in lending, caused by the financial crisis. This created barriers to the business growth in the UK (Mason & Harrison, 2013, p.2).

Du Preez (2012, p.143), analysing the status of post commencement finance for business rescue in South Africa, concluded that the primary reason for lenders' disinterest in the provision of post rescue finance is the impact and profile of the business rescue practitioner. Her study attributed this to the lack of a formal accreditation body for the certification of practitioners. Other factors highlighted by Du Preez (2012) for the financial sector to fund a business rescue were the unavailability of unencumbered assets to attract funding and the fact that financiers did not have comfort in the business rescue plan to demonstrate a viable business proposition.

It is evident that a success factor of business rescue is the ability of the distressed business to acquire sufficient funds. Due to the reluctance of the financial sector to fund business rescues in South Africa, many companies under business rescue are unable to complete a successful rehabilitation. It is also evident that the justification provided by the financial sector for not funding a business rescue is based on the profile of the business rescue practitioner and an ineffective business rescue plan. In addition, there are other factors that impact negatively on the success of a business rescue and these are discussed next.

2.10. OTHER FACTORS THAT CONTRIBUTE TO FAILURE

A factor that impacts on the success of a business rescue is the lack of the South African justice system to adequately handle business rescue cases (Ensor, 2014). Although business rescue is defined as a non-judicial, commercial process, there is still a high reliance on the courts to ensure compliance. For example, it was previously noted that an affected party can apply to the court for the commencement of business rescue and that every affected person has the right to be part of court proceedings. It has also been noted that a business rescue practitioner can be removed from office by order of the court in terms of Section 138. Whilst there is great reliance on the judiciary to enforce business rescue legislation, South African courts do not have the capacity to handle these cases. This has resulted in a lack of specialist judges, contradictory judgements and judges who do not possess adequate knowledge to consider a case (Ensor, 2014). According to Pretorius (as cited in

Visser, 2013), there have been several contradictory business rescue judgements. This indicates the need for competent judges and the establishment of specialised business rescue courts.

Another contributing factor to the failure of business rescue is the high costs of the business rescue process. As highlighted earlier in the review of the remuneration structure of the practitioner, there have been complaints about the exorbitant fees charged for managing a business rescue (Pretorius, 2013, p.2). In addition to the business rescue fee, there are complaints about the magnitude of the costs of the process (Holthausen as cited in Visser, 2013, p.1). In view of the existing strain on cash resources that a company in business rescue encounters, the additional costs of the business rescue process may reduce the chances of a successful rescue even further.

Tight deadlines have been established as factors that contribute towards difficulties in the commencement of the business rescue and the appointment of a business rescue practitioner. These difficulties are further compounded by the requirement that the entire business rescue process must be completed within three months. It appears that this short time period is unrealistic, resulting in suggestions to increase the duration to between 12 to 18 months (Loubser, 2010, p.140). A short duration of three months limits the effectiveness of the process and, although the practitioner can approach the CIPC for an extension, such an approach will lead to the incurrence of additional costs. The suggestions for an increase in the duration of the process to beyond three months appear to be reasonable in light of the fact that the average turnaround time for a completed business rescue is approximately six months (Lotheringen, 2013, p.11). Bibeault (1999) also felt that the suggestions are practical, based on the findings that an effective and successful turnaround is approximately six months to a year in duration.

A report prepared for the CIPC by the University of Pretoria Business Enterprises in March 2015 highlighted some of the reasons for failed business rescues. Data from rescues confirmed that insufficient creditor support and access to post commencement funding accounted for accounted for 21% and 15% of failed rescues respectively (Pretorius, 2015, p.42). A limitation of the report is that it does not consider the factors included in existing literature on failed business rescues. These deal with the impact that a business rescue practitioner, a lack of specialist business rescue courts and the tight time frames have on business rescue. Many of the reasons provided for failed business rescues in the report are unique and refer to specific failed rescues. These reasons include the lack of contracts for new work, labour unrest and theft of stock (Pretorius, 2015, p.43). Another limitation of the report is that it did not rank the factors that impacted on a failed business rescue.

2.11. SUMMARY OF THE REVIEW OF THE BUSINESS RESCUE PROCESSES

Although Museta (2011, p.77) indicated that there is an improvement in the business rescue process when compared to judicial management, the review identified several factors that impact negatively on the process. These factors are reflected in Table 2.5.

Table 2.5: Factors contributing towards the failure of business rescues

	FACTORS CONTRIBUTING TOWARDS FAILURE OF BUSINESS RESCUE
Commencement of business rescue	• A company can only apply for commencement of business rescue if it anticipates financial distress in the ensuing six-month period and not earlier. • Complexities and costs exist to keep affected persons involved and informed in a court application. • Affected persons and management often abuse the business rescue process. • Companies are unable to conform to tight deadlines. • The business rescue is not properly planned and communication with creditors is ineffective.
Appointment of business rescue practitioner	• Deadlines for appointment of the practitioner are tight. • Lack of an accreditation process results in appointment of incompetent practitioners. • High cost of remuneration may result in deliberate delays to earn more fees. • The contingency fee payable to a practitioner may impair judgment. • The task cannot be completed on time and deadlines are not met. • Stakeholders are not kept informed of progress. • Business plans are poorly prepared.

	FACTORS CONTRIBUTING TOWARDS FAILURE OF BUSINESS RESCUE
Preparation of a business rescue plan	• Twenty-five days are not enough to complete the rescue plan. • There is not enough focus on the commercial viability of the business. • Information is inadequate. • The plan fails to serve as an enabler of communication.
Post rescue finance	• Lack of confidence exists in the practitioner. • There is a lack of comfort in the rescue plan. • Lack of available security exists.
Other factors	• Lack of post commencement funding. • Lack of support for the process from the South African Revenue Services (SARS). • Short time period of three months for completion of the process. • Lack of judicial capacity. • Focus on legality of process rather than commercial viability complicates process and adds to costs.

The factors reflected in Table 2.5 contributed to the poor success rate of business rescue in South Africa, thereby reducing its impact. These factors relate specifically to areas such as the commencement of business rescue, post rescue funding, and the appointment of a business rescue practitioner. Concerns about the competency of practitioners were identified and complaints about the lack of skills and knowledge of business rescue practitioners were highlighted.

2.12. THE BUSINESS RESCUE PRACTITIONER

Various aspects of the practitioner's role in the success of a business rescue were presented earlier. It was established that, in both a turnaround and a legislated business rescue, the management of rehabilitating a financially distressed company is crucial to success. However, the South African business rescue legislation does not allow for the accreditation of a business rescue practitioner. The lack of a proper accreditation system for business rescue practitioners has resulted in several criticisms of South African business rescue practitioners. These relate to poor quality of work and exorbitant fees charged (Pretorius, 2013, p.2), the inability to complete tasks in a timely manner and a lack of adherence to reporting requirements (Voller, 2011). The business rescue practitioner has also been cited as a cause for failure to attract post rescue funding. Du Preez (2012, p.156), when analysing barriers to post commencement finance for a company undergoing business rescue, highlighted the concern of industry specialists over the inability of the business rescue practitioner to prepare an adequate business rescue plan that will attract funding.

According to Midanek (2002, p.24 as cited in Pretorius, 2013a, p.2), successful turnaround managers require “war-zone” experience. In order to turnaround a financially distressed business, it is vital that for the turnaround manager to have appropriate competencies (Obiajunwa, 2013, p.71). Baird (2014), when highlighting the importance of a turnaround manager, linked the success profile of a turnaround manager to the expected monetary value of a distressed business in the following equation:

*Economic Monetary Value = Probability of Successful Turnaround * Value of the Distressed Business.*

The above equation demonstrates the value of appointing a successful business rescue practitioner to a financially distressed business. It illustrates the economic value created when a financially distressed company is successfully rehabilitated. Due to the role of the business rescue practitioner in the success of a rescue, it follows that the appointment of a competent practitioner will enhance the monetary value of the distressed business. The appointment of a competent practitioner will be facilitated by the establishment of accreditation criteria.

The benefit of establishing an accreditation framework, specifying the competencies of a business rescue practitioner, is that the risk of appointing an unsuitable professional as a practitioner is reduced. A suitably accredited practitioner will contribute towards the survival of a distressed firm, thereby enabling the continued existence of the firm (Baird, 2014, p.6). Whilst it is concerning that the CIPC has failed to establish sound criteria for the accreditation of practitioners in South Africa, the difficulty in establishing these accreditation criteria must be acknowledged. The practitioner’s tasks are complex, vaguely stated and involve a wide range of competencies which the average business person does not have (Pretorius, 2013a, p.1). It is difficult to determine the optimal competence for a successful business rescue practitioner as it entails various characteristic, educational and experiential traits.

White (1959 as cited in Delmarie de List & Winterton, 2005, p.31) is credited for introducing the term competence to describe personality characteristics associated with superior performance and high motivation. Further recent research in relation to the effective performance of individuals in the workplace suggests that competencies include any individual characteristic that can be measured or counted reliably and that can be shown to differentiate between superior and average performers, or between effective and ineffective performers. Examples of these characteristics include motives, traits or knowledge (Spencer & Spencer, 1993, p.4). Furnam and Mansi (2011 as cited in Pretorius, 2014, p.4) described a competency as a state of being qualified, capable or proficient through skills, knowledge and ability for a specified assignment. A professional competency is described as a composite of personal attributes (capacities, motives, personality traits, self-image, aptitudes, values and personality) which complement themselves with knowledge, abilities, skills, values, actions and experience of the professional task being undertaken (Guerrero & De los Ríos, 2012, p.9). The establishment of competencies for a successful business rescue practitioner will enhance the knowledge-based resources of a distressed firm.

2.12.1. Business rescue practitioner competencies

In an effort to establish a set of characteristics that define a successful and high performing turnaround management professional (TMP), Baird (2014, p.8) explored a missing link in the Dynamic Capabilities Theory relating to human capital and its impact on competitive advantage. Dynamic capability is defined as the firm's ability to integrate, build and reconfigure internal and external competencies to address rapidly changing environments (Teece *et al*., 1997 as cited in Baird, 2014, p.10). An important component of the Dynamic Capabilities Theory suggests that human capital of turnaround firms will provide a competitive advantage in the form of knowledge, skills, and experience of individuals (Baird, 2014, p.33).

Baird (2014, p.83) undertook research to identify the characteristics of high performing, successful turnaround management professionals. He sought to expand on the work of the turnaround industry which identified knowledge in the areas of accounting, finance, legal and business acumen, and coupled with experience, as characteristics of successful turnaround practitioners (TMA, 2012 as cited in Baird, 2014, p4). The initial survey conducted with presidents of turnaround organisations identified the following characteristics as important measures of success in relation to a turnaround management professional (Baird, 2014, p.85):

- Level of ability to communicate transparently and quickly with all stakeholders;
- Ability to implement effective cash management strategies;
- Amount of increase in the distressed company's profitability achieved and speed with which results were achieved.

The second phase of Baird's research involved the utilisation of a questionnaire completed by turnaround management professionals to identify characteristics of a successful turnaround practitioner. The results of his research are illustrated in Figure 2.10 (Baird, 2014, p.125).

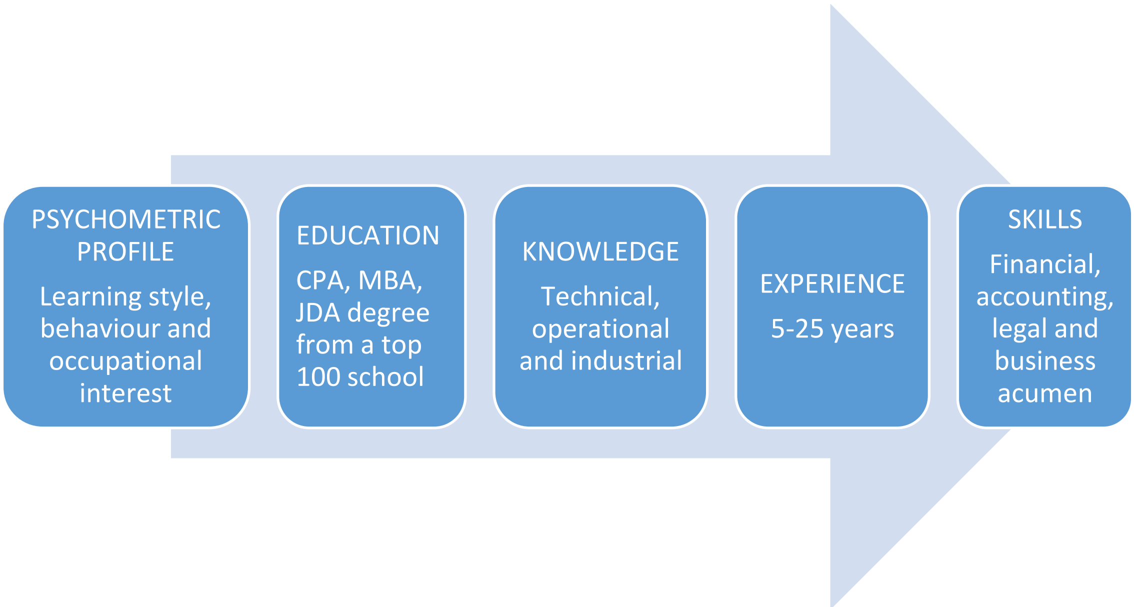

Figure 2.10: Factors leading to turnaround manager success

Source: Baird, S. 2014. An Empirical Investigation of Successful, High Performing Turnaround Professionals: Application of the Dynamic Capabilities Theory. Unpublished Ph.D.-dissertation. Georgia State University, Atlanta, GA.

Figure 2.10 demonstrates that a successful turnaround manager requires a unique combination of educational, experiential, and personality skills to be a successful turnaround management professional. Due to the overlap in the objectives between turnarounds and business rescue, discussed earlier, these findings can be used as a basis, after suitable adaptation to meet South African conditions, for the much needed accreditation of a business rescue practitioner.

In order to recommend competencies and educational requirements to achieve these competencies to the CIPC, Pretorius (2013a) initially focused on the important tasks and activities of the business rescue practitioner. He concluded that the five important tasks that must be undertaken by a successful business rescue practitioner are taking management control, investigating the affairs of the distressed firm, compiling a rescue plan, implementing this plan and complying with the statutory plan. Thereafter, in an effort to identify the most important activities of a business rescue practitioner, he expanded each of the tasks into an activity. According to Jarzabkowski (2007 as cited in Pretorius, 2013a, p.9), a practice relates to the cognitive, behavioural, procedural, discursive, motivational and physical resources that practitioners combine and use in the performance of their responsibilities. The research indicated that there are five activities undertaken by business rescue practitioners that contribute to 55% of their total activity. These important activities are undertaking a viability analysis (14% of the total activity of a business rescue practitioner), conducting a feasibility analysis (9%), meeting with stakeholders (11%), preparing a rescue plan (8%) and following the rescue process (14%).

Further research conducted by Pretorius (2014, p.10) to identify the competencies required by the business rescue practitioner to successfully complete tasks and activities, concluded that the most important competencies are sense making, decision making and integration. These competencies are to be achieved through collaboration, which was considered to be the central competency. The studies undertaken by Pretorius established the important competencies in relation to skills of a business rescue practitioner. There is an absence of literature relating to the educational qualifications that will contribute towards a competent practitioner. According to Guerrero and De los Ríos (2012, p.9), knowledge forms an important component of the successful execution of a professional task. According to Section 138 (a) of the Companies Act, Act No.71 of 2008 (RSA, 2008), a person may be appointed as a business rescue practitioner if they are a member in good standing of a legal, accounting or business management profession accredited by the CIPC. A shortcoming of existing literature is that guidance is not provided on the most suitable educational qualification that will result in a competent practitioner. Although research on business rescue practitioners indicated support for an examination and a formal qualification as a prerequisite for practitioner appointments, existing literature has provided no guidance on the suitable scope of the qualification or the content of the examination (Pretorius, 2015, p.92).

2.13. IMPACT OF BUSINESS RESCUE

According to the CIPC, the main objective of the legislated business rescue process is to avoid liquidations and job losses by providing companies with protection against creditors who want to file for liquidation (Lotheringen, 2013). A key responsibility of the CIPC is to oversee the implementation of the business rescue legislation with the aim of promoting growth, employment, innovation, stability, good governance, confidence and international competitiveness (Lotheringen, 2013). The CIPC is also responsible for monitoring the impact of business rescue legislation, conditional licensing of business rescue practitioners and maintenance of statistics. In August 2012, to assess the impact of the business rescue process in facilitating a successful rehabilitation, the CIPC conducted an audit. Questionnaires were sent to business rescue practitioners who were conditionally licensed to obtain information on the status of the business rescue that they were involved in. Although only 25% responses were received, the information provided important indicators relating to the success of business rescues (Figure 2.11).

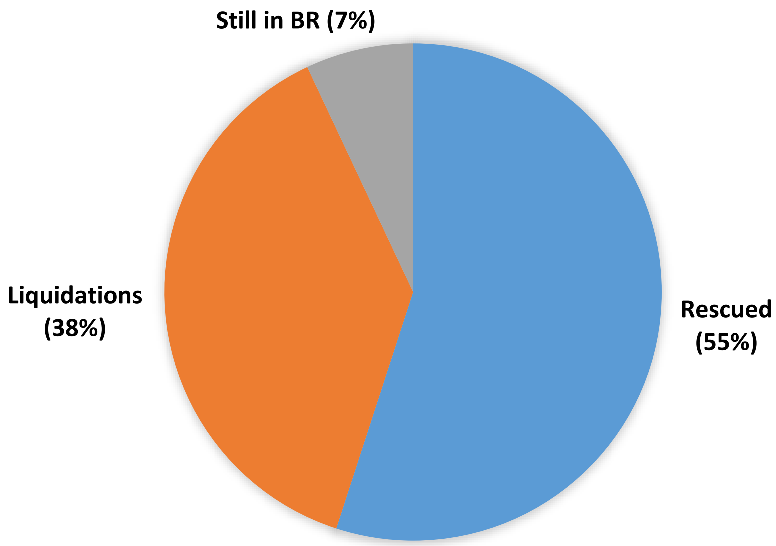

Figure 2.11: Business rescue successes versus failures

Source: Adapted from Du Preez, W. 2012. The Status of Post Commencement Finance for business rescue in South Africa. Unpublished M.B.A.-thesis. University of Pretoria, Pretoria, p.5.

Figure 2.11 reflects that of the 25% of the responses received, 55% of the businesses that filed for business rescue reported that the rescue was successful. A business rescue is classified as a success when the business rescue practitioner files the form Cor 125.3 (Notice of Substantial Implementation of the business rescue Plan) with the CIPC (Pretorius, 2015). Although a success rate of over 50% demonstrates that the business rescue legislation has a positive impact on business rescue, the CIPC estimated that the real figure was closer to 12 to 14%, taking into account the business rescues in process at the time that the audit was undertaken (CIPC, 2013). More recent statistics by the CIPC, reflected in Table 1.1, indicate that there has not been any improvement in the success rate of business rescues. According to these statistics, released in 2015, the business rescue success rate has remained at 12% (Voller, 2015).

In addition to the low overall success rate of business rescues, there have been several publicised, high profile business rescues that have failed. These failures include 1 Time Holdings, which commenced the business rescue process in August 2012 as a result of financial distress. On commencement of the process, the board was of the view that a reasonable prospect existed to rescue the business (Odendaal & Vos, 2012). Unfortunately, due to a lack of post commencement finance, the company terminated business rescue proceedings and filed for liquidation in November 2012. Also in 2012, Sanyati Construction, a listed company that undertook civil and construction work for government and the private sector, applied for business rescue due to financial distress as a result of the inability of government to pay for work performed in a timely manner. Sanyati liquidated before the conclusion of the business rescue process due to the rejection of the business rescue plan by creditors (Du Preez, 2012, p.5). In August 2015, Chemical Specialities, a listed company, was placed into provisional liquidation after an unsuccessful business rescue. The liquidation resulted in the loss of approximately 400 jobs (Nene, 2015). The failure of all these high profile business rescues and the subsequent liquidation of these companies adversely affected numerous employees, creditors, bankers and other stakeholders.

Whilst there has been much focus on the low success rate of business rescues and these high profile business rescue failures, it must be acknowledged that there are certain positive features that have emerged from the adoption of the new business rescue legislation. As highlighted earlier, an important focus of the new legislation is to prevent or reduce the number of jobs lost when a company experiences financial difficulty (Rushworth, 2010; Lotheringen, 2013). In this context, the results of the CIPC audit indicated that there were 5680 existing jobs at the commencement of the business rescue cases surveyed. The number of jobs at the end of the business rescue process declined to 4256. This indicates that only 25% of jobs were lost and that the business rescue process effectively saved 75% of jobs, which would have been lost if the companies had liquidated rather than filed for business rescue.

The potential of the business rescue legislation has been highlighted by the few successful business rescues that prevented a liquidation. These successes illustrate that it is possible to prevent the closure of a business by the effective application of the new legislation. The benefit of a successful business rescue was highlighted by an analysis of the rehabilitation of B and J Meltz (Pty) Ltd (Matuson Associates, 2013). The company was established in 1997 as a fashion retailer and grew in size to 43 stores. Due to financial difficulties experienced, the company filed for business rescue in February 2013. A business rescue practitioner was appointed in the same month and, thereafter, the creditors approved the implementation of a business rescue plan. The benefits of a successful business rescue are illustrated in Table 2.6, which compares the outcome of the business rescue against that of liquidation.

Table 2.6: Benefits of a business rescue

	BUSINESS RESCUE	LIQUIDATION
Stock	Able to trade and maximise the value of stock	Would have realised significantly less for the stock at approximately 30c to the Rand
On-going employment	108 employees retained their jobs with 130 employees retrenched	All 238 employees would have lost their jobs
Retrenchment	Retrenched employees to receive their full packages including severance, notice and leave pay	Employees retrenched would receive significantly less than what was received in business rescue
Dividend to concurrent creditors	Concurrent creditors to receive approximately 5c to the Rand	Concurrent creditors would not have received a dividend in a liquidation
Costs	Costs of business rescue are significantly lower than the costs of liquidating the company	Costs would be significantly higher

Source: Adapted from Matuson Associates. 2013. *Business Rescue Workshop.* Matuson Associates, Pretoria.

Table 2.6 illustrates the benefits of a successful business rescue in comparison with the consequences of liquidation. It is apparent that a successful business rescue is beneficial to all stakeholders, including employees that are retrenched. In the example illustrated, retrenched employees received a severance package, which would not have been possible under liquidation. The survival of the company, as a result of the business rescue process, resulted in benefits to creditors and ongoing employment to more than a hundred staff. This would not have been possible if the company had been liquidated. The business rescue statistics illustrated in Table 1.1 indicate that unfortunately a significant proportion of companies that file for business rescue are liquidated, thereby failing to reap the economic benefits of a successful business rescue.

According to the business rescue practitioner in the Meltz case, the successful rescue was due to sufficient resources devoted to the pre-assessment stage, effective communication with all stakeholders, the availability of post commencement funding and ensuring compliance with the legislation (Matuson, 2013). The identification of factors which ensure a successful business rescue, such as those relating to B and J Meltz (Pty) Ltd, can contribute to the knowledge resources of a company in business rescue.

2.14. SURVIVAL OF BUSINESS RESCUE

The focus on the survival of business rescue is not unexpected. Due to the low success rate of business rescue in South Africa since adoption in 2011, there are several critics of the process. Kuper (2010) described business rescue as a process similar to preventing a corpse from being buried and that the chances of a successful rescue are similar to the resurrection of a dead person. There are concerns about the ability of the business rescue process to help distressed companies as intended (Ensnor, 2014, p.1). Due to its low success rate, there are doubts as to whether business rescue provides a lifeline for a distressed company; concerns are that instead it is yet another costly addition to an inevitable liquidation (Naidoo, 2015). These doubts and concerns illustrate the present unsuitability of utilising business rescue as a mechanism to enable the rehabilitation of a distressed company. Many researchers have interpreted business rescue legislation as a glorified liquidation (Hammond, 2015, p.3). However, the few cases of a successful business rescue have demonstrated that if the legislation is properly implemented and managed, the potential for an improved success rate does exist.

In assessing business rescue’s future role in preventing the closure of businesses in South Africa, Pretorius (2013b) presented four possible scenarios for the future of the business rescue “industry” in South Africa. Figure 2.12 was developed from a scenario plan presented by Pretorius (2013b) which reflects the possibilities for the future of business rescue in South Africa.

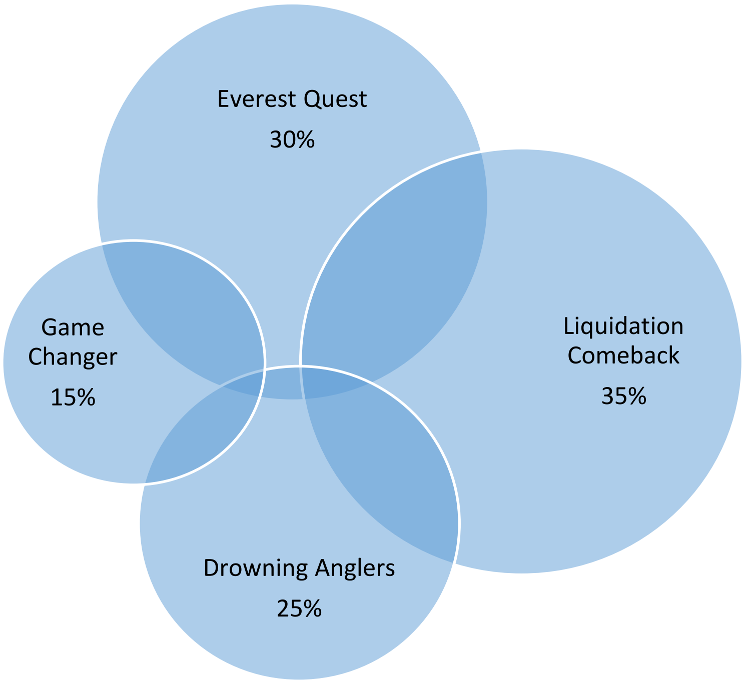

Figure 2.12: Scenarios and their probabilities for the future of business rescue

Source: Based on Pretorius, M. 2013b. New business heroes? *Fin24,* 3 March.

In Figure 2.12, the first scenario, referred to as the Everest Quest, is characterised by low levels of business rescue practitioner expertise. In this scenario, it is difficult to obtain the support of banks for the business rescue, even for those with business rescue plans that are well prepared. Ultimately, business rescue practitioners lose interest in the process and the industry is perceived as one that is not functioning properly.

Pretorius refers to the second, and most likely, scenario as the Liquidation Comeback. In this scenario there is a complete failure of the rescue process, mainly due to the poor skills and competence of the business rescue practitioner. Consequently, the financial sector does not fund a business rescue and a liquidation mindset prevails.

In the third scenario, a possibility exists that only a few business rescue practitioners survive the industry. The other practitioners 'drown', mainly as a result of their widespread rescue incompetence. Only a few competent practitioners survive and the industry shrinks. This scenario is referred to as the Drowning Angler.

The final scenario, and the one providing the most hope for the sector, is referred to as the Game Changer. In this scenario, business rescue practitioners are ethical and competent and many businesses are rescued. Courts act quickly and banks are willing to fund a business rescue. The successful rescues result in greater success and the business rescue sector develops a positive reputation. However, Pretorius anticipates the chances of this scenario materialising at only 15%. This is the scenario that a successful business rescue will fit into.

Based on the above scenarios, it is most likely that business rescue legislation will fail. If this materialises, financially distressed companies will not be provided with an opportunity for rehabilitation and will be liquidated. Pretorius (2013b) attributes the failure mainly to poor skills and limited competence of the business rescue practitioner. In order to prevent a Liquidation Comeback and for business rescue to survive, there must be competent business rescue practitioners, quick courts and accessible post rescue funding. This will result in the Game Changer scenario and achieve a greater level of business rescue success. One of the ways in which a Game Changer can be achieved is to undertake more research into the field of business rescue, particularly as it is relatively new field and more research will therefore contribute to improving the effectiveness of the rescue (Pretorius and Roslyn-Smith, 2014, p.135).

Business rescue was introduced to rehabilitate financially distressed companies and thereby prevent their liquidation (Lotheringen, 2013). The increase in compulsory liquidations is contrary to the objectives of business rescue, which seeks to prevent the closure of a business. The closure or liquidation of any business is accompanied by adverse economic and social losses to the stakeholders and has a disruptive impact on the community in which that business operates (Binns-Ward, 2011). Since the protection afforded by the business rescue process allows for a company to rehabilitate and prevent the negative consequences of liquidation, it follows that an improvement in the success rate of business rescue will reduce liquidations and the adverse consequences thereof.

2.15. CONCLUSION

This chapter was undertaken within the framework of enhancing the knowledge-based resources of a distressed firm as a means to enabling its rebirth. The review, descriptive in nature, highlighted the low success rate of business rescue and the increase in forced liquidations. The increase in liquidations is contrary to the objectives of business rescue, which seeks the rehabilitation of a distressed firm. Consequently, there are concerns over the survival of the recently adopted business rescue legislation as a mechanism to enable the rebirth of a distressed firm. In order to ensure the survival of business rescue, reasons for failed business rescues were initially diagnosed. Thereafter success factors, that will enable the survival and continuity of the business rescue process, were established. Due to the focus on the business rescue practitioner in the rehabilitation of a business, coupled by the severe criticisms of their performance, competencies that can be utilised for the accreditation of a business rescue practitioner were identified. However, it was not possible to establish the skills and qualification that a successful business rescue practitioner requires.

An important feature identified was the inadequate research in the field of business rescue in South Africa. Due to this shortcoming, it was not possible to rank the factors that have contributed to business rescue failure as there is an absence of literature that measures the impact of these factors on a failed business rescue. Another shortcoming of the existing knowledge is that it is not possible to develop a common set of success factors that impact on a business rescue. Due to the above limitations and shortcomings of the existing knowledge in the field of business rescue, the researcher deemed it necessary to conduct empirical research. The next chapter presents the methodology used to address these research gaps. The generation of new knowledge will contribute towards ensuring the survival of business rescue.

CHAPTER 3

RESEARCH METHODOLOGY

3.1. INTRODUCTION

Chapter 2 reviewed the most recent literature in the field of business rescue. The literature was presented using a descriptive style due to the dearth of existing knowledge. The review provided a clear understanding of contemporary issues relating to the recently introduced business rescue legislation in South Africa. Furthermore, the chapter highlighted the difficulties experienced in the business rescue process that resulted in failure of certain business rescues. It established some factors that will result in a successful business rescue. Due to the importance of the business rescue practitioner, certain competencies that are required to be a practitioner were identified. An important finding was that successful business rescues require highly skilled and competent business rescue practitioners.

A key finding of the literature review was an absence of academic literature on business rescue, and hence the need to undertake empirical research to develop knowledge in this field. This shortcoming in the literature resulted in the inability to:

- confirm, dispel or rank the impact that the factors identified have on a failed business rescue;
- assess the impact that the factors identified have on the success of rescue;
- rank both the skill and educational competencies required to be a successful business rescue practitioner.

These limitations provided justification to engage in further research to extend the literature of business rescue. The empirical study therefore focused on factors that impact on a business rescue. In addition, the research sought to statistically rank the factors which have the greatest impact on the success of a business rescue. The establishment and ranking of these factors can contribute to the knowledge on business rescue and the rehabilitation of a distressed firm and by inference could even improve the success rate of business rescues. The acquisition or enhancement of a firm's knowledge resources in relation to the planning and performance of a business rescue process will result in improved profitability, thereby facilitating a resurrection and continued existence of the firm. According to Dickinson and Sommers (2008, p.7), an investment in innovation through research and development should yield a higher profitability. Undertaking further business research to harness new and improved knowledge will assist management, the financial sector and business rescue practitioners to better plan and execute a business rescue. This will ultimately result in solving the problem of the low success rate of business rescue in South Africa. Chapter 3 presents the methodology utilised to undertake empirical research to enhance the success rate of business rescue.

3.2. BUSINESS RESEARCH

According to Pretorius (2013b), a "Game-Changer" in the business rescue sector is possible. This change will result in more competent business rescue practitioners, a financial sector that is more willing to provide post commencement funding and courts that act quicker. Undertaking business research to address the success rate of business rescue will contribute towards the change that Pretorius referred to. Business rescue falls within the ambit of business research as it is a systematic and organised effort to investigate a specific problem encountered in the work setting which needs a solution (Sekaran & Bougie, 2013, p.2). Business research is normally undertaken because there is a problem that is to some extent unresolved (Bryman & Bell, 2011). It is most important that the business research must have a practical consequence whereby the potential exists for some form of action that can be taken as a result of the practical findings of the research (Saunders *et al*., 2003, p.2).

Sekaran and Bougie (2013, p.23) recommended the utilisation of the hypothetico-deductive methodology to undertake empirical business research and solve business problems. They recommended the application of a seven-stage process that will contribute towards the reduction or elimination of a business problem or difficulty. The sequence followed when using this methodology is illustrated in Figure 3.1.

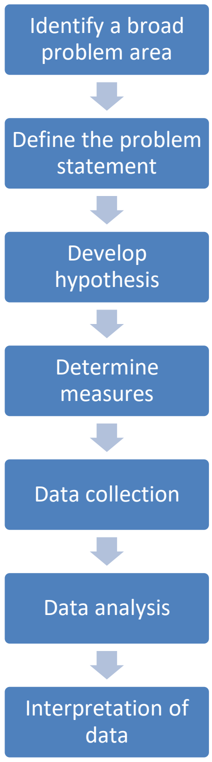

Figure 3.1: Seven-step process in the hypothetico-deductive method

Source: Sekaran, U. & Bougie, R. 2013. *Research Methods for Business: A Skill Building Approach.* 6th ed. John Wiley and Sons, Chichester.

The first step of the methodology in Figure 3.1 entails the formulation of the broad problem area. The review of existing knowledge in the field of business rescue established that the success rate of business rescue was approximately 12%. This low rate is contradictory with the objectives of the business rescue legislation which seeks to successfully rehabilitate distressed companies. Utilising the hypothetico-deductive method to solve the low success rate of business rescue will result in the generation of new knowledge. This knowledge will improve the distressed company's chances of survival and continued existence. The hypothetico-deductive process will ensure that the research is logical, organised and rigorous (Sekaran & Bougie, 2013, p.23). Having identified the broad problem area, the next step is to define the problem statement.

3.3. PROBLEM STATEMENT

South African business rescue legislation was implemented in 2011 with the intention of rehabilitating financially distressed companies. The legislation was intended to enable distressed firms to continue with least disruption in the short term, to become sustainable in the mid-term and competitive in the long term. Statistics from the CIPC (Lotheringen, 2013; Voller, 2015) indicated that the success rate of companies that file for business rescue is approximately 12%. This low success rate indicates that many companies entering into business rescue were liquidated, which was contrary to the objective of business rescue legislation. Existing research does not identify a common set of factors/causes that impact on the success of business rescue in South Africa. This study set out to answer the question "What are the factors that result in a successful business rescue in South Africa?"

3.4. AIM OF THIS STUDY

The aim was to identify the factors that impact on business rescue.

3.5. OBJECTIVES OF THE STUDY

The objectives of the study were to achieve the following:

- Establish and rank factors that impact on failed business rescues in South Africa.
- Compile and rank factors that result in successful business rescues in South Africa.
- Assess the importance of the role of the business rescue practitioner in successful business rescues in South Africa.
- Develop a set of competencies required to be a successful business rescue practitioner in South Africa.

3.6. CONTRIBUTION OF THIS STUDY

The results of the research can be utilised by different stakeholders of business rescue as follows:

a) The availability of factors that impact on a business rescue will increase the rate of business rescue success. The factors can be utilised by management and creditors to assess the chances of a success rescue prior to filing for business rescue. The research findings may point to an unsuccessful rescue and, in such cases, management may consider opting for a liquidation rather than filing for a business rescue. If a decision is made to file for business rescue, the availability of success factors will facilitate better planning of the process by incorporating the key success factors.

b) The financing sector will be able to assess the chances of a successful rescue before committing funds to a rescue. The literature established the importance of post rescue funding in the rehabilitation of a financially distressed company. The identification of success factors will enable the financing sector to commit funds to those companies in business rescue that have a better chance of success.

c) The CIPC will firstly be able to understand the role of the business rescue practitioner in the success of a business rescue. The research will also be used by the CIPC in planning of a regulatory framework for the accreditation of business rescue practitioners. The competencies of a successful business rescue practitioner will form the foundation of the accreditation process. In the event that an educational qualification is required for the accreditation, then the research findings will be utilised to stipulate broad areas that the educational qualification will comprise of.

The research findings will contribute to an improved success rate, the survival of business rescue legislation and a more vibrant South African economy and democracy.

3.7. RESEARCH DESIGN

The effectiveness of the research findings depends on the rigour of the research design. The research design is a blueprint for the collection, measurement and analysis of the data based on the research objectives (Sekaran & Bougie, 2013, p.95). In order to obtain an understanding of the challenges and difficulties experienced in the planning and implementation of business rescue, it was necessary for the researcher to analyse, describe and summarise the experiences of business rescue practitioners. Such an analysis produces information that establishes views on the reasons for the success and failure of business rescue in South Africa and the role of the business rescue practitioner in the success of a business rescue. This analysis and consideration of the business rescue practitioner's opinion could initially be achieved by adopting a qualitative approach wherein a sample of business rescue practitioners, who are conditionally accredited by the CIPC, were interviewed (Leedy & Ormrod, 2001).

A qualitative approach for this study was appropriate as the research attempted to obtain new insights and elaborate interpretations of the business rescue process from the perspective of experienced successful business rescue practitioners (Zikmund, Babin, Carr

& Griffin, 2013). According to Bryman (2008), qualitative research is defined as a research strategy that focuses on words in the collection and analysis of data. Similarly, qualitative research explores attitudes, behaviour and experiences through the use of in-depth interviews (Kerns, 2003). This type of research was able to facilitate feedback from business rescue practitioners about their personal experience in the planning and performance of a business rescue.

Qualitative research is subjective and fewer people take part in this type of research but the contact with respondents tends to last a lot longer (Kerns, 2003). In-depth interviews are conducted with individuals from relevant groups of people. In this type of research, participants are asked to respond to general questions and the interviewer or group moderator probes and explores their responses to identify and define their perceptions, opinions and feelings about the topic or idea being discussed and to determine the degree of agreement that exists in the group (Kerns, 2003). The researcher decided that applying this approach would facilitate feedback about difficulties experienced during the business rescue process and it would be possible to obtain ideas on how these problems can be solved.

A qualitative approach was adopted by Du Preez (2012) to analyse the business landscape for post commencement business rescue finance. Du Preez (2012) interviewed 18 business rescue experts to identify barriers encountered in accessing post commencement business rescue finance and to recommend solutions to overcome these barriers. An important justification that Du Preez (2012, p.47) provided for using a qualitative methodology was that this methodology allows for the exploration of an area where little theory exists. She sought to develop a better understanding of the post rescue funding environment in order to recommend changes. Her study aimed at seeking meaning, rather than measurement, to build on the lack of current business rescue theory. Whilst the qualitative method produces quality responses, it is a hallmark of good research to quantify the results by obtaining a wider perspective. Hence a quantitative study was also conducted for this study.

In order to solve the research problem, it was necessary to also adopt a quantitative research approach (Leedy & Ormrod, 2001, p.102). A quantitative approach to research is one in which the investigator primarily uses post-positivist claims for developing knowledge, i.e. claims that are based on the law of cause an effect (Sekaran & Bougie, 2013, p.29). This includes cause and effect thinking, reduction to specific variables, hypotheses and questions, including the use of measurement. This approach employs strategies of inquiry such as experiments and surveys and collects data on predetermined instruments that yield statistical data (Creswell, 2003). The measurement has to be objective, quantifiable and statistically valid. According to Bryman (2008), quantitative research usually emphasises quantification in the collection and analysis of data. Kerns (2003) added that being quantitative is simply about numbers that are objective. A quantitative approach thus allowed for the usage of closed-ended questions to obtain information on factors relating to business rescue success and failure so that a relationship could be established between the factors that result in the success or failure of a business rescue.

In order to meet the objectives of the research and to harness and develop new knowledge in the field of business rescue, it was important to adopt a complementary mixed methods approach to satisfy the research objectives. A complementary mixed methods approach entails the use of both a quantitative and a qualitative approach. The usage of this approach is supported by Creswell (2003, p.17) as a means to achieve research rigour. It is a sound principle of research to view qualitative and quantitative research as being complementary, rather than in competition with each other (Malhotra, 2004, p137). The researcher therefore decided that the use of a mixed methods approach would follow different paths to improving the success rate of business rescue in South Africa (Gerring, 2008).

Having justified the need for a mixed methods approach to meet the research objectives, it was important for the research design to reflect a comprehensive strategy that would solve the research problem (Leedy & Ormrod, 2001, p.91).

3.8. QUANTITATIVE RESEARCH

The quantitative research design incorporates detail relating to data collection, the sample frame and statistical analysis. As the primary component of a research design is the collection of data, initial consideration must be given to the most effective data collection method (Sekaran & Bougie, 2013, p.116).

3.8.1. Data collection

Sekaran and Bougie (2013, p.112) stated that the manner in which data is collected for solving a research problem has a fundamental impact on the effectiveness of solving the problem. The deductive method of solving a research problem emphasises the need to collect data so that any causal relationship that exists between variables can be identified and explained (Saunders *et al*., 2003, p.88). In order to effectively address the aim of this research, it was vital for the data collection method to facilitate the establishment and ranking of the following:

- Factors that impact on a failed business rescue;
- Factors that result in a successful business rescue; and
- Competencies that are required to be a successful business rescue practitioner.

An efficient data collection method recommended by Sekaran and Bougie (2013, p.147) is to use a questionnaire so that respondents can record their answers. The use of a questionnaire to undertake explanatory or descriptive research in a new area, such as business rescue, is supported by Saunders *et al*. (2003, p.282) as it could be utilised to identify and describe variability in phenomena. However, they suggested that the use of a questionnaire be complemented by linking it to another method of data collection and adopting a mixed methods approach in order to add to the rigour of the research. The quantitative aspect of this research was carried out by making use of a questionnaire.

3.8.2. Questionnaire design

The questionnaire, comprising closed-ended questions, was used to address the objectives of this study (Annexure 2). Questions 1 to 9 were designed to collect demographic information from participants. These relate to the age, race and gender of participants, as well as their level of education and area of specialisation. The questions also requested details relating to the number of business rescues that the participant was appointed to, the number of business rescues completed and for the completed business rescues to be categorised as successes, failures or incomplete. Thereafter the questions were aligned to the research objectives as follows:

Table 3.1: Questionnaire design

OBJECTIVE	QUESTION NUMBER	DETAIL
1. Establish and rank factors that result in failed business rescues in South Africa.	10-21	These questions requested participants to rate the impact of the following factors on a failed business rescue: • Failure to apply early for the commencement of business rescue (Loubser, 2010). • Abuse of the business rescue process (Lovells, 2014). • Lack of effective planning prior to the application of business rescue (IoDSA, 2009). • Ineffective communication with stakeholders during the application for business rescue (Van der Burgh, 2013). • Lack of an accreditation process for the appointment of a business rescue practitioner (Pretorius, 2014). • Deliberate delays by the business rescue practitioner to earn more fees (Visser, 2013). • A poorly prepared business rescue plan (Pretorius, 2012). • Lack of post rescue funding (Du Preez, 2012). • Lack of support for the business rescue process from SARS. (Lotheringen, 2013) • Limited time period of three months to complete a business rescue (Loubser, 2010). • Lack of skilled courts to deal with business rescue cases (Ensnor, 2014). • High costs of the business rescue process (Visser, 2013)
2. Compile and rank factors that result in successful business	22-34	These Likert-scale statements required participants to agree or disagree on whether the

OBJECTIVE	QUESTION NUMBER	DETAIL
rescues in South Africa.		following factors will result in a successful business rescue: • Businesses need to use early warning signals (Bibeault, 1991). • Early planning and preparation before the commencement of business rescue (Borman, Kram & Ploenski, 2010). • Establishment of an effective business rescue plan (Bormann *et al*., 2010) • Time frame of a business rescue of between six months and one year (Bibeault, 1991) • Post rescue funding must be available (Booz & Company, 2010). • Effective communication with stakeholders during the business rescue process (Manimala, 2011). • Ensuring that the employees of the company are highly motivated during the business rescue process (Balgobin & Pandit, 2001). • Maintaining a focus on the company strategy (Booz & Company, 2010). • Government and related agencies need to be proactively involved in the business rescue (Singh, 2011). • Banks and other financial institutions need to be proactively involved in the business rescue (Singh, 2011). • Creditors need to play an active role in the business rescue (Mindlin, 2013). • Specialised courts need to be established to handle business rescue cases (Mindlin, 2013). • Implementation of strict accreditation criteria for the business rescue practitioner (Museta, 2011).
3. Develop a set of competencies	35-37	• Participants had to rank the first and second most important qualification that a business rescue practitioner should possess.

OBJECTIVE	QUESTION NUMBER	DETAIL
required to be a successful business rescue practitioner in South Africa.		• Participants had to rank the first, second and third most important skill that a business rescue practitioner must possess. • Participants had to provide and explain their views on the necessity of an exam to become an accredited business rescue practitioner.

Table 3.1 reflects the nature of questions for each research objective. Although the questionnaire is a formidable tool to gather data, it is critical that the questionnaire is answered by individuals who will provide the correct answers to solve the research problem (Sekaran & Bougie, 2013, p.240).

3.8.3. Sample frame and size

The CIPC currently issues a conditional licence for the appointment of a business rescue practitioner to a company that applies for business rescue. There were 140 conditionally registered business rescue practitioners in May 2013 (Lotheringen, 2013). This database is administered by the CIPC and can be utilised as a sample frame for undertaking research. The database was utilised for previous research, undertaken by Pretorius (2014), to make recommendations relating to the competencies required to become a successful business rescue practitioner. However, the CIPC did not respond to several requests for permission to utilise the database of conditionally accredited business rescue practitioners as the sample frame.

In order to overcome the lack of intent from the CIPC, an international group of professionals, which focuses on the rehabilitation of financially distressed businesses was utilised as the sample frame. The organisation, known as the Turnaround Management Association (TMA), is making an attempt to regulate and set standards for the rehabilitation of financially distressed companies (Baird, 2014, p.42). Established in 1988, the TMA has nearly 9 000 members in 45 chapters, including 32 in North America, and one each in Australia, Brazil, the Czech Republic, Finland, France, Germany, Italy, Japan, the

Netherlands, Southern Africa, Spain, Taiwan and the UK, with a chapter in formation in China (TMA-SA, 2016). In an effort to obtain expert opinion about the business rescue process, members of the Turnaround Management Association-Southern Africa (TMA-SA), the local affiliate of the TMA, were requested to respond to the questionnaire. TMA-SA represents the Southern African region (South Africa, Swaziland, Lesotho, Namibia, Angola, Zimbabwe and Mozambique). In terms of its license agreement, TMA-SA members share in knowledge exchange and networking with TMA (TMA-SA, 2016).

According to the TMA-SA (2016), its professionals have expertise in the following areas:

- Business turnarounds,
- Business rescue under Chapter 6 of the Companies Act, Act No. 71 of 2008 (RSA, 2008),
- Corporate and interim management, and
- Provision of legal, accounting and financial advice.

Membership is open to all professionals interested in corporate renewal, including business transformation, turnaround, and business rescue, who manage, provide professional services to, or fund troubled companies. It is also open to those who are involved in government, education and research in the field of corporate renewal and restructuring.

According to the TMA-SA website, regular members comprise corporate turnaround managers working in line management positions in turnaround situations and interim turnaround managers. Many members are service providers to financially distressed companies by fulfilling the role of turnaround practitioners and business rescue practitioners. Due to the focus on the financial rehabilitation of underperforming companies and the diverse experience and background of the TMA-SA membership, it was decided to use the entire membership as a sample frame. This consisted of experts in business turnarounds and several members that have been involved in high profile cases. This approach is supported by previous research undertaken by Baird in 2014 when the USA chapter of the TMA served as the sampling frame for a survey that collected data from turnaround professionals. Baird's research focused on developing a set of competencies that could be used to identify successful and high performing turnaround professionals.

There were approximately 130 regular members registered with the TMA-SA and the questionnaire was sent to all registered members on the TMA-SA database. The members' contact details were accessed via the TMA-SA's website and the chief operating officer (COO) of the TMS-SA provided a letter stating that the Association did not object to its members being contacted for the purpose of undertaking the research.

3.8.4. Statistical analysis

The data obtained from the questionnaire was analysed using descriptive statistics such as frequency tables, bar and pie charts as well as other descriptive measures such as the mean, mode and medians. Cross tabulations were carried out to establish trends and relationships in business rescue failures and successes. The analysis was then utilised to confirm or dispel the findings of the literature review relating to the variables associated with business rescue successes and failures. Some of the statistics that could be computed and analysed relate to the success rate of business rescues completed by the business rescue practitioners. It was also possible to compute the success rate of business rescues in relation to the age, qualification and expertise of the business rescue practitioners.

The analysis also focused on inferential statistics and model building. The inferential statistics relate to making inferences about business rescue and testing hypotheses about the data.

3.8.5. Hypotheses

The first step in testing hypotheses relating to the research objectives involved the use of the Kolmogorov Smirnov test to establish whether the data had been derived from a normal distribution. If the data were derived from a normal distribution, then parametric tests such as the independent sample t-test which tests for the difference between means from independent samples or the one-way analysis of variance were used to test differences between three or more samples. If the data were not derived from a normal distribution, then the non-parametric tests such as the Mann Whitney U test were utilised. The hypotheses that were tested are listed in Table 3.2.

Table 3.2: Details of hypotheses

RESEARCH OBJECTIVE	HYPOTHESIS
1. Establish and rank factors that result in failed business rescues in South Africa.	<u>Hypothesis 1</u> H_0: Limited post rescue funding has no impact on a failed business rescue H_1: Limited post rescue funding has a significant impact on a failed business rescue <u>Hypothesis 2</u> H_0: Poorly prepared business rescue plans have no impact on a failed business rescue H_1: Poorly prepared business rescue plans have a significant impact on a failed business rescue <u>Hypothesis 3</u> H_0: A limited time period of three months to complete a business rescue has a minor impact on a failed business rescue H_1: A limited time period of three months to complete a business rescue has a significant impact on a failed business rescue
2. Compile and rank factors that result in successful business rescues in South Africa.	<u>Hypothesis 1</u> H_0: Strict accreditation criteria are not needed for the appointment of business rescue practitioners H_1: Strict accreditation criteria are needed for the appointment of business rescue practitioners <u>Hypothesis 2</u> H_0: Government and related agencies need to be proactively involved in the business rescue H_1: Government and related agencies need not be proactively involved in the business rescue
3. Develop a set of competencies required to be a successful business rescue practitioner in South Africa.	<u>Hypothesis 1</u> H_0: Accreditation as a turnaround management professional is not an important qualification that a business rescue practitioner should possess H_1: Accreditation as a turnaround management professional is an important qualification that a business rescue practitioner should possess

RESEARCH OBJECTIVE	HYPOTHESIS
	Hypothesis 2 H_0: Enhanced integration skills are not the most important skills that a business rescue practitioner should possess H_1: Enhanced integration skills are the most important skills that a business rescue practitioner should possess

Data collected from the survey was utilised to confirm or dispel the above hypotheses.

3.8.6. Pilot study

A pilot study was conducted among 15 academics from the School of Accounting, Economics and Finance at the University of KwaZulu-Natal. The pilot study served to verify the validity of the research and identify potential problems in the design of the questionnaire. The feedback the pilot study served to eliminate minor grammatical errors and remove ambiguity from the questionnaire.

3.9. QUALITATIVE RESEARCH

The design for the qualitative component of the study focused on data collection, the sample frame and statistical analysis.

3.9.1. Data collection

Saunders *et al*. (2003, p.96) recommended qualitative research to find out "what is happening, to seek new insights, to ask questions and to assess phenomena in a new light". The three principal methods that they advocated to achieve this objective are to undertake a search of literature, talk to experts and conduct interviews (Saunders *et al*., 2003, p.97).

Belting (2008, p.2) described an expert as a person that has a high degree of skill, knowledge, experience and decision-making opportunities based on these skills and knowledge. The business rescue practitioner is considered to be an expert on business rescue due to the authority, oversight of the process and control vested in them by the business rescue legislation. For example, Section 140 of the Companies Act of 2008 confers full authority for the management of the business to the business rescue practitioner by way of allowing for the substitution of the board and existing management. The business rescue practitioner has the additional authority to dispose of assets and terminate existing contracts of the business (Section 136). Marshall and Rossman (2006 as cited in Du Preez, 2012, p.49) provided the following guidance, listed in Table 3.3, for selecting an appropriate method of data collection to obtain the insights of the business rescue practitioner.

Table 3.3: Qualitative research strategies

Genre	Strategy	Focus of enquiry
Individual experience	In-depth interviews	Individuals
Society and culture	Case study	Groups or organisations
Language and communication	Micro analysis and text analysis	Speech events or interactions

Source: Du Preez, W. 2012. *The Status of Post Commencement Finance for Business Rescue in South Africa.* Unpublished M.B.A.-thesis. University of Pretoria, Pretoria.

Based on the Table 3.3, the method of data collection for obtaining the individual experience and views of the business rescue practitioners was an in-depth interview. An advantage of the interview was that the researcher could gain considerable insight from each business rescue practitioner based on their personal experience.

There are disadvantages associated with using in-depth interviews as an instrument for data collection. The results are dependent on the researcher's interpretation and it is an expensive process to conduct interviews (Zikmund *et al.*, 2013). A specific disadvantage of conducting interviews with business rescue practitioners for this study was that professionals do not have sufficient time and they are dispersed in different geographic locations. This difficulty could be overcome by conducting telephonic interviews (Baird, 2014).

3.9.2. Research instrument

The interviews with business rescue practitioners were able to establish information that could be utilised to meet the research objectives. The interview schedule was constructed in a manner that would obtain feedback from conditionally accredited business rescue practitioners relating to the research objectives.

Questions 1 to 8 requested demographic information from participants. These relate to the age, race and gender of participants, as well as their level of education and area of specialisation. These questions also aimed to collect details relating to the number of business rescues that the participant was appointed to, the number of business rescues completed and for the completed business rescues to be categorised as successes, failures or incomplete. The questions were aligned with the objectives of the study, as listed in Table 3.4.

Table 3.4: Details of interview schedule

OBJECTIVE	QUESTION
1. Establish and rank factors that result in failed business rescues in South Africa.	• Do you think that South Africa was prepared for the implementation of business rescue legislation? • What are the reasons for the low success rate of business rescue in South Africa? • To what extent are business rescue practitioners the cause of business rescue failure? Please explain. • To what extent is the business rescue plan the cause of a business rescue failure?
2. Compile and rank factors that result in successful business rescues in South Africa.	• What is the impact of post rescue funding on the outcome of a business rescue? • What are the factors that will contribute to an increase in the success of business rescue in South Africa? • What is the support for the current business rescue legislation in South Africa? • What impact will the establishment of accreditation criteria for business rescue practitioners have on a business rescue?
3. Develop a set of competencies required to be a successful business rescue practitioner in South Africa.	• What are some of the competencies/qualifications that a successful business rescue practitioner should possess? • Who should establish the accrediting body?

The duration of each interview was approximately one hour and was recorded for analysis.

3.9.3. Sample frame and size

The interviews were intended to stimulate discussion from business rescue practitioners relating to their personal experience in the planning and performance of a business rescue. According to Bryman (2008), qualitative research is defined as a "research strategy that usually emphasizes words in the collection and analysis of data". Similarly, "qualitative research explores attitudes, behaviour and experiences through the use of in-depth interviews" (Kerns, 2003). Qualitative research is subjective and fewer people take part in this type of research but the contact with respondents tends to last a lot longer (Kerns, 2003). Individuals from relevant groups of people are interviewed in-depth. In this type of research, participants are asked to respond to general questions and the interviewer or group moderator probes and explores their responses to identify and define their perceptions, opinions and feelings about the topic or idea being discussed and to determine the degree of agreement that exists in the group (Kerns, 2003). The researcher used this approach in order to facilitate feedback about difficulties experienced during the business rescue process and ideas on how these problems can be solved.

In March 2015, the CIPC released a list of the top ten practitioners, ranked according to the number of business rescue practitioner appointments (Voller, 2015). The list of top ten business rescue practitioners was used as a sampling frame for the interviews. Due to their substantial exposure to business rescues, these practitioners have significantly more practical experience of the business rescue process and can provide valuable insights. Obtaining these practitioners' insights and experience can assist in improving the business rescue success rate.

3.9.4. Qualitative statistical analysis

Responses to the in-depth interviews were transcribed and analysed so that the salient findings could be highlighted and documented. The transcriptions were analysed to determine possible themes that emerged from the practitioners, for example common patterns around issues such as failure, success and competencies of successful business rescue practitioners. The responses were summarised and frequently used factors could be displayed using word clouds and word trees as well as using bar, column and pie charts. The qualitative data was recoded to perform statistical tests such as frequency tables, correlation analysis and any other possible non-parametric tests which emerged from the data.

A general strategy for the analysis of qualitative data is the use of analytic induction. This entails a process of identifying explanations for a phenomenon. Analytical induction commences with a definition of a problem and proceeds with the examination of cases to collect data relating to the problem (Sekaran & Bougie, 2013, p.352). Interview-based feedback from business rescue practitioners could facilitate this approach.

3.9.5. Pilot study

A language specialist reviewed the interview schedule to ensure that the questions were understandable, unambiguous and grammatically correct.

3.10. VALIDITY

Validity relates to a researcher being certain that the research instrument will measure the concept that the study intends measuring (Sekaran & Bougie, 2013, p.225). There are two types of validity, namely content validity and construct validity.

3.10.1. Content validity

Leedy and Ormrod (2005, p.92) stated that content validity is the extent to which a measuring instrument is a representative sample of the domain being measured. A measuring instrument has a high content validity if the questions reflect the various parts of the domain in appropriate proportions and if it requires particular skills and behaviours that are central to that domain. The questionnaire for this study was assessed by the supervisor and respondents in the pilot study to ensure that the questions matched the test objectives or specifications. Furthermore, the questionnaire was reviewed by a statistician to ensure that the questions matched the research objectives. It was concluded that there was there was a high level of content validity.

3.10.2. Construct validity

Leedy and Ormrod (2005, p.92) stated that construct validity is the extent to which an instrument measures a characteristic, that cannot be directly observed, but is assumed to exist based on people's behaviour and characteristics. The behaviour and characteristics are referred to as constructs. The questionnaire will display construct validity if it adequately assesses the theoretical concept studied (Brown, 2000). For this study, the presence of construct validity was assessed by conducting several statistical tests such as analysis of variance (ANOVA), t-tests and factor analysis.

The survey comprised questions that were carefully chosen to address the low success rate of business rescue. The questionnaire was designed to ensure that it could be easily completed within a relatively short time period. Questions were reviewed by the supervisor and an English language expert to avoid ambiguity and ensure that they were comprehensive. Respondents' data remained anonymous.

3.11. RELIABILITY

The reliability of a measure indicates the extent to which it is error free and ensures consistent measurement across time and across the various items in the instrument (Sekaran & Bougie, 2013, p.228). A common reliability coefficient is the Cronbach's alpha, which is based on the average correlation of items within a standardised test (Coakes & Steed, 2003, p.140). The Cronbach's alpha can range from 0 to 1. It was used as a reliability test to assess the consistency of results of the questionnaire. The Cronbach's alpha was calculated for questions that measured the same construct.

3.12. TRIANGULATION

Triangulation is a technique that is associated with collecting data from different methods and sources. The main objective of triangulation is to ensure that different methods lead to the same results (Sekaran & Bougie, 2013). The use of a mixed methods approach in this research allowed for the identification of common themes (Leedy & Ormrod, 2001, p.105). This phenomenon facilitated the corroboration of themes that emerged from the questionnaire to the interviews and vice versa (Bryman & Bell, 2011, p.632). Feedback from the questionnaires and interviews were analysed to establish common patterns and trends.

The advantage of triangulation is that it provides a study with different opportunities to obtain empirical evidence (Jick, 1979, p.602). For example, in this study, the competencies of a successful business rescue practitioner could be constructed based on feedback from the questionnaire and a discussion during the interviews. This facilitated a greater degree of confidence in the results of the study.

3.13. ETHICAL CONSIDERATIONS

The questionnaire for TMA-SA members and the interview schedule for business rescue practitioners was approved by the Humanities & Social Science Research Ethics Committee (HSSREC) of the University of KwaZulu-Natal. The approval was granted on the basis of gatekeeper permission from the TMA-SA. This comprised written consent from the COO of TMA-SA. During the data collection process the names and identity of respondents, for both the questionnaires and interviews, were not disclosed. Respondents were guaranteed anonymity. Care was taken to ensure that leading questions were not asked during the interviews that could have led to the disclosure of the interviewees' identity. The names of interviewees were not quoted in interviews and their identities were not disclosed.

3.14. CONCLUSION

This chapter commenced by emphasising the scarcity of knowledge in the field of business rescue. Scarce knowledge, combined with the low success rate of business rescue, provided justification to undertake empirical research. The further research focused on the low success rate of business rescue and sought to develop knowledge that can contribute towards improving this low success rate.

The study utilised the hypthetico-deductive method to meet the research objectives. This method entailed the establishment of a problem statement, research objectives and hypothesis as a means to improving the business rescue success rate. Due to the need for both measurement and understanding of the complexities relating to business rescue, the study utilised a mixed method approach. The methodology highlighted the research instruments, sample frames and the statistical analysis that were utilised to meet the research objectives. An advantage of the mixed methods approach is that it facilitated a level of triangulation, whereby the results from both methods could be compared to ensure that they are consistent. The next chapter presents the analysis of the results of the data collected in accordance with the quantitative methodology.

CHAPTER 4

PRESENTATION, ANALYSIS AND DISCUSSION OF QUANTITATIVE RESULTS

4.1. INTRODUCTION

Chapter 3 detailed the methodology used to conduct the empirical study. Justification was provided for the use of a mixed methods approach. This approach used quantitative (questionnaire) and qualitative (interview) data collection techniques. Chapter 4 presents the results of the quantitative study. It commences with a section on graphical and descriptive statistics. Bar graphs and frequency tables were processed using SPSS (version 23) to gain an overview of the perceptions of TMA-SA members with respect to business rescue. The feedback from respondents is presented in the form of descriptive statistics such as the mean, mode, median and standard deviation. Data from the completed questionnaires facilitated the identification and ranking of factors relating to both failed and successful business rescues. In addition, there is a formulation of the competencies that are required to be a successful business rescue practitioner. The results of the hypotheses relating to the research objectives are also presented.

In addition to presenting the results of the quantitative study, this chapter includes a detailed discussion of these results. The results are compared to existing literature to determine whether the study established new or different findings. In order for the study to have integrity, it must be reliable. The results of the reliability tests are presented to demonstrate the reliability and integrity of the study.

4.2. DATA COLLECTION CHALLENGE

The questionnaire was submitted electronically to TMA-SA members using QuestionPro. The initial response was low and the following attempts were made to increase the response rate:

1. A verbal request to the administrator of the TMA-SA for assistance by asking the TMA-SA members to respond to the questionnaire.

2. A verbal and written request to the chief executive officer (CEO) of the TMA-SA for assistance by asking the TMA-SA membership to respond to the questionnaire.
3. Three electronic reminders were sent to respondents to complete the survey.
4. Telephonic follow-ups with members of the TMA-SA.

These attempts resulted in the receipt of 71 complete surveys, representing a response rate of approximately 54%. Although the use of an online survey allowed for feedback from TMA-SA members situated in various parts of the country, a common feature of online surveys is the low response rate (Nulty, 2008, p.302). Electronic survey response rates average approximately 20% (Hart, Brennan, Sym & Larson, 2009, p.17). Studies on the response rates of electronic surveys indicate that the range of response rates vary between 20% and 47% (Nulty, 2008, p.302). The response rate of approximately 54% therefore compares favourably with these rates. It also compares favourably with other recent surveys in the field of business rescue and turnaround management. These include response rates of 10% (Baird, 2014, p.75) and 33% (Pretorius, 2015, p.16) in studies requiring online feedback from turnaround management professionals and business rescue practitioners.

4.3. RELIABILITY

Coakes and Steed (2003, p.140) stated that there are a number of different reliability coefficients. One of the most commonly used is the Cronbach's alpha, which is based on the average correlation of items within a test if the items are standardised. If the items are not standardised, it is based on the average covariance among the items. The Cronbach's alpha can range from 0 to 1. The Cronbach's alpha was calculated as part of the reliability test to assess consistency of results. The Cronbach's alpha was calculated for questions which have the same scales in each section (Table 4.1).

Table 4.1: Cronbach's alpha

QUESTION	CRONBACH'S ALPHA
10-21	0.75
22-34	0.84

The alpha values reflected in Table 4.1 exceed 0.7, which is indicative of high internal consistency. The results of the study therefore display a high degree of reliability and integrity.

4.4. DEMOGRAPHIC PROFILE OF RESPONDENTS

Questions 1 to 5 of the first section of the questionnaire related to biographical data of the respondents, such as their age, race, gender, education and area of specialisation. The respondents' demographic distribution is presented in Table 4.2.

Table 4.2: Demographic profile of respondents (n=71)

CHARACTERISTIC		FREQUENCY	PERCENTAGE
Age	21-30 years	2	2.8
	31-40 years	19	26.8
	41-50 years	**25**	**35.2**
	51-60 years	21	29.6
	61 and over	4	5.6
	Total	**71**	**100.0**
Race	African	10	14.1
	Coloured	2	2.8
	Indian	10	14.1
	White	**49**	**69.0**
	Total	**71**	**100.0**
Gender	Female	9	12.7
	Male	**62**	**87.3**
	Total	71	100.0
Education	Matric	1	1.4
	Diploma	2	2.8
	Degree	12	16.9
	Postgraduate Diploma/Honours	**29**	**40.8**
	Masters	25	35.3
	Doctorate	2	2.8
	Total	**71**	**100.0**

CHARACTERISTIC		FREQUENCY	PERCENTAGE
Area of specialisation	Management	21	29.6
	Financial	**26**	**36.6**
	Legal	22	31.0
	Other (specify)	2	2.8
	Total	**71**	**100.0**

According to Table 4.2, the distribution of the age groups is roughly bell shaped. The sample comprised 92% of respondents in the 31 to 60-year age group. Most (35%) of the respondents were in the 41 to 50-year age group. Approximately 30% were aged 51 to 60 and 27% were aged 31 to 40-years. Almost half of the respondents were Whites, followed by Indians and Coloureds (14% each). The ratio of males to females was approximately 7:1. Respondents to the survey were well educated as approximately 79% possessed a postgraduate qualification. The postgraduate qualification comprised predominantly of a post graduate diploma/honours (41%) and a Masters (35%). Most respondents were financial specialists (37%), followed closely by legal (31%) and business management specialists (30%).

4.5. RESPONDENTS APPOINTED AS BUSINESS RESCUE PRACTITIONERS

Question 6 required information from respondents as to whether or not they were appointed as a business rescue practitioner. The responses indicated that 26 (37%) of the 71 respondents were appointed as a business rescue practitioner. The demographic distribution of the 26 respondents with business rescue experience is reflected in Table 4.3.

Table 4.3: Demographic profile of business rescue practitioners (n=26)

CHARACTERISTIC		FREQUENCY	PERCENTAGE
Age	21-30 years	2	7.7
	31-40 years	7	26.9
	41-50 years	9	34.6
	51-60 years	6	23.1
	61 and over years	2	7.7
	Total	**26**	**100.0**

CHARACTERISTIC		FREQUENCY	PERCENTAGE
Race	African	1	3.8
	Coloured	1	3.8
	Indian	1	3.8
	White	23	88.5
	Total	**26**	**100.0**
Gender	Female	2	7.7
	Male	24	92.3
	Total	**26**	**100.0**
Education	Degree	6	23.1
	Postgraduate Diploma Honours	8	30.8
	Masters	12	46.2
	Total	**26**	**100.0**
Area of Specialization	Business Management	5	19.2
	Financial	7	26.9
	Legal	13	50.0
	Other (specify)	1	3.8
	Total	**26**	**100.0**

Table 4.3 indicates that most of the business rescue practitioners were in the 41 to 50-year age group (35%). The age distribution is roughly bell shaped as 27% and 23% of respondents were from the 31 to 40 and 51 to 60-year age groups. The majority of business rescue practitioners were White (89%) and male (92%). Whilst all 26 business rescue practitioners possessed a post matric qualification, the majority of respondents possessed a Master's qualification. Most of the business rescue practitioners specialised in the legal field (50%).

4.6. BUSINESS RESCUE PRACTITIONER EXPERIENCE

The 26 business rescue practitioners responded to further questions relating to the number of business rescue appointments, length of service as a business rescue practitioner and the results of their total business rescue appointments (Table 4.4).

Table 4.4: Business rescue experience

	YEARS EXPERIENCE/NUMBER OF APPOINTMENTS	FREQUENCY	PERCENTAGE
Number of years of experience as business rescue practitioner	1	3	11.5
	2	2	7.7
	3	8	30.8
	>3	13	50.0
	Total	**26**	**100.0**
Number of business rescue appointments	1	3	11.5
	4	2	7.7
	5	8	30.8
	>5	13	50.0
	Total	**26**	**100.0**

The business rescue practitioners that responded were very experienced in terms of both the years of experience and the number of appointments to business rescues. Approximately 80% of the respondents had more than three years of experience in business rescues. Furthermore, approximately 80% of the 26 business rescue practitioners were appointed as practitioners to five or more business rescues. The data indicates that the business rescue practitioners were well experienced – based on the years of experience and number of appointments.

4.7. OUTCOME OF BUSINESS RESCUE APPOINTMENTS

Question 9 required the 26 business rescue practitioners to categorise their business rescue appointments as successes, failures or incomplete. The results are reflected in Figure 4.1.

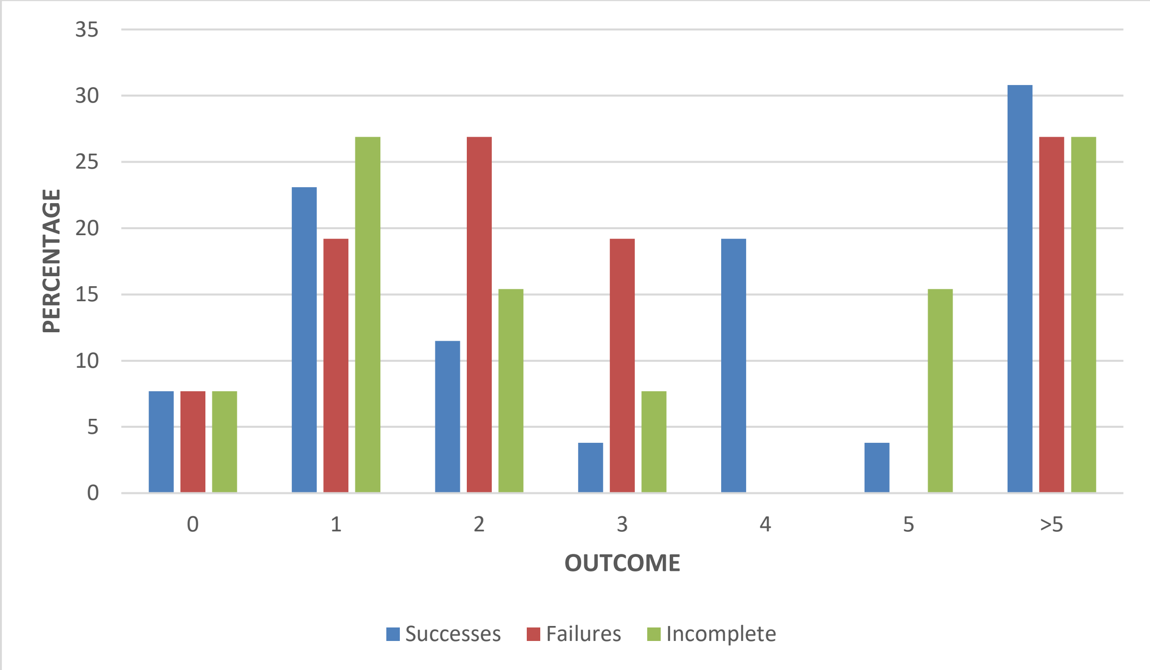

Figure 4.1: Business rescue experience

According to Figure 4.1, most business rescue practitioners (31%) had been involved in more than five successful business rescues. The practitioners also had a high proportion of failures and incomplete business rescues. Figure 4.1 indicates that approximately 27% of the practitioners had been involved in more than five failed and more than five incomplete business rescues respectively. The data presented in Figure 4.1 and Table 4.2 were correlated to investigate the impact of demographic factors on business rescue successes and failures. The results are presented in Section 4.8.

4.8. RELATIONSHIP BETWEEN BUSINESS RESCUE DEMOGRAPHICS AND SUCCESSES/FAILURES

There are two main Chi-square tests to assess if a relationship exists between business rescue successes/failures and business rescue practitioner demographics. These tests are the goodness of fit and the test of independence. The goodness of fit test is utilised to determine if a distribution can be matched to a variable, whilst the test of independence is utilised to assess if a relationship exists between variables (Coakes & Steed, 2003). It was more appropriate to utilise the Chi-square test of independence to investigate the existence of a relationship between business rescue success/failures and practitioner demographics (Table 4.5).

Table 4.5: Chi-square test of independence

	Successes		Failures	
	Chi-square	p-value	Chi-square	p-value
Age	26.929	0.308	8.596	0.929
Race	15.072	0.657	14.243	0.285
Gender	4.875	0.560	2.662	0.616
Education	13.271	0.350	4.736	0.785
Specialisation	15.176	0.650	23.190	**0.026**
Number of business rescue appointments	21.684	0.246	14.657	0.288
Years of experience as a business rescue practitioner	3.443	0.1323	1.473	0.2318

When conducting the Chi-square test of independence, if the p-value between two variables is less than 0.05 there is a significant association or relationship between the tested variables. According to Table 4.5, there is only one significant relationship that exists. This is the area of specialisation and the number of failures experienced by the business rescue practitioners at the 5% level. The area of specialisation included business management, finance and law and there were only two respondents in the "other" category. Those respondents in the financial and legal areas had more failures than those in the business management field. Therefore, from the sample of 26 business rescue practitioners, it can be concluded that there is a greater chance of business rescue failure in instances when the practitioner specialises in the legal or financial fields. The findings also indicate that other demographic characteristics make no difference to the success or failure of a business rescue.

Section two of the questionnaire (questions 10 to 21) requested information about factors that impact on a failed business rescue.

4.9. IMPACT OF FACTORS ON A FAILED BUSINESS RESCUE

In order to fulfil the first research objective, respondents were requested to indicate the impact of identified factors on a failed business rescue. The responses were categorised into no impact, a minor impact or a significant impact. The minor impact and significant impact responses are combined and compared to the no impact category (Table 4.6).

Table 4.6: Impact of factors on a failed business rescue

FACTOR	NO IMPACT (%)	MINOR OR SIGNIFICANT IMPACT (%)
Inability of a company to apply for rescue before six months of anticipation of financial distress	32	68
Management abuse	13	87
Lack of effective planning	1	99
Ineffective communication with stakeholders	6	94
Lack of an accreditation process	6	94
Cost escalations	1	99
Poorly prepared plans	1	99
Limited post rescue funding	1	99
Lack of support from SARS	25	75
Limited time period of three months to complete a business rescue	21	79
Lack of skilled courts	7	93
High costs of the process	1	99

According to Table 4.6, there are several factors that have a high impact on the failure of a business rescue. Approximately 99% of the sample identified the lack of effective planning prior to the application for business rescue, cost escalation due to business rescue practitioners not meeting deadlines, poorly prepared business rescue plans, limited post rescue funding and the high costs of the business rescue process as having an impact on a failed business rescue. These factors are supported by existing literature as follows:

- Lack of effective planning prior to the application for business rescue.

  The selection of a lack of effective planning as a factor confirms literature relating to the importance of early planning when a company intends undertaking a turnaround or formal Rescue. The Association of Business Recovery Professionals (2011) noted that a willingness to plan and prepare for a rescue reduces the chance of a failed rescue. In establishing a relationship between a successful business rescue and the duration of the rescue, Pretorius (2012) noted that any delay in the business rescue process contributes towards a failed rescue. Both Van der Burgh (2013) and Terblanche (2014) suggested that as much consultation as possible must occur prior to the application for a business rescue to minimise the chances of a failed business rescue. The impact that a lack of effective planning has on a failed business rescue justifies the advice provided by the CIPC (Terblanche, 2014) that most of the important financial analysis required for a business rescue is undertaken prior to the application for a business rescue.

- Cost escalations due to business rescue practitioners not meeting deadlines.

  Voller (2011) noted exorbitant fees by business rescue practitioners, the inability to complete the task on time and a failure to meet deadlines as some of the concerns relating to the performance of a business rescue practitioner.

- Poorly prepared business rescue plans.

  Gruber (2006) and Brinkman, Grichnik, and Kapsa (2010) highlighted the use of a well-developed business plan to increase the chances of a successful venture. Unfortunately, the analysis undertaken by Rosslyn-Smith in 2012, indicated that many business rescue plans contained an insufficient amount of information (Pretorius, 2012). The analysis indicated that most business rescue plans did not comply with the basic minimum requirements of Section 150 of the Companies Act of 2008. For example, the review of literature in Chapter 2 indicated that fewer than 50% of business rescue plans contain sufficient details relating to projected cash flow statements, balance sheets and income statements (Pretorius, 2012). The identification of poorly prepared business rescue plans confirms the literature and serves to highlight the importance of dedicating sufficient resources to the preparation of an effective business rescue plan

- Limited post rescue funding.

  The identification of limited post rescue funding as a factor that results in failed business rescues is also supported by existing literature. Carter and Van Auken (2006) noted that access to cash can prevent a liquidation. Vriesendorp and Gramatikov (2010), Du Preez (2012), Pretorius (2012) and Mindlin (2013) emphasised the importance of funding to a distressed business. The identification of limited post rescue funding as a significant factor that results in a failed business rescue justifies the CIPC's concern about the scepticism of the formal credit sector to fund businesses that file for business rescue (Lotheringen, 2013).

- High costs of the business rescue

  The identification of cost escalations as a factor that has a high impact on a failed business rescue supports the concerns by Holthausen relating to the magnitude of costs that are incurred during the business rescue process (Visser, 2013). These concerns were also raised by Pretorius (2013b).

In addition to the above five factors, there were other factors which were classified by more than 90% of respondents as impacting (minor and significant) on a failed business rescue. These factors included the lack of an accreditation process for business rescue practitioners, ineffective communication with creditors during business rescue and the lack of skilled courts to deal with business rescue cases. The identification of these factors as a cause of business rescue failure is supported by existing literature as follows:

- The lack of an accreditation process for business rescue practitioners

  Existing literature confirms the importance of the role of the business rescue practitioner (Bradstreet, 2010; Levenstein, 2011; Bezuidenhout, 2012). However, it was noted earlier that there are no clear prerequisites in terms of skills or experience other than those highlighted in Chapter 138 of the Act for appointing a business rescue practitioner (Pretorius, 2013a). The absence of an accreditation framework and process, similar to that utilised by other professionals, has contributed to failed business rescues.

- Ineffective communication with creditors during the business rescue

  Le Roux and Duncan (2013) highlighted creditors' concern about the lack of communication from the company in business rescue. Often, creditors are unaware that the company intends filing for business rescue. Mindlin (2013) emphasised the importance of effective communication with all stakeholders by suggesting a more active role for creditors in the business rescue process.

- The lack of skilled courts to deal with business rescue cases

  It was noted in Chapter 2 that the success of business rescue also lies in an effective judiciary to interpret and enforce the relevant legislation. However, there is a lack of specialist judges and courts to handle business rescue cases (Ensor, 2014).

The respondents' feedback facilitated the identification of the significant factors that result in a failed business rescue. However, research objective one requires a ranking of factors that result in a failed business rescue.

4.10. RANKING OF THE MEAN SCORES FOR QUESTIONS 10 TO 21

The ranking of factors resulting in a failed business rescue was achieved by the computation of the mean scores for each factor (Table 4.7).

Table 4.7: Ranking of factors resulting in a failed rescue

FACTOR	STANDARD DEVIATION	MEAN	RANK
Limited post rescue funding	.484	2.72	1
Poorly prepared plans	.510	2.65	2
Lack of effective planning	.525	2.58	3
Lack of an accreditation process	.603	2.56	4
Ineffective communication with stakeholders	.606	2.48	5
High costs of the process	.527	2.44	6

FACTOR	STANDARD DEVIATION	MEAN	RANK
Management abuse	.704	2.38	7
Cost escalations	.514	2.37	8
Lack of skilled courts	.590	2.28	9
Lack of support from SARS	.777	2.1	10
Limited time period of three months	.695	2.06	11
Inability of a company to apply for rescue before six months of anticipation of financial distress	.773	1.94	12

It is evident from Table 4.7 that the standard deviations for the top five factors fall within the range of 0.4 to 0.61. This indicates a high level of consistency of the responses to the respective question.

The top five factors, in order of their mean ranking, that have an impact on a failed business rescue are as follows:

1. Limited post rescue funding
2. Poorly prepared business rescue plans
3. Lack of effective planning prior to the application for business rescue.
4. Lack of accreditation process for the business rescue practitioner.
5. Management's ineffective communication with stakeholders during application for business rescue.

The literature in support of these factors resulting in a failed business rescue was presented in Chapter Two. However, existing literature does not provide a ranking of factors that result in a failed business rescue. The ranking allows stakeholders of a business rescue to take cognisance of its impact and importance and to plan accordingly. The consideration of the above factors will enable management to prioritise and dedicate scarce resources to areas that will prevent the failure of business rescue. These factors provide stakeholders an important guide to the pitfalls that must be avoided during the planning and performance of a business rescue.

Although financially distressed, more resources of a company filing for business rescue must be dedicated to the compilation of an effective business rescue plan and the raising of post rescue funding. The literature review highlighted the importance of a business rescue plan as an instrument for funding the financially distressed company. A well-prepared business rescue plan will contribute to removing barriers to funding business rescues. As the lack of post commencement funding is the main reason for business rescue failure, it is vital that funding needs of a distressed business are arranged before filing for business rescue. In the absence of the availability of post rescue funding for a business contemplating business rescue, management may prefer the liquidation route rather than incur more costs on a failed business rescue. From a funder's perspective, the absence or lack of adequate planning of a business rescue will point to a failed rescue.

The ranking of the lack of accreditation of business rescue practitioners as a significant factor resulting in failed business rescues points to the urgent need for a framework for accreditation. This study has aimed to establish some of the competencies that are required for the accreditation of a business rescue practitioner.

In attempting to address and resolve the factors that result in a failed business rescue, the next section focuses on factors that result in a successful business rescue. Questions 22 to 34 required respondents to indicate whether a stated factor will result in a successful business rescue.

4.11. BUSINESS RESCUE SUCCESS FACTORS

Respondents were requested to complete a Likert scale question for each possible success factor. The scale comprised five categories, namely strongly disagree, disagree, neutral, agree and strongly agree. The responses for the strongly disagree and disagree categories and the responses for the strongly agree and agree categories were combined into two categories respectively (Table 4.8).

Table 4.8: Business rescue success factors

FACTOR	DISAGREE AND STRONGLY DISAGREE	NEUTRAL	AGREE AND STRONGLY AGREE
Businesses need to use early warning signals	3	19	79
There needs to be early planning and preparation before commencement	0	21	79
Use of an effective business rescue plan	1	16	84
Increased time frame to six months to a year	19	25	56
Increased post rescue funding	1	20	79
Effective communication by business rescue practitioner	1	16	83
Employees of the company must be highly motivated	13	31	56
A key focus of the business rescue must be the company strategy	11	35	54
Government and related agencies need to be proactively involved in business rescue	17	21	62
Banks and financial institutions need to be proactively involved in the business rescue	4	17	69
Creditors need to play an active role in the business rescue process	4	11	85
Specialised courts need to be established	3	17	80
Strict accreditation criteria are needed	1	7	92

According to Table 4.8, 92% of respondents either agreed or strongly agreed that strict accreditation criteria for the appointment of a business rescue practitioner will result in a successful rescue. In order for business rescue legislation to survive, practitioners need to become more professional and better organised. In England, an important success feature of the formal rescue process rests with the strict accreditation of administrators (Loubser, 2010; Museta, 2011). In South Africa, there are many professions, such as in law, auditing and accounting that have strict accreditation criteria. The respondents to the questionnaire favour a similar route of accreditation as the main factor that will result in a successful business rescue. The components of the accreditation (skills and qualifications) are established in questions 35 to 37.

The results in Table 4.8 also indicate that businesses need to use early warning signals to anticipate financial distress in order for a business rescue to be successful. This view, supported by 79% of respondents, will facilitate the early commencement of a business rescue. The benefits of an early commencement of business rescue was illustrated in the successful rescue of Shelly Point Hotel (Muller, 2014). The early commencement of that rescue facilitated timeous raising of post rescue finance (ranked as the main factor resulting in a failed business rescue). Businesses must be educated about early warning signals as a sign of financial distress. This will facilitate the early planning and preparation for a business rescue (rated by 79% of respondents as a success factor).

Establishing an effective business plan is also an important factor for successful business rescue as is the business rescue time frame being increased to six months to a year. The issue of post rescue funding being available for a successful business rescue is again emphasised. The research also indicates that business rescue practitioners must ensure that employees of the company in business rescue are highly motivated for a successful business rescue. This is related to effective communication, a quality that a business rescue practitioner must possess. The company strategy is also an important factor that businesses should consider for successful business rescue. Government and related agencies as well as banks, creditors and other financial institutions also need to be involved in the business recue process. In addition, specialised courts are critical for a successful business rescue.

Whilst the respondents' feedback in Table 4.8 provided an indication of success factors, these factors must be ranked according to their mean scores to establish their importance.

4.12. RANKING OF THE MEAN SCORES FOR QUESTIONS 22 TO 34

A ranking of the mean scores for the factors that impact on a successful business rescue is reflected in Table 4.9.

Table 4.9: Ranking of mean scores for business rescue success factors

FACTORS RESULTING IN A SUCCESSFUL BUSINESS RESCUE	STANDARD DEVIATION	MEAN	RANK
Strict accreditation criteria are needed	.693	4.45	1
Effective communication by the business rescue practitioner	.749	4.2	2
Use of an effective business rescue plan	.743	4.18	3
Businesses need to use early warning signals	.828	4.17	4
Post rescue funding must be available	.751	4.08	5
There needs to be early planning and preparation before commencement	.685	4.04	6
Creditors need to play an active role in the business rescue process	.717	4.03	7
Banks and other financial institutions need to be proactively involved in the business rescue	.784	4.01	8
Specialised courts need to be established	.775	4	9
Employees of the company must be highly motivated	.992	3.56	10
A key focus of the business rescue must be the company strategy	.953	3.55	11
Government and related agencies need to be proactively involved in business rescue	.983	3.55	11
The business rescue time frame should be increased to six months to a year	.968	3.45	13

According to Table 4.9, the top five factors in order or their mean ranking for a successful business rescue are as follows:

1. Strict accreditation criteria are needed for the appointment of business rescue practitioners.
2. The business rescue practitioner must communicate effectively with stakeholders during the business rescue process.
3. An effective business rescue plan needs to be established.
4. Businesses need to use early warning signals to anticipate financial distress.
5. Post rescue funding must be available.

Whilst the strict accreditation of a business rescue practitioner is ranked as the highest factor that will result in a successful rescue, existing literature does not indicate the qualifications and skill competencies that can be utilised for accreditation purposes. The next section establishes the important qualifications that a successful business rescue practitioner must possess.

4.13. QUALIFICATIONS THAT A PRACTITIONER SHOULD POSSESS.

Question 35 required responses to the two most important qualifications required to be a successful business rescue practitioner. The feedback is illustrated in Figure 4.2.

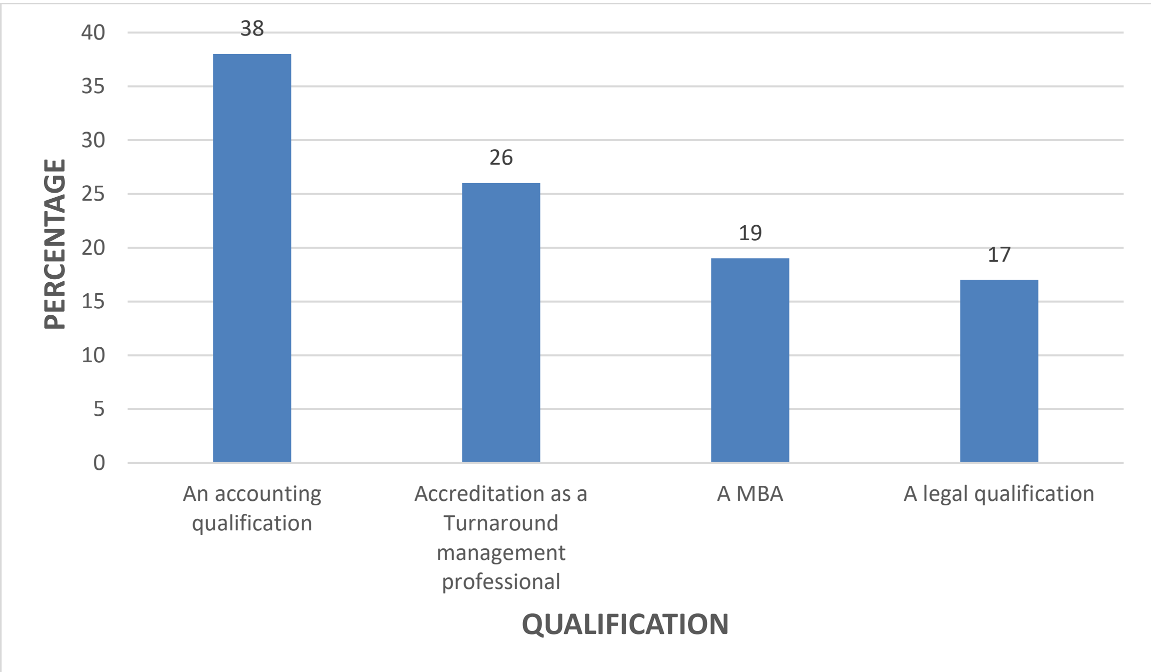

Figure 4.2: Important qualifications required to be a successful business rescue practitioner

According to Figure 4.2, an accounting qualification had the highest average ranking of 38%. Although the identification of an accounting qualification as the most important qualification for business rescue practitioners represents a new contribution to knowledge in business rescue, it does support the focus on effective cash management of a financially distressed business that was highlighted in existing literature (Pretorius, 2012; Mindlin, 2013). Furthermore, this study established that the lack of post rescue funding is the main cause of business rescue failure and that the availability of post rescue funding is the 5th most important factor that will result in a successful business rescue. The average ranking of accounting as the most important qualification for business rescue practitioners serves to confirm the importance of effective cash management.

Possession of an accounting qualification will also facilitate the development of an improved business rescue plan. Pretorius (2012) noted that fewer than 50% of business rescue plans contained sufficient details relating to projected cash flow statements, balance sheets and income statements, which has negative consequences for the success of a business rescue plan and the business rescue. Business rescue practitioners who have an accounting qualification will therefore contribute significantly to compiling the business rescue plan and the chances of raising post rescue finance.

Approximately 26% of the respondents ranked the accreditation of a turnaround management professional as the most important skill that a successful business rescue practitioner should possess. Whilst Section 138(a) of the Companies Act, Act No.71 of 2008 (RSA, 2008) allows for the appointment of a business rescue practitioner if the person is a member in good standing of a legal, accounting or business management profession accredited by the CIPC, it does not include turnaround management accreditation or experience. The review in Chapter 2 noted similarities between a successful informal turnaround and a business rescue, especially concerning the successful rehabilitation of financial distress. It also noted that the business rescue practitioner’s tasks are complex and vague and involve a wide range of competencies that are unavailable to the average business person. In order to successfully rehabilitate a financially distressed company, the practitioner requires “war-zone” experience (Pretorius, 2013b, p.1). An accredited turnaround management professional will possess the necessary skills to restore profitability to financially distressed companies. Baird (2014) noted that successful turnaround management professionals possess the necessary psychometric profile, educational, knowledge and experience to implement a successful turnaround strategy. The research findings acknowledge the vast spectrum of responsibilities relating to negotiation, cash flow management, strategy, conflict resolution and administration required by the business rescue practitioner.

A legal qualification was ranked as the least important qualification. Although the business rescue process is non-judicial and commercial in nature, there remains a high reliance on courts to ensure compliance (Ensor, 2014). There are concerns relating to the legal skills of South African courts to handle business rescue disputes (Visser, 2013). These concerns point to the need for special legal qualifications relating to business rescue during disputes or judicial matters rather than in the performance of a business rescue practitioner responsibilities. The ranking of legal skills as an unimportant qualification is supported by the analysis of the demographics of the 26 business rescue respondents. According to Table 4.5, there was only one significant relationship that existed between business rescue failures and areas of specialisation. It was concluded that there is a greater chance of business rescue failure in instances when the practitioner specialises in the legal field.

Overall, it can be concluded that a successful business rescue practitioner must possess an accounting qualification or be an accredited TMP. In addition to a qualification, a successful business rescue practitioner must possess certain important skills, as discussed next.

4.14. SKILLS THAT A BUSINESS RESCUE PRACTITIONER SHOULD POSSESS.

Question 36 related to the three most important skills required to be a successful business rescue practitioner. The results of the most important skills are presented in Figure 4.3.

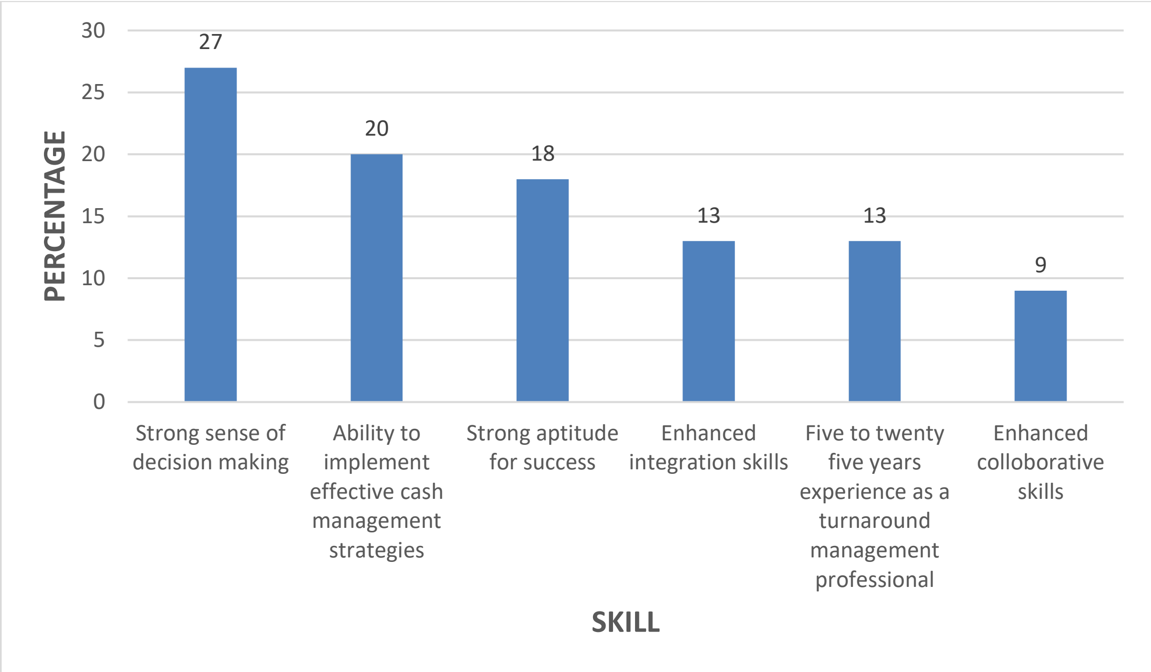

Figure 4.3: Important skills required to be a successful business rescue practitioner

According to Figure 4.3, a strong sense of decision making was ranked as the most important skill. The ability to implement effective cash management strategies was regarded as the second most important skill. Effective cash management relates to the raising of post rescue funding and the effective management and utilisation of cash resources during a rescue. This research finding is consistent with the results of this study which highlight the importance of cash management by ranking:

a) a lack of funding as the highest cause of business rescue failure

b) the availability of post rescue funding as a key success factor for business rescue success.

Existing literature supports the generation of cash as vital to a successful turnaround or business rescue (Carter & Van Auken, 2006; Vriesendorp & Gramatikov, 2010; Du Preez, 2012; Mandlin, 2013). In the USA, a feature of the Chapter 11 rescue mechanism is the availability of funding, which is viewed as a reason for many successful rescues (Bharath *et al*., 2013, p.10). A business rescue practitioner who is skilled in implementing effective cash management strategies will contribute to the overall success of the rescue. This finding is highly consistent with the finding that a business rescue practitioner must possess an accounting qualification.

Another important skill that that was identified was the five to 25 years of experience as a turnaround management professional. It is consistent with the earlier finding on the importance of a qualification as a TMP.

These findings, however, contradict earlier research which concluded that enhanced collaborative skills are the central and most important competency that a business rescue practitioner must possess. (Pretorius, 2014). This study has ranked that skill as the least important.

In an effort to develop a framework for the accreditation, a further question dealt with the need for a written examination.

4.15. NEED FOR AN ACCREDITATION EXAMINATION

The final question related to the necessity of a written examination as part of the accreditation process. The results are presented in Figure 4.4.

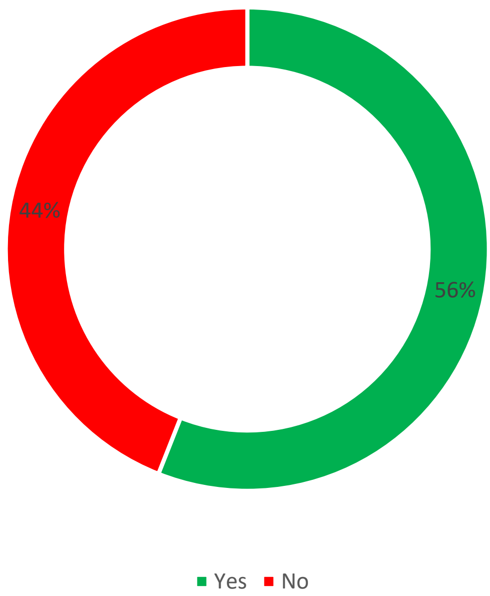

Figure 4.4: Need for a written examination

It is evident from Figure 4.4 that the majority (56%) are in favour of a written examination to improve the competencies of business rescue practitioners. A written exam can be used as a mechanism in the accreditation process to address some of the concerns relating to the poor skills of practitioners (Pretorius, 2013a, Ensor, 2014). The finding that a written examination is necessary supports existing literature relating to the necessity of a written examination (Pretorius, 2015, p.92). However, it must be noted that the margin of 6% represented a small majority in favour of a formal accreditation examination.

Whilst guidance on the scope of the examination is not provided by available literature, the responses to questions 35 and 36 provide an indication of the content of the examination.

4.16. ANALYSIS OF MEANS

The descriptive statistics are reflected in Table 4.10 and comprise the mean, mode, median, the sample variance and the sample standard deviation. The mean or the arithmetic mean is the sum of all the values divided by the sample size, the mode is the most frequent response given by the respondents and the median is the middle most value when the data (per variable/question) is arranged from highest to lowest. The sample variance is the degree or quantity by which each observation varies one from another. The sample standard deviation is the square root of the sample variance and is presented in Table 4.10.

Table 4.10: Descriptive statistics

Question	Mean	Median	Mode	Std. Deviation	Variance
1	3.08	3.00	3	.952	.907
2	3.38	4.00	4	1.074	1.153
3	1.87	2.00	2	.335	.112
4	4.14	4.00	4	.930	.866
5	2.07	2.00	2	.851	.724
6	1.63	2.00	2	.485	.235
7	4.19	4.50	5	1.021	1.042
8	5.08	6.00	6	1.468	2.154
9 (a)	4.38	5.00	7	2.210	4.886
9 (b)	3.92	3.00	3	2.077	4.314
9 (c)	4.19	3.50	2	2.263	5.122
10	1.94	2.00	2	.773	.597
11	2.38	3.00	3	.704	.496

Question	Mean	Median	Mode	Std. Deviation	Variance
12	2.58	3.00	3	.525	.276
13	2.48	3.00	3	.606	.367
14	2.56	3.00	3	.603	.364
15	2.37	2.00	2	.514	.264
16	2.65	3.00	3	.510	.260
17	2.72	3.00	3	.484	.234
18	2.10	2.00	2	.777	.604
19	2.06	2.00	2	.695	.482
20	2.28	2.00	2	.590	.348
21	2.44	2.00	2	.527	.278
22	4.17	4.00	5	.828	.685
23	4.04	4.00	4	.685	.470
24	4.18	4.00	4	.743	.552
25	3.45	4.00	4	.968	.937
26	4.08	4.00	4	.751	.564
27	4.20	4.00	4	.749	.561
28	3.56	4.00	4	.922	.849
29	3.55	4.00	4	.953	.908
30	3.55	4.00	4	.983	.965
31	4.01	4.00	4	.784	.614
32	4.03	4.00	4	.717	.513
33	4.00	4.00	4	.775	.600
34	4.45	5.00	5	.693	.480
35a	2.56	2.00	4	1.204	1.449
35b	2.52	2.00	2	.892	.796
36a	3.00	2.00	1	2.056	4.229
36b	2.97	3.00	3	1.298	1.685
36c	3.38	3.00	3	1.398	1.953

According to Table 4.10, the majority of the questions had modes of “2” or “3” and these can be translated in accordance with the responses from the scales of the corresponding questions. This indicates that respondents tended specifically towards certain categories of answers, indicating a high level of consistency. The standard deviations are consistently about ‘1’, indicating good consistency between the observations due to the low variability. This indicates a high degree of reliability and is consistent with the Crobach’s Alpha for the study.

4.17. HYPOTHESES TESTING

Prior to conducting hypotheses testing, a test must be conducted to determine if the questions/variables follow a normal distribution or not. If the variables/questions are normally distributed then parametric tests such as the independent sample t-test, ANOVA and certain parametric hypothesis tests will be permissible to use on the data. If the variables do not follow a normal distribution, then non-parametric tests such as the Mann Whitney U test, Wilcoxon sign rank test and Friedman test are allowed on the data to test certain hypotheses and infer results (Field & Miles, 2010). The Kolmogorov Smirnov test is utilised to test for normality of the data and assess if the data is normally distributed (Table 4.11).

Table 4. 11: Test for the normality of data

Question	Test Statistic	Asymp. Sig. (2-tailed)
10	.213	.000
11	.318	.000
12	.381	.000
13	.340	.000
14	.385	.000
15	.382	.000
16	.417	.000
17	.452	.000
18	.229	.000
19	.265	.000
20	.331	.000
21	.345	.000
22	.251	.000
23	.271	.000

Question	Test Statistic	Asymp. Sig. (2-tailed)
24	.234	.000
25	.278	.000
26	.244	.000
27	.238	.000
28	.246	.000
29	.217	.000
30	.296	.000
31	.282	.000
32	.329	.000
33	.303	.000
34	.335	.000
35 (a)	.258	.000
35 (b)	.242	.000
36 (a)	.222	.000
36 (b)	.238	.000
36 (c)	.171	.000

According to Table 4.11, every p-value is less than 0.05. The tested variables therefore do not come from a normal distribution. The implication is that non-parametric statistical tests such as the Mann-Whitney U, Chi-square and the Kruskal Wallis tests were the most suitable for further analysis.

4.18. CHI-SQUARE GOODNESS OF FIT TEST

There are two Chi-square tests, namely the Chi-square test of independence and the Chi-square goodness of fit test. The Chi-square test of independence is used to check for an association between the row and columns of a contingency table (Coakes & Steed, 2010). The hypotheses identified in Chapter 3 were tested using the Chi-square goodness of fit test. The results of the tests are reflected in Table 4.12.

Table 4. 12: Hypotheses tested

	DETAILS OF HYPOTHESES	CHI-SQUARE VALUE	P-VALUE
1.	H_0: Limited post rescue funding has no impact on a failed business rescue H_1: Limited post rescue funding has a significant impact on a failed business rescue	523.817	0.000
2.	H_0: Poorly prepared business rescue plans have no impact on a failed business rescue H_1: Poorly prepared business rescue plans have a significant impact on a failed business rescue	458.983	0.000
3.	H_0: The limited time period of three months to complete a business rescue has a minor impact on a failed business rescue H_1: The limited time period of three months has a significant impact on a failed business rescue	.305	.859
4.	H_0: Strict accreditation criteria are not needed for the accreditation of a business rescue practitioner H_1: Strict accreditation criteria are needed for the accreditation of a business rescue practitioner	346.733	0.000
5.	H_0: Accreditation as a turnaround management professional is not an important qualification that a business rescue practitioner should possess H_1: Accreditation as a turnaround management professional is an important qualification that a business rescue practitioner should possess	175.733	0.000
6.	H_0: Enhanced integration skills are not the most important skills that a business rescue practitioner should possess H_1: Enhanced integration skills are the most important skills that a business rescue practitioner should possess	.225	.999

The results of the hypotheses testing in Table 4.12 reflect the p-values for each of the relationships tested. Based on the test results:

a) The null hypothesis is rejected for the 1st hypothesis relating to the impact of post rescue funding on a failed business rescue. Accordingly, it is concluded that a lack of post rescue funding has a significant impact on a failed business rescue. These results are consistent with the earlier findings of this study which rated the lack of post rescue funding as the main cause of business rescue failure.

b) The null hypothesis is rejected for the 2nd hypothesis, relating to the impact of a poorly prepared business rescue plan on a failed business rescue. Accordingly, it is concluded that the poorly prepared business rescue plans have a significant impact on a failed business rescue.

c) The null hypothesis is accepted for the 3rd hypothesis as the p-value is greater than 0.05. Therefore, the limited time period of three months has only a minor impact on a failed business rescue.

d) The null hypothesis is rejected for the 4th hypothesis, relating to the need for strict accreditation criteria. It is concluded that the utilisation of strict accreditation criteria will have a significant impact on the success of a business rescue.

e) The null hypothesis is rejected for the 5th hypothesis, relating to the importance of accreditation as a turnaround management professional. It is concluded that accreditation as a turnaround management professional is an important qualification that a business rescue practitioner should possess.

f) The null hypothesis is accepted for the 6th hypothesis, relating to enhanced integration skills being the most important skill that a business rescue practitioner should possess. It is concluded that enhanced integration skills are not the most important skill required.

4.19. KEY QUANTITATIVE FINDINGS

The key findings of the quantitative study, in relation to existing literature, is presented in Table 4.13.

Table 4. 13: Key quantitative findings

FINDING	RELATION TO LITERATURE
The ranking of the top five factors that impact on a failed business rescue are the following: 1. Limited post rescue funding 2. Poorly prepared business rescue plans 3. Lack of effective planning prior to the application for business rescue 4. Lack of an accreditation process for the business rescue practitioner 5. Ineffective communication by management with stakeholders during the application for business rescue	• Although limited post rescue funding was identified as a factor having an impact on failed business rescues, it was not considered to have the highest impact on these failures (Pretorius, 2015). This study ranked limited post rescue funding as the highest factor that resulted in a failed business rescue. • Pretorius (2012) undertook an analysis of business rescue plans and observed that most plans did not comply with Section 150 of the Act. Although highlighted as a concern, his study did not quantify the impact that poorly prepared business rescue plans have on a failed business rescue. This study ranked poorly prepared business rescue plans as having the second highest impact on a failed business rescue. • Existing literature highlighted the importance of effective planning for a business rescue (IoDSA, 2009), the lack of an accreditation process for business rescue practitioners (Pretorius, 2014), and ineffective communication with stakeholders (Van der Burgh, 2013). This study confirmed the impact of these factors on a failed business rescue. • Existing literature identified the abuse of the business rescue process (Lovells, 2014), a lack of support for the business rescue process from SARS (Lotheringen, 2013), and high costs of the business rescue process (Visser, 2013) as reasons for failures in business rescue. These factors did not feature in the top five factors that impacted in a failed business rescue in this study. • The findings of this study do not support the findings of Loubser (2010) that the time frame

FINDING	RELATION TO LITERATURE
	of three months to complete a business rescue must be extended. The current time frame of three months did not feature amongst the top five factors having an impact on a failed business rescue. • The original contribution of the study is the measurement and ranking of the factors that impact on a failed business rescue.
The ranking of the top five factors that will result in a successful business rescue are the following: 1. Strict accreditation criteria are required for the appointment of business rescue practitioners 2. The business rescue practitioner must communicate effectively with stakeholders during the business rescue process 3. An effective business rescue plan needs to be established 4. Businesses need to use early warning signals to anticipate financial distress 5. Post rescue funding must be available	• This study confirmed success factors identified in existing literature relating to the accreditation of a business rescue practitioner (Museta, 2011; Pretorius, 2013a). It contributes to knowledge by ranking the accreditation of business rescue practitioners as the most important success factor. • This study confirmed post rescue funding as a success factor (Du Preez, 2012). • This study confirmed the importance of an effective business rescue plan (Pretorius & Rosslyn-Smith, 2014). • This study's unique finding is the utilisation of early warning signals to anticipate financial distress as a success factor for a business rescue. • Although literature established different factors that result in a successful business rescue, it did not contain a common set of factors that can be utilised to achieve a successful business rescue. This study has identified and ranked the factors that must be actioned in order to achieve a successful rescue.
The following are the two most important qualifications required to be a successful business rescue practitioner: 1. An accounting qualification	Existing literature does not specify the qualifications required to be a successful business rescue practitioner. These findings represent a unique contribution.

FINDING	RELATION TO LITERATURE
2. Accreditation as a turnaround management professional	
The following are the three most important skills required to be a successful business rescue practitioner: 1. A strong sense of decision making 2. The ability to implement effective cash management strategies 3. A strong aptitude for success	• Pretorius established that enhanced collaborative skills are the most important for business rescue practitioner success (Pretorius, 2014, p.10). Enhanced collaboration skills did not feature in the three most important skills for success in this study. • This study confirms the importance of strong decision-making skills for a successful business rescue practitioner (Pretorius, 2014). • The original contribution of this study is the ranking of effective cash management strategies as an important skill for practitioners. • The identification of effective cash management and a strong aptitude for success as skills that must be possessed by a business rescue practitioner is a unique contribution of the study.
A written examination is required for accreditation as a business rescue practitioner	This finding is consistent with the University of Pretoria Business Enterprises (Pretorius, 2015) research that favoured a written examination as a component of the accreditation process.

It is evident from Table 4.13 that, whilst some of the factors that result in a failed and successful rescue are consistent with existing literature, the unique contributions of this study are the following:

1. The ranking of limited post rescue funding as having the greatest impact on a failed business rescue.
2. The ranking of the strict accreditation criteria as the highest success factor that will result in a successful business rescue. Furthermore, the study established the utilisation of early warning signals to anticipate financial distress as a success factor.

3. The identification of an accounting qualification and accreditation as a turnaround management professional as the most important qualifications that a business rescue practitioner must possess.

4. The identification of effective cash management skills as an important skill to be a successful business rescue practitioner.

4.20. CONCLUSION

This chapter has presented the results of the quantitative study. The salient findings were that the lack of post rescue funding was ranked as the main cause of business rescue failure. The establishment of strict accreditation criteria for rescue practitioners is the most important factor that will result in a successful business rescue. The results indicated that a successful business rescue practitioner should possess an accounting qualification. It also indicated that a successful business rescue practitioner must possess a strong sense of decision-making skills. The study's reliability was highly rated according to the Cronbach's Alpha which indicates that the results are reliable. The next chapter presents and analyses the findings of the qualitative study.

CHAPTER 5

PRESENTATION, ANALYSIS AND DISCUSSION OF QUALITATIVE FINDINGS

5.1. INTRODUCTION

The results of the quantitative methodology were presented and analysed in the previous chapter. A statistical analysis was performed on the data collected from the membership of the TMA-SA. The analysis facilitated the establishment and ranking of factors that impact on failed and successful business rescues. Due to the importance of the role of the business rescue practitioner in a rescue, the study established the qualifications and skills that are required for the accreditation of a successful practitioner.

The research methodology, outlined in Chapter 3, proposed a mixed methods approach to the study. This chapter, Chapter 5, presents and analyses the research findings of the qualitative research. The qualitative methodology encompassed individual interviews with a sample of business rescue practitioners. Qualitative research is based on the specialist knowledge of a small group of experts. The interviews were conducted with a group of business rescue practitioners that were ranked, by the CIPC, as the top ten practitioners in terms of the number of their business rescue appointments. The analysis of the interviews resulted in the development of themes relating to the causes of business rescue failure, factors that will result in a successful business rescue and the competencies of a successful business rescue practitioner.

An important feature of the methodology relates to the triangulation of the results of the literature with the quantitative and qualitative results. Triangulation ensures that the utilisation of a mixed methods approach leads to the same results (Sekaran & Bougie, 2013). This chapter determines whether an overlap exists between the research findings of the different approaches.

5.2. INTERVIEW PROCEDURE

Marshall and Rossman (2006 as cited in Du Preez, 2012, p.49) recommended the use of in-depth expert interviews as a method of data collection to obtain an individual's experience and views of a subject area. An expert is a person with a high degree of skill, knowledge and decision-making opportunities based on these skills and knowledge (Belting, 2008, p.2). In the business rescue environment, the practitioner possesses an intimate knowledge of the business rescue process. A well-experienced practitioner possesses an in-depth understanding of the difficulties experienced, the causes of rescue failure and the interventions required to improve the success rate.

In March 2015, the CIPC released a list of the top ten business rescue practitioners in terms practitioner appointments. These practitioners are the most experienced and possess substantial knowledge of the business rescue process. Due to their immense experience and knowledge, they are considered to be experts in business rescue. The CIPC list of the top ten business rescue practitioners was utilised as the sample frame for conducting interviews. The selected respondents were contacted telephonically to request their participation in the interview. Of the ten practitioners contacted, seven agreed to participate. An email was sent to these practitioners with the list of interview questions. Included in the list was a request for permission to record the interviews and a copy of the University of KwaZulu-Natal's informed consent form for signature.

A difficulty experienced during the initial phase of the process was finalising a time for the interview due to the time constraints experienced by the business rescue practitioners. Business rescue practitioners' responsibilities are complex and time consuming, many do not have time to "tie their shoelaces" (Pelser, 2012). Of the seven that consented to the interview, two participants provided written responses to the interview questions. Follow-up telephone conversations were held with both those practitioners to clarify and probe their responses. The remaining five participants' responses were recorded telephonically. The interviews were transcribed verbatim for analysis. The transcriptions were recorded, analysed and interpreted to develop themes. Thereafter, these themes were triangulated with the findings of the quantitative research and the literature review to establish areas of overlap.

5.3. DEMOGRAPHIC PROFILE OF INTERVIEWEES

Each interview commenced with brief questions relating to the interviewee demographic characteristics, such as age, race, highest level of education and area of expertise. These characteristics are summarised in Table 5.1.

Table 5.1: Demographic profile of respondents

CHARACTERISTIC		FREQUENCY	PERCENTAGE
Age	31-40 years	2	28.6
	41-50 years	2	28.6
	51-60 years	2	28.6
	61 and over	1	14.2
	Total	**7**	**100.0**
Race	White	7	100
Gender	Male	7	100
Education	Degree	3	42.9
	Postgraduate Diploma/Honours	1	14.2
	Masters	3	42.9
	Total	**7**	**100**
Area of Specialisation	Business/Management	1	14.2
	Financial	2	28.6
	Legal	4	57.2
	Total	**7**	**100.0**

According to Table 5.1, the age of the respondents was equally distributed between the three groups from the 31 to 60 age categories. All interviewees were White males and were well educated, with a degree as a minimum qualification. The majority (4) of interviewees were legal specialists, whilst two practitioners were financial specialists. Only one interviewee specialised in business management.

5.4. BUSINESS RESCUE PRACTITIONER EXPERIENCE

The interviewees were requested to provide details of their business rescue experience and their number of business rescue appointments (Table 5.2).

Table 5.2: Respondents' business rescue experience

PRACTITIONER EXPERIENCE	YEARS EXPERIENCE/NUMBER OF APPOINTMENTS	FREQUENCY	PERCENTAGE
Number of years of business rescue experience	**>3**	7	100
Number of business rescue appointments	**>5**	7	100

According to Table 5.2, all interviewees had served as a business rescue practitioner for more than three years and had been appointed to more than five business rescues. The average number of business rescue practitioner appointments per interviewee was approximately 51. This is significantly in excess of the average business rescue practitioner appointments (7) per conditionally registered business rescue practitioner (Voller, 2015). As a result of their significant experience and exposure to business rescues, the interviews with these practitioners facilitated an understanding of challenges relating to business rescue and the interventions required to improve the success rate. The first phenomena related to the causes of business rescue failure (research objective one). There are four questions that relate to the first research objective.

5.5. READINESS OF SOUTH AFRICA FOR BUSINESS RESCUE LEGISLATION

All seven business rescue practitioners welcomed the implementation of the business rescue legislation. They conveyed their support for the introduction of the legislation due to the potential to grow the economy. A practitioner indicated that "Business Rescue is a fantastic piece of legislation…the spirit of the Act is that jobs will be saved and there are many other benefits to the economy". The majority indicated the business community, prior to implementation, also welcomed the legislation mainly due to its intent to prevent liquidations and save jobs. At the time of implementation of the legislation, the business community felt there were parallels between judicial management and Chapter 6 legislation. However, this was not true as business rescue legislation required a completely different set of skills, mindsets and approaches for its successful implementation.

During the interviews it became evident that South Africa was unprepared for the implementation of business rescue legislation. All seven business rescue practitioners indicated that there was a level of unpreparedness when the legislation was implemented in 2011. The reasons provided by the interviewees are presented in Table 5.3.

Table 5.3: Reasons that South Africa was unprepared for implementation of business rescue legislation

REASON FOR BEING UNPREPARED	BR1	BR2	BR3	BR4	BR5	BR6	BR7
Complexity of legislation	✓	✓	✓			✓	
Resistance to change from financial institutions				✓			
Lack of adequate systems at the CIPC							✓
The judiciary's lack of expertise					✓		

According to Table 5.3, four respondents justified their view that South Africa was unprepared for business rescue legislation by highlighting the technical nature and complexity of the legislation. The introduction of business rescue legislation resulted in a significant difference in the manner that financially distressed companies were managed. However, when the legislation was implemented there were "no guidelines, structure or case law". Difficulties were experienced during the implementation of the legislation due to the complex nature of the new legislation. Although, since implementation, there have been more guidelines and assistance to understand the business rescue legislation, the scope and nature of the legislation was misunderstood when it was implemented. Initial attempts to implement the legislation were cumbersome due to the complexity of the legislation.

One of the business rescue practitioners highlighted the reluctance of the financial institutions to accept and be prepared for the implementation of the legislation. He felt that the legislation was long overdue as a corporate recovery mechanism. It had the potential to rebalance the institutional power between companies and financial institutions, which resulted in a concentration of power in the financial institutions for many decades. If the government waited longer to implement the legislation to enable the funding sector to be better prepared, the financial sector would not have prepared themselves. “Everyone who previously enjoyed the situation would say that they were not prepared”. In essence, they were not prepared due to their unwillingness to accommodate a compromised role in the restructure of a distressed company. The adoption of the business rescue legislation posed a threat to the financial sector due to their compromised role. As a result, the actions and attitude towards the legislation indicated that they were not supportive of the legislation.

Although the CIPC was tasked with the oversight and implementation of business rescue legislation, the organisation was unprepared for its responsibilities. The CIPC did not have functional systems for the first two months after the adoption of business rescue legislation. A business rescue practitioner mentioned that he resorted to obtaining a court order forcing the CIPC to appoint him due to delays experienced with the CIPC. He also indicated that the first five business rescue practitioner appointments in South Africa were as a result of court orders that compelled the CIPC to make practitioner appointments. In addition, there was uncertainty relating to the qualifications and skills that were required to be an effective business rescue practitioner. Although the Act stipulated that a business rescue practitioner required legal, financial and management skills, these skills were insufficient to effectively fulfil their responsibilities.

Another interviewee supported the view that the country was not prepared for the implementation by highlighting the unsupportive nature of the courts for the new legislation. He felt that the courts were, and still are, not prepared to accept business rescue into South African jurisprudence. He attributed this to a lack of expertise in the judiciary and its inability to comprehend the positive impact of business rescue legislation on the economy.

In summary, the discussion with interviewees regarding the readiness of South Africa for business rescue legislation indicated that the legislation was welcomed at implementation. This was due to its potential to save jobs and prevent liquidations. However, South Africa was not prepared for the implementation of business rescue legislation. Certain factors such as the complexity of legislation, the resistance to change from financial institutions, a lack of suitable systems to support the implementation of the legislation at the CIPC, and the unwillingness of the judiciary to accommodate and support the legislation resulted in South Africa being unprepared.

The second question related to the reasons for the low success rate of business rescue in South Africa.

5.6. REASONS FOR THE LOW SUCCESS RATE OF BUSINESS RESCUE IN SOUTH AFRICA

The low success rate of business rescue was acknowledged and accepted by all interviewees. The reasons provided for the low success rate are presented in Table 5.4.

Table 5.4: Reasons for low success rate

REASON FOR LOW SUCCESS RATE	BR1	BR2	BR3	BR4	BR5	BR6	BR7
Late filing for business rescue		✓		✓	✓		
Extensive litigation and absence of specialised courts		✓			✓		✓
Lack of post rescue finance		✓			✓		
Unaccredited business rescue practitioners	✓					✓	
Abuse of business rescue			✓				

According to Table 5.4, three interviewees felt that the low success rate was attributable to companies filing late for business rescue. They believed that the late filing was mainly due to management ignoring initial distress signals. Often management admitted late in the distress process that they needed help. These practitioners encountered numerous failed business rescues that would have been successful, if the rescue had commenced earlier. By the time practitioners got involved, it was too late for the rescue to be a success. According to the interviewees, creditors were reluctant to support the business rescue at a late stage. They observed that, when financial distress is at an advanced stage, creditors do not wish to work with management or the practitioner. This resulted in a failed rescue.

An interviewee indicated that there is a negative correlation between the time that elapses and the asset value in a distressed company. An unfortunate consequence of the diminution in asset value is that is becomes very difficult/impossible to secure post rescue finance. According to this interviewee, he did not find it difficult to get post rescue finance in the normal course of events. However, when a business rescue commences late, it is difficult to obtain finance.

The discussions with the business rescue practitioners highlighted some of the reasons for the late commencement of a business rescue. Often, management is not aware of the business rescue legislation and the remedy offered to rehabilitate a financially distressed company. Many managers that were aware of business rescue legislation frequently did not understand the process and the complexities involved.

An interviewee linked the late commencement of business rescue with management not complying with Section 129(7) of the Companies Act. According to this section, if the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution to commence business rescue, the board must deliver a written notice to each affected person setting out the reasons for not filing for business rescue. The interviewee suggested that management of companies that are financially distressed have a simple choice – they must either file for business rescue or they must comply with Section 129(7) of the Act. According to him, the non-compliance with Section 129(7) delays the commencement of the business rescue. When management eventually decides to file for business rescue, it is about "eight to twelve months too late". At this late stage, the practitioner's task of rehabilitating the company is almost impossible. The interviewee suggested that the business rescue sector must take corrective action to ensure that management of distressed companies complies with Section 129(7). As a testament to the low compliance rate, the interviewee mentioned that he had not seen a Section 129(7) notice in the sector since implementation of the business rescue legislation.

Whilst concurring that the late commencement of business rescue is a reason for the low success rate, two interviewees highlighted the negative impact of extensive litigation on a business rescue. Another interviewee mentioned that he had been involved in business rescues, where the business rescue plan had been voted on and approved but there was litigation that prevented the successful implementation of the plan. Some of the litigation had been ongoing for more than three years. This prevented a successful implementation of the business rescue plan and the completion of the rescue. The impact of the extensive litigation is compounded due to the inability of courts to urgently resolve business rescue cases. An interviewee with many years of litigation experience in business rescue, stated that they believe that the lack of judicial infrastructure and skills will have the impact of muting the benefits of business rescue legislation.

One of the interviewees mentioned that, in his opinion, the single most important reason for the low success rate is management abuse of the provisions of Chapter 6 legislation. The abuse manifests itself frequently when management, requiring more time before a liquidation, file for a business rescue. In these instances, there is no realistic chance of a successful business rescue. Filing for business rescue under such circumstances is simply a mechanism to delay a liquidation and to plan around the needs of management.

Another factor that surfaced, in relation to failed business rescues, was the adverse impact of unaccredited business rescue practitioners. According to two interviewees, the lack of experience and the necessary skills among practitioners to deal with difficult circumstances generally had an adverse impact on the success rate of business rescues.

5.7. THE EXTENT TO WHICH BUSINESS RESCUE PRACTITIONERS ARE THE CAUSE OF BUSINESS RESCUE FAILURE

All seven interviewees felt that business rescue practitioners contribute significantly towards a failed business rescue. The unanimous response from the interviewees prompted the researcher to probe why business rescue practitioners are often the cause of failed business rescues. The reasons provided are illustrated in Figure 5.1.

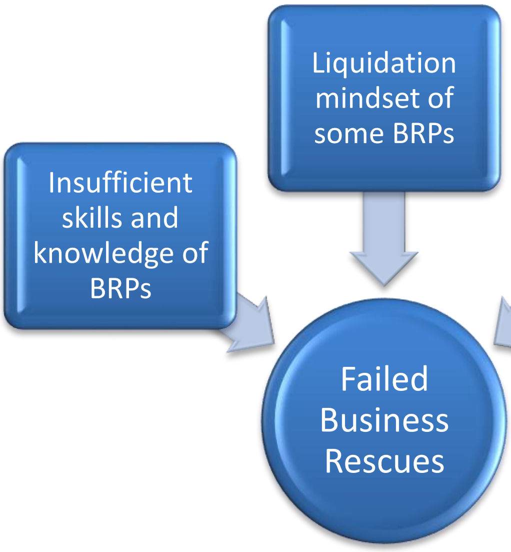

Figure 5.1: Reasons for business rescue practitioners causing a rescue to fail

According to Figure 5.1, business rescue practitioners cause rescues to fail due to insufficient skills and knowledge. A majority of the interviewees highlighted the lack of knowledge and understanding of business rescue legislation as justification for their belief that business rescue practitioners are often the cause of failed rescues. An interviewee shared his experience of two instances where procedural mistakes were made by the business rescue practitioner that had a negative outcome on the rescues. According to this interviewee, many business rescues were terminated due to practitioners failing to follow legislative procedures, especially in the first seven days after filing for business rescue. This demonstrates that if practitioners do not understand, and consequently do not comply with, the procedural requirements of legislation then the rescue becomes a nullity (which is classified as a failed business rescue).

The interviewees felt that many business rescues failed due to the incompetence of business rescue practitioners. Whilst they agreed that there is a high skills expectation to be a successful business rescue practitioner, they were of the opinion that many business rescue practitioners lack sufficient knowledge and skills to be effective. Although a practitioner cannot be expected to be a legal, financial and managerial expert, they must possess managerial skills to delegate/outsource tasks that they are incapable of performing themselves. Some of the interviewees felt that in addition to failing to effectively delegate/outsource, business rescue practitioners lacked managerial skills to manage finances and deadlines. One of the interviewees also expressed concern about the communication skills of business rescue practitioners. He indicated that business rescues are failing due to the practitioners' inability to communicate effectively and transparently with creditors, including financial institutions. For example, it was mentioned that practitioners often failed to provide the worst case scenario to the creditors. This caused creditors to be overoptimistic. Consequently, creditors refused to negotiate or compromise during a business rescue, resulting in a failed rescue.

The active role of liquidators in the business rescue sector was highlighted by an interviewee. He mentioned that many liquidators are appointed as business rescue practitioners. He considered this to be a paradox as liquidators are skilled at salvaging and selling business components rather than rehabilitating a distressed business. In his view, many liquidators attempt to rescue a business without the financial, business modelling and turnaround skills. Many liquidators do not possess the basic understanding of financial statements and do not understand financial terminology. A liquidator's training and focus is to maximise the salvage value of a distressed business. It becomes problematic when these skills are applied to rehabilitate a business. The practitioner's observation was that the appointment of liquidators as business rescue practitioners was causing business rescues to fail, due to the liquidators' lack of skills required to successfully rehabilitate a financially distressed company.

The adverse role of practitioners in the abuse of the business rescue process was highlighted by an interviewee. He expressed concern that some practitioners acted on behalf of unscrupulous business owners to abuse business rescue legislation. In those cases, owners filed for business rescue with the intent of using the process for some other ends (such as delaying a liquidation). The practitioner was thus complicit in the process of abuse as they were aware of the business owner's intent. The failure of these business rescues is partially attributable to the practitioner because their use of the legislation for purposes other than the rehabilitation of a distressed company.

In summary, the interviewees concurred that poorly skilled business rescue practitioners are very often the cause of failed rescues. The negative impact is mainly attributable to a lack of skills and knowledge of the business rescue practitioner. The interviewees also highlighted the negative impact of appointing a liquidator as a business rescue practitioner. This is due to the different skills set possessed by a liquidator and those required to be a successful business rescue practitioner. The third justification for the view that business rescue practitioners are responsible for a failed business rescue relates to the complicit role of practitioners in abusing legislation.

5.8. THE EXTENT TO WHICH BUSINESS RESCUE PLANS ARE THE CAUSE OF BUSINESS RESCUE FAILURE

A pattern that emerged from the interviewee responses was that business rescue plans do not contribute greatly towards the failure of a business rescue. The majority of practitioners interviewed felt that the business rescue plan is a practical mechanism that enables a practitioner to communicate and deal directly with the creditors.

Most practitioners interviewed had a track record of successful business rescue plans. They believed that the business rescue plan is an innovation that simplifies the rehabilitation process. It allows for changes to be implemented by consultation with creditors. Section 150 of the business rescue legislation only specifies the minimum information which must be in the plan, it does not provide a structure of a commercially effective plan. However, some interviewees felt that there will be a natural improvement of business rescue plans as the business rescue sector evolves and becomes more experienced.

Other interviewees provided some insight to improve the effectiveness of a business rescue plan. One of them cautioned against an overoptimistic business plan. He believes that such a plan is a recipe for disaster. He emphasised that the assumptions must be realistic and the plan must never promise full payment to creditors as this often leads to failure. Based on his experience, he felt that there were occasions that a business rescue fails due to the assumptions in the rescue plan being too positive. To prevent such failure, he suggested that the plan be developed with the input of as many creditors as possible so that different scenarios are researched and developed. A consultative and conservative approach will facilitate the establishment of a plan whereby creditors agree to take an initial loss or a “haircut”. This initial loss can be offset by creditors sharing in profits of the rescued business at a later stage. From this interviewee’s experience, this innovative approach would result in the business rescue plan becoming more effective.

The approach of consulting with creditors, during the preparation of the business rescue plan, was highlighted by another interviewee. He felt that the objective of an effective business rescue plan is to get as many votes as possible to support the plan. He had already prepared about 40 plans and, of these, 32 received 100% favourable votes from creditors. His success rate was attributable to the development of an effective financial model that was based on reasonable and realistic assumptions. He suggested that the plans must be transparent, honest and easily readable for creditors.

Another interviewee mentioned that his knowledge of other practitioners’ business rescue plans was very limited. However, his failed business rescues were never due to the business rescue plans. It was always due to an underlying condition or assumption not being met. Sometimes conditions detailed in the plan were not met, therefore the rescue failed.

Business rescues failures have also occurred due to the time pressure experienced during the preparation of a business rescue plan. One of the practitioners felt that the plan contributes to the failure of business rescue because of the short time period of 25 days allowed for its preparation. During this short time frame, it may not be possible to effectively prepare a financial model and consult all creditors.

In summary, the responses indicate that the business rescue plan is an innovative mechanism that facilitates enhanced communication with creditors. It enables stakeholders to understand their role in the rehabilitation of the company, the compromise required and the potential benefits. Although a majority of interviewees do not feel that a business rescue plan has an impact on a failed business rescue, they indicated that the short time frame in which the plan must be completed can negatively impact its effectiveness.

5.9. THE IMPACT OF POST RESCUE FUNDING ON THE OUTCOME OF A BUSINESS RESCUE

All seven business rescue practitioners stressed the paramount importance of post rescue funding as a vital ingredient for the success of a business rescue. However, a common concern expressed by interviewees was the attitude of the banks and financial sector towards the provision of post rescue finance and business rescue. They stated that the financial sector is not supportive of business rescue. There has been no improvement in their attitude since the implementation of business rescue legislation in 2011. Financial institutions are reluctant to provide post commencement finance because they view the distressed company as a “sinking ship”. Consequently, most of the commercial finance utilised during business rescue is derived from private sources. The sector needs financiers to support and participate in the business rescue so that the process can be successful.

An interviewee identified the business opportunity that exists for post commencement business rescue funding in South Africa. His knowledge and exposure to the USA Chapter 11 private funding market led him to conclude that a funding gap exists in the South African market. Banks should ensure that they can identify the opportunities due to the absence of adequate funding. These opportunities relate mainly to provision of post commencement funding to companies in business rescue that demonstrate excellent potential for rehabilitation. He said that the banking sector must realise that not all practitioners are trying to abuse business rescue legislation and cause financial harm to banks. According to him, South African financial institutions must adopt a more positive outlook, get involved in the rescue and specifically in the development of the business rescue plan. Their role must not be limited to financing the business, they must also ensure that the rescue is properly managed. A good relationship between the business rescue practitioner and the investor is important as it takes a lot of the emotion out of the business rescue. The benefit of a good relationship is that funders have access to information that is verifiable and they can take objective decisions. Ultimately, the improved relationship will benefit the business rescue sector whilst enhancing the funder’s profitability.

One of the interviewees detailed his efforts to establish relationships with private funders. In many of the business recues that he had been involved in, there was a close relationship with the private funders. In addition to the provision of funds, the funders monitored the business rescue planning and its progress. This additional party to the business rescue process resulted in the management of the business rescue becoming more effective. Without private funders, none of his previous four projects would have been successful. He concluded that it is impossible to rescue a business without access to funding. The private funders have demonstrated that there's no reason to be discouraged from funding a viable business rescue as Section 135 will protect their interests.

Some of the interviewees observed that banks are often discouraged from investing in the business rescue process due to concerns about the competency of the business rescue practitioner and management of the company. Excellent funding opportunities exist but the distressed companies are poorly managed. In such instances, a close relationship between the funders and practitioners would ensure that the funder's concerns about management are addressed. An interviewee mentioned that this is a common problem and that in such cases, he always insists on either alternative or additional management to provide the funder with additional comfort.

In summary, the interviewees stated that they feel that there is a reluctance of financial institutions to provide post rescue funding. Financial institutions are reluctant to commit funds to a business rescue due to concerns about the viability of the distressed company and the skills of the business rescue practitioner. The lack of post rescue funding has contributed significantly towards failed business rescues. Due to the demand for post rescue funding, there are business opportunities for private funders to provide post commencement finance. The role of these funders must extend to involvement in the management of the business rescue. The dual role of the funder, as both financier and management of the rescue, will contribute towards a successful rescue. The next question relates to other factors that can contribute towards a successful business rescue.

5.10. FACTORS THAT WILL CONTRIBUTE TO AN INCREASE IN THE SUCCESS OF BUSINESS RESCUE IN SOUTH AFRICA

According to the business rescue practitioners interviewed, the success of business rescue can definitely be improved. The improvement will require an increased effort and changed mindset from the different role players in the sector. The factors that will result in an increased success are illustrated in Table 5.5.

Table 5.5: Factors that will result in an increased business rescue success

SUCCESS FACTOR	BR1	BR2	BR3	BR4	BR5	BR6	BR7
Accreditation of business rescue practitioners	✓		✓	✓		✓	✓
Increased post rescue funding		✓				✓	✓
Earlier filing for business rescue		✓		✓			
Establishing specialised courts					✓		✓
Increased education and awareness of business rescue		✓	✓				
Flexibility from labour	✓						

According to Table 5.5, five interviewees were of the opinion that the accreditation of business rescue practitioners would enhance their competency and professionalism. This will lead to more successful business rescues. One of the interviewees felt that if business rescue practitioners do not conform to an accreditation framework, business rescue will not survive due to the low success rate. The demise of business rescue can be prevented by ensuring that there are more experienced and competent practitioners, which will be facilitated by an accreditation framework.

Another success factor that was highlighted by the interviewees was the increased availability of post rescue funding. Whilst a fresh injection of long-term capital is vital for the success of a business rescue, one of the interviewees also emphasised the benefit of securing immediate, short-term funding. Such funding will facilitate the continuance of the business immediately at the commencement of business rescue. The interviewee recalled that short- term payment of taxes and expenditure was one of the major issues in several of his business rescues. If the practitioner can obtain short-term and long-term funding for the business, the rescue will be successful.

Furthermore, the business rescue success rate can be improved by educating business people so that they are more aware of business rescue as a mechanism to rehabilitate underperforming businesses. The increased awareness can be achieved by informing the public and others in the business sector about the benefits of business rescue so that the stigma attached to a business rescue is removed. Business rescue must not be seen as a death sentence. An awareness and culture of support for business rescue will definitely improve the success rate of business these rescues.

A practitioner felt that an increased awareness and support for business rescue will enable an early application and commencement of business rescue. In addition, the early commencement of business rescue will be facilitated by ensuring that the requirements of Section 129(7) of the Act became compulsory. It is vital for the business community to take Section 129(7) seriously. He suggested that creditors approach the court to obtain compensation from directors that do not comply with Section 129(7) of the Act. If SARS, creditors and other affected parties require strict compliance with Section 129(7), there will be earlier applications for business rescue and a higher success rate.

The success of business rescue also lies in more court cases being resolved at the Constitutional Court. According to an interviewee, several decisions by the Supreme Court of Appeal (SCA) have been very questionable. The judges are not qualified or competent in business rescue legislation. It is important that the questionable SCA decisions must be challenged at the Constitutional Court. In addition, consideration must be given to the establishment of specialised business rescue courts.

There must be a greater scrutiny of management wanting to file for business rescue, and one of the interviewees suggested that management of companies filing for business rescue should be interviewed. He said that he undertook interviews with company management whenever he was approached to be the business rescue practitioner. This interview process enabled him to assess if the business rescue was worthwhile or if the company should be liquidated.

Another interviewee mentioned that there is currently an unnatural wish from role players that jobs must be saved. The legislation is very strict regarding labour relations and this affects the viability of a business rescue. Businesses are liquidated because of staff demands and the cost of labour. There is great pressure on the financial institutions and government organisations (such as SARS) to vote to save jobs. However, it is costly to save jobs and the company has to be liquidated. Flexibility from organised labour to allow certain retrenchments will result in a higher success rate.

5.11. THE CURRENT SUPPORT FOR BUSINESS RESCUE LEGISLATION IN SOUTH AFRICA

The majority of practitioners interviewed felt that there is an insufficient level of support for the legislation. Statistics from the CIPC indicate that less than 2000 business rescues have been filed since the inception of business rescue legislation (Voller, 2015). An interviewee felt that this is not an acceptable figure and indicates that business rescue is not marketed and accepted by the business sector. For a country trying to boost business and entrepreneurial development, the number of business rescues filed is evidence that it is underutilised as a mechanism to rehabilitate distressed businesses. Although there are certain institutions/stakeholders that support business rescue legislation, there is a distinct lack of support by the majority of stakeholders in South Africa. The support for the business rescue legislation is minimal and can be improved (Figure 5.2).

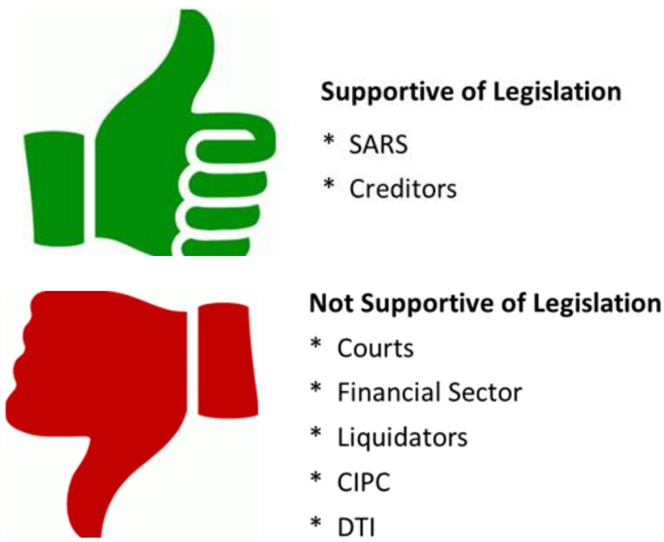

Figure 5.2: Support for business rescue legislation

As illustrated in Figure 5.2, the interviewees indicated that there is support for the legislation from SARS and creditors. Trade creditors are supportive of the legislation and frequently assess proposals utilising commercial criteria. They understand the notion of saving jobs as opposed to destroying them. They are always supportive of trying to keep a future potential customer afloat. One of the practitioners explained that, in his experience, he has a great relationship with SARS. In his opinion, SARS is a very important role player in the business rescue process. His interaction with SARS indicated a level of support when the business rescue practitioner negotiates in a transparent manner.

There is definitely a need for more support for business rescue legislation from the courts, financial institutions, the CIPC, the DTI and the liquidation sector. The interviewees felt that the courts do not support business rescue legislation, resulting in a slow demise in the ability of the legislation to achieve an effective rehabilitation. There has been a series of Supreme Court of Appeal cases that have demonstrated a lack of support for Chapter 6 legislation, to such an extent that it has muted the objective and impact of the legislation.

Some interviewees indicated that business recue is not supported by state organs such as SARS and the Industrial Development Cooperation (IDC). They justified their view by highlighting occasions where business rescue plans were presented and the IDC and SARS were the only creditors that objected.

There is also little support for the legislation from the commercial banks. They have been antagonistic towards the process and, unless their position is very secure and covered in terms of risk, they do not support attempts to rescue a distressed business.

The lack of support is most evident from the liquidators, who view the legislation as a huge threat to their existence. Some of the practitioners have spent several years fighting with liquidators to secure the business rescue practitioner's preference in liquidation proceedings. There is also a lack of support from the CIPC. They seem to be reluctant to get into any form of litigation or to further develop the legislation. An interviewee recommended that CIPC and the Minister of Trade and Industry should be more involved in developing the legislation. Currently, the CIPC and the Minister of Trade and Industry only get involved if there is a constitutional challenge or if there is a cost order that is passed against them. It would be preferable for the CIPC to be involved in every SCA matter where a precedent is set. This does not occur and the perception thus exists that of a lack of commitment and involvement by the CIPC.

Interviewees suggested that for business recue to be transformed to a point where it flourishes, there is a need for self-regulating and professional authority. The regulator must function in a similar manner to lawyers and chartered accountants. This will ensure changes in the understanding and awareness of business rescue. The most important task of the regulating body is to change perceptions relating to business rescue as this will improve the manner of operation and the low support for business rescue legislation in South Africa. At the moment, there is no regulator to resolve problems and complaints. For example, it is currently not possible to complain to the CIPC about poorly performing business rescue practitioners. The absence of a regulator therefore contributes to the low support for business rescue legislation.

5.12. IMPACT OF ESTABLISHING ACCREDITATION CRITERIA FOR BUSINESS RESCUE PRACTITIONERS

A consensus view of interviewees is that the establishment of accreditation criteria will have an extremely positive impact on the business rescue sector. This view was driven by a recognition that the responsibilities and tasks of a business rescue practitioner are distinctly different from any other profession. Therefore, a separate skills set is required to become a successful business rescue practitioner. An accreditation framework consisting of strict criteria will equip business rescue practitioners with the necessary skills to ensure successful business rescues. Some interviewees suggested that the accreditation process is essential and not negotiable. They pointed to their experience of many dubious practitioners that appear on the CIPC panel. The establishment of accreditation criteria will rectify this adverse situation.

There is thus no doubt that the establishment of accreditation criteria will have a positive impact on business rescue. It will legitimise the profession and increase the potential for a successful business rescue. An improvement in the expertise and qualifications of business rescue practitioners will improve the effectiveness of practitioner performance.

5.13. ESSENTIAL COMPETENCIES FOR SUCCESSFUL BUSINESS RESCUE PRACTITIONERS

This question served to build on the previous question relating to the necessity of accrediting business rescue professionals. Responses to this question can generate knowledge in support of research objective four. The interviewees indicated that an individual who possesses only a single skill (such as only a legal or accounting skill) will not be a successful business rescue practitioner. It was evident that the interviewees view a successful business rescue practitioner as having a multitude of skills and qualifications (Figure 5.3).

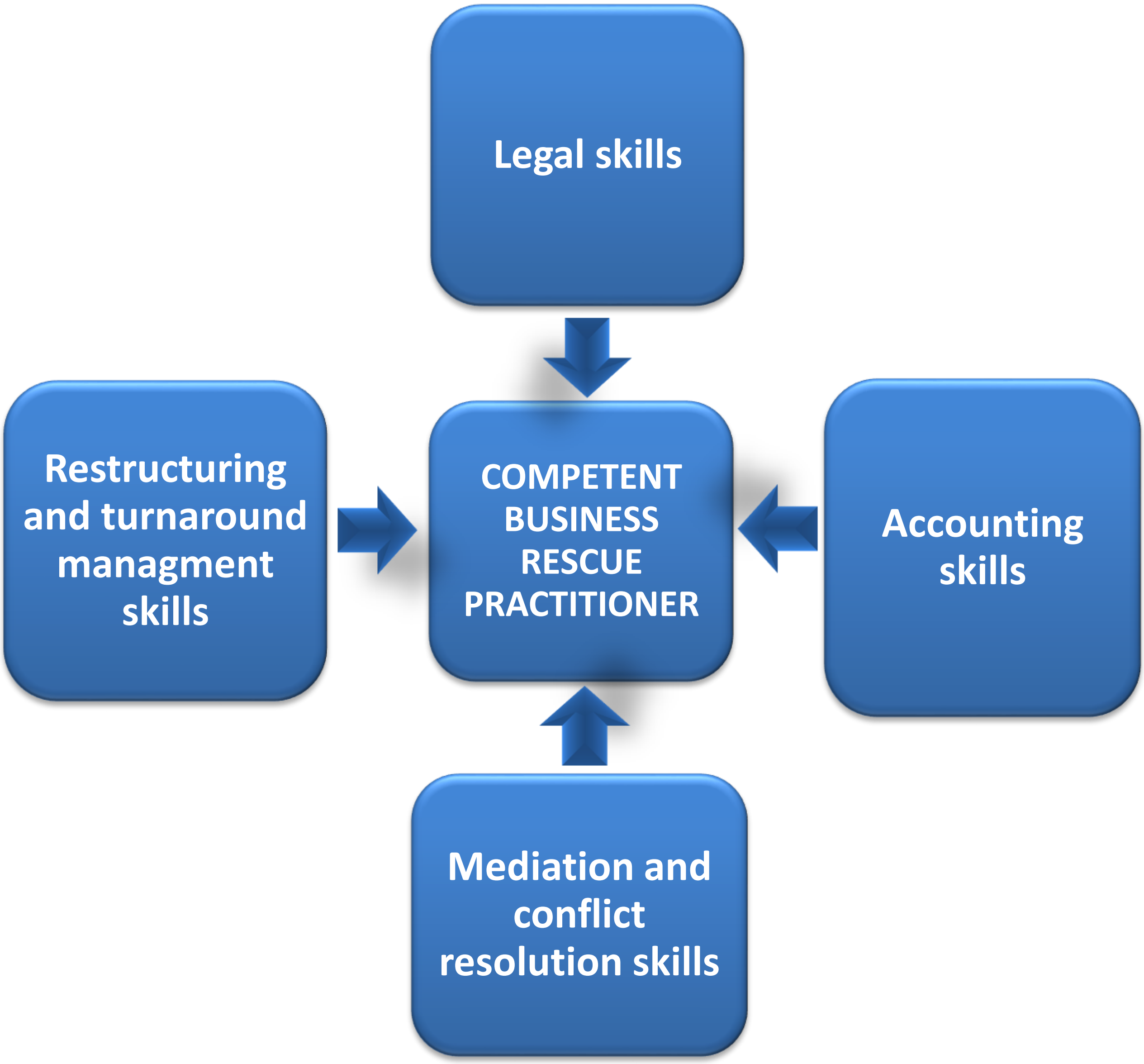

Figure 5.3: Competencies required to be an effective business rescue practitioner

According to Figure 5.3, a successful business rescue practitioner must possess effective legal, accounting, mediation and conflict resolution and restructuring skills.

The legal skills must not be of a general nature or focused on an area that is not related to financial distress or corporate rehabilitation. The skills must be related to contractual, company and insolvency law. A person trained as a criminal lawyer only will not possess the necessary legal skills for business rescue. In addition to the legal skills, a successful practitioner must possess accounting and financial skills to sufficiently understand and assess the financial performance of the distressed business. The accounting skills must specifically relate to the rehabilitation of a business. The skills must enable the practitioner to facilitate the rehabilitation and to generate cash for the distressed entity.

In addition to possessing relevant legal and accounting skills, it is important for a business rescue practitioner to have conflict resolution, mediation and negotiation skills. An interviewee referred to these skills as "political skills", which include the ability to negotiate and mediate an outcome that considers the interests of various affected parties. Conflict resolution, mediation and negotiation skills must be complemented by skills to effect a successful rehabilitation. The interviewees felt that restructuring and turnaround management skills are vital to successfully rescue a financially distressed business.

Four interviewees acknowledged the difficulty for an individual to possess these diverse skills. As a solution to this difficulty, they suggested a joint appointment for rescues whereby more than one practitioner is appointed. This will ensure that there is sufficient expertise devoted to a business rescue. There was considerable support for joint appointments so that one practitioner complements the weakness of another. The interviewees also suggested the enforcement of joint appointments at the initial phase of a career as business rescue practitioner which will encompass a joint appointment of an inexperienced practitioner with a more experienced managing practitioner. This arrangement will benefit the company in business rescue by ensuring that there are adequate skills for a successful rehabilitation and it will facilitate a transfer of skills to the newly appointed business rescue practitioner.

An interviewee recommended that businesses comprising of a single person, such as a one-man consultancy, must not be a business recue practitioner. In order to be successful, a practitioner must possess proper infrastructure, including office and administrative support. The practitioner must also have a proper support team to ensure that he has access to the necessary legal, accounting, turnaround and mediation skills.

5.14. RESPONSIBILITY FOR ESTABLISHING THE ACCREDITING BODY FOR BUSINESS RESCUE PRACTITIONERS

An accrediting body is required to establish, implement and maintain the accreditation process for business rescue practitioners. A majority of four interviewees felt that the business rescue profession must be self-regulated. The self-regulatory body must be responsible for the establishment and implementation of accreditation criteria. These interviewees did not support an active role by the government or the CIPC in the regulatory authority for the business rescue profession. They felt that the role of the CIPC must be limited to facilitating the creation of the regulator. However, the CIPC must not oversee the regulator or even serve on it. The regulator should be similar to the South African Institute of Chartered Accountants (SAICA). The Institute is created by an Act of parliament, but government does not play an active operational role. The regulator will serve as the accrediting body and must be self- governing.

One of the interviewees felt that there is no need for a separate accreditation body. His justification for not requiring an accreditation authority was that if the business rescue practitioner requires a professional qualification to be a practitioner, then that member is regulated by a professional body already. For example, if a practitioner plays a legal role, then he is already regulated by the law profession. It will be the same for the accountant. Therefore, there would be no need for a separate accreditation body. However, this minority view does not give due cognisance to the fact that specialist legal and financial skills are required to be a successful business rescue practitioner. An accredited attorney or accountant will require more skills, focusing on corporate law, cash management and turnaround procedures, to be effective as a business rescue practitioner.

In summary, although there are different views relating to the accrediting authority for business rescue practitioners, the majority response is that an independent authority is required. The role of the government and the CIPC must be limited to facilitating the establishment of the accrediting body. The regulating authority must be independent and self-regulating rather than managed by government.

5.15. TRIANGULATION OF QUANTITATIVE AND QUALITATIVE RESEARCH

Denzin (1978) described triangulation as a technique of using different methods when investigating the same phenomenon. The triangulation metaphor is derived from a military strategy that uses multiple reference points to locate an object's precise location or position. In the research environment, triangulation can be utilised to improve the accuracy of results by collecting different types of data bearing the same phenomenon (Jick, 1979, p.602). This study utilised a mixed methods methodology that encompassed feedback from TMA-SA members (questionnaire) and views of expert business rescue practitioners (interviews). The use of a mixed methods approach facilitates the identification of common themes (Leedy & Ormrod, 2001, p.105). Common themes for this study were developed, in relation to each research objective, by an analysis and comparison of the results of the literature review, questionnaire and interviews.

5.16. ESTABLISHING AND RANKING THE FACTORS THAT IMPACT ON A FAILED BUSINESS RESCUE

Research objective one focused on establishing and ranking the factors that resulted in failed business rescues in South Africa. Question 1 of the interview facilitated an understanding of the difficulties that are experienced during implementation of business rescue legislation. Although business rescue legislation was welcomed by the business community when it was introduced, the country was not prepared for the implementation of the legislation. A view held by four interviewees is that the legislation is complex, technical and difficult to understand. Existing literature supports the contention of the interviewees as business rescue legislation is deemed to be technical in nature and there is a high reliance on courts for its interpretation (Ensor, 2014).

The interviews also established that the South African judiciary was unprepared for the implementation of business rescue when it was introduced. One of the interviewees stated that the courts were unprepared for the task of interpreting and effectively implementing the legislation and that this situation has not changed as the judiciary is still unsupportive of and unprepared for the implementation of business rescue legislation. According to

Pretorius, there have been several contradictory business rescue judgements (Visser, 2013). This indicates the need for more competent judges and the creation of specialist courts. Both the interviews and the literature are supported by the quantitative study which established a lack of specialist business rescue courts as the 9th highest factor that resulted in a failed business rescue.

Another reason provided in support of the view that South Africa was not prepared for business rescue legislation relates to the financial sector's unsupportive attitude towards the new legislation. Interviewees said that the business rescue legislation was designed to prioritise support for distressed businesses and that this has resulted in a compromised role for the financial sector. This in turn has resulted in a level of resistance towards business rescue legislation and to provide funding for distressed businesses. The literature noted that in the financial sector a level of scepticism still exists in terms of providing funding for companies filing for business rescue (Lotheringen, 2013). The ranking of the factors that result in a failed business rescue indicate that a lack of post rescue funding is the highest ranked factor resulting in a failed business rescue (Table 5.6).

Table 5.6: Impact of factors on a failed business rescue

RANKING OF IMPACT ON A FAILED BUSINESS RESCUE BASED ON QUESTIONNAIRE	REASONS FOR LOW SUCCESS RATE BASED ON RESPONSE FROM INTERVIEWEES
1. Limited post rescue funding	Lack of post rescue funding
2. Poorly prepared business rescue plans	
3. Lack of effective planning prior to the application for business rescue	Late application for business rescue
4. Lack of accreditation process for the business rescue practitioner	Lack of an accredited business rescue practitioner
5. Ineffective communication by management with stakeholders during application for business rescue	
6. High costs of the business rescue process	

RANKING OF IMPACT ON A FAILED BUSINESS RESCUE BASED ON QUESTIONNAIRE	REASONS FOR LOW SUCCESS RATE BASED ON RESPONSE FROM INTERVIEWEES
7. Management abuse of the business rescue process	Abuse of the business rescue process.
8. Cost escalations due to business rescue practitioners not meeting deadlines	
9. Lack of skilled courts to deal with business rescue cases	An absence of specialised courts coupled with extensive business rescue litigation
10. Lack of support for the business rescue process from SARS	

The questionnaire's ranking of a lack of post rescue funding as having an impact on a failed business rescue in Table 5.6, supports the view of interviewees that a lack of post rescue funding is a significant reason for the low success rate of business rescue. These findings are supported by the responses in the interviews and existing literature. Pretorius (2012) noted that a lack of post rescue funding is one of the key reasons why business rescues fail. The reluctance of the South African financial sector to fund business rescues has a detrimental impact on the success of a business rescue. This is supported by the findings of the study, namely that it is evident that business rescues fail due to a lack of post rescue funding. The financial sector's lack of support for business rescue legislation has extended beyond the implementation phase and it continues to be viewed as being reluctant to provide post commencement finance.

The interview responses indicated that the late application for a business rescue contributed to business rescue failure. Management is often unaware of or ignores early distress signals. They have a tendency to admit late in the distress process that the company requires assistance to rehabilitate. As a result, many creditors do not support the business rescue process which then results in business rescue failure. At this point, it may be impossible to successfully rehabilitate the distressed company as the delay results in the company being "terminally ill" (Geach, 2014). Feedback from TMA-SA members ranked the lack of effective planning prior to the application for business rescue as having the third highest impact on a failed business rescue. Existing literature recognises the adverse impact of a lack of prior planning and the late application of a business rescue. For example, it was noted that the tight deadlines incorporated in the business rescue legislation created difficulties for the timeous application for business rescue and the appointment of a practitioner. There have been calls to increase the duration of the business rescue time frame, thereby allowing for more effective planning prior to application for business rescue (Loubser, 2010). Although this study does not support the request for the increased duration of a business rescue from its current three-month time frame, it does highlight the need to plan more effectively prior to the application of a business rescue.

The Institute of Directors of Southern Africa (IoDSA) suggested that the commencement of business rescue should be as early as possible in order to improve the effectiveness of the process (IoDSA, 2009). It is evident, based on the results of the mixed methods approach and the literature review, that the late application for business rescue is a reason for the low success rate. The interviews further identified that a reason for the late application of business rescue is the non-compliance with Section 129(7) of the Act. This Section applies if the board of a company has reasonable grounds to believe that a company is financially distressed, but does not adopt a resolution to commence business rescue. According to Section 129(7), the board must deliver a written notice to each affected party setting out the reasons for not filing for business rescue. According to an interviewee, there is an extremely low conformance rate to Section 129(7), resulting in companies not filing for business rescue timeously and therefore the subsequent failure of the business rescue.

Responses from all seven interviewees indicated that a business rescue practitioner contributes significantly towards a failed business rescue. The absence of a formal accreditation process has resulted in the appointment of practitioners that lack skills and experience to deal with rescues. The interviewees recounted their experience of failures by practitioners that contributed to failure of the business rescues. Often these failures included the failure to comply with legislation and procedural errors. These findings are supported by the literature which highlighted concerns about business rescue practitioners charging exorbitant fees, their inability to complete important tasks on time and their non-adherence to legislative reporting requirements (Voller, 2011). In addition, the results of the quantitative methodology ranked the lack of an accreditation process as having the fourth highest impact on business rescue failure.

The lack of a formal accreditation process has resulted in the appointment of many liquidators as business rescue practitioners. The interviewees stated that they did not consider liquidators to be sufficiently skilled as they lack financial, and turnaround and business skills necessary to effect a successful rehabilitation. As their training and qualifications relate to the selling and salvage of business components, liquidators do not possess the necessary turnaround skills. Pretorius (2013a) outlined different scenarios for the future of business rescue and noted that the most likely scenario is a "Liquidation Comeback". He warned that unless business rescue practitioners improve their skills and become more competent, a liquidation mindset will dominate the business rescue sector. The appointment of liquidators as business rescue practitioners suggests that a liquidation mindset is prevalent in the rescue sector. Table 4.5 illustrated the relationship between business rescue practitioner demographics and business rescue failure. It was noted that there was a greater chance of business rescue failure if a practitioner had a legal background. As liquidators possess a legal background, the findings in Table 4.5 support the contention that a liquidation mindset contributes to business rescue failure.

An interviewee highlighted the complicit role of practitioners in the abuse of the business rescue legislation. According to this interviewee, management's abuse of business rescue is the single most important reason for the failure of business rescue. Although it was agreed that the abuse of business rescue legislation is undertaken by management, interviewees noted that there are some business rescue practitioners that act on behalf of unscrupulous owners to utilise the legislation for other purposes. The abuse takes the form of an application for business rescue merely to provide management with more time to prepare to liquidate a company. Lovells (2014, p.1) noted that a business rescue application that delays liquidation proceedings prejudices the creditors of the company. There is a growing concern in the business rescue industry of such process abuse by shareholders and creditors to utilise business rescue as a mechanism to gain time for asset stripping before an eventual liquidation (Pretorius, 2014, p.2; Visser 2013, p.1). In such instances, the abuse of the process, in addition to a failed business rescue, results in a reduced liquidation dividend to creditors of the company. Museta (2011, p.26) provided another example of abuse of the business rescue process by citing the possibility of a trade union applying for business rescue only because the application will confer the union with a right to inspect relevant financial information, such as financial statements. This information can then be used to improve the union's bargaining position during wage negotiations. If the union is not intent on pursuing the business rescue until the successful implementation of an approved business rescue plan, the rescue will be terminated and classified as a failure.

Whilst the literature attributed the blame for the abuse to management of the company and other parties (such as trade unions), it did not apportion blame for the abuse on business rescue practitioners. In addition, the quantitative research ranked management abuse of business rescue legislation as the 8th highest cause of business rescue failure. The interviews, whilst enhancing the perspective that management abuse contributes to business rescue failure, provided an additional dimension to the abuse. This relates to the complicit role of the business rescue practitioner in undertaking the abuse.

The interview responses established that a lack of post rescue funding, a late application for business rescue, the lack of an accredited practitioner, abuse of the business rescue process and the absence of skilled courts are all factors that contribute to rescue failure. The literature and ranking of factors that impact on a failed business rescue (derived from the questionnaire) support these interview responses. However, there was a difference of opinion between TMA-SA members and interviewees in relation to the impact of a business rescue plan on a failed rescue. The interviewees felt that business rescue plans do not contribute towards a failed business rescue. According to them, the plan is a practical mechanism that facilitates communication between creditors and the practitioner. Most practitioners interviewed had a successful track record of preparing business rescue plans. Whilst they agreed that there was room for improvement in the preparation of a business rescue plan, they believe that the required improvement will occur gradually as the sector evolves. They suggested that, for the plan to be successful, the assumptions must be realistic and that all creditors must be consulted before the plan is finalised.

According to the results of the quantitative methodology, approximately 99% of respondents were in agreement that a poorly prepared business rescue plan impacts on a failed business rescue. A poorly prepared business rescue plan ranked as having the 2nd highest impact on a failed business rescue. The contradictory findings can be attributable to the degree of skill and resources that the well-experienced business rescue practitioners utilised in the preparation. Although the business rescue plan is used to attract post rescue funding, it is an integral part of the entire rescue process (Pretorius, 2012). The plan must be utilised as a medium of communication, an enabler of transparency and to secure post commencement funding (Pretorius & Rosslyn-Smith, 2014). Therefore, if the plan is well researched and properly prepared, it will not be part of the reason for a failed business rescue. Loubser (2010) identified the business rescue plan as a major innovation of the business rescue legislation.

The second research objective encompassed the compilation and ranking of factors that will result in a successful rescue.

5.17. COMPILATION AND RANKING FACTORS THAT RESULT IN A SUCCESSFUL BUSINESS RESCUE

The responses from the seven business rescue practitioners interviewed indicate that there is scope for improvement of the success rate of business rescues in South Africa. The factors that will result in the increased rate of successful business rescues appear in Table 5.7.

Table 5.7: Factors that result in a successful business rescue

RANKING FACTORS THAT RESULT IN A SUCCESSFUL BUSINESS RESCUE	FACTORS THAT WILL CONTRIBUTE TO AN INCREASED SUCCESS BASED ON RESPONSE FROM INTERVIEWEES
1. Strict accreditation criteria are needed for the appointment of business rescue practitioners.	Accreditation of business rescue practitioners
2. The business rescue practitioner must communicate effectively with stakeholders during the business rescue process.	
3. An effective business rescue plan needs to be compiled.	
4. Businesses need to use early warning signals to anticipate financial distress.	Earlier filing for business rescue
5. Post rescue funding must be available.	Increased post rescue funding

RANKING FACTORS THAT RESULT IN A SUCCESSFUL BUSINESS RESCUE	FACTORS THAT WILL CONTRIBUTE TO AN INCREASED SUCCESS BASED ON RESPONSE FROM INTERVIEWEES
6. There needs to be early planning and preparation before the commencement of business rescue.	
7. Creditors need to play an active role in the business rescue process.	
8. Banks and financial institutions need to be proactively involved in the business rescue.	
9. Specialised courts need to be established to handle business rescue cases.	Establishing specialised courts
10. The business rescue practitioner must ensure that employees of the company in business rescue are highly motivated.	
	Increased education and awareness of business rescue
	Flexibility from labour

According to Table 5.7, the interviewees felt that the accreditation of business rescue practitioners will result in an improved success rate and this supports the findings from the quantitative methodology. This finding also confirms feedback from the TMA-SA membership, namely that the implementation of strict accreditation criteria was the highest ranked factor that will result in a successful business rescue. These findings are supported by the view of researchers that a strong business rescue practitioner is vital to ensure that the rescue is a success (Levenstein, 2011; Bezuidenhout, 2012). International research into the Finnish Restructuring of Enterprises Act indicated that the management of the rescue is an important factor in determining whether the rescue will be successful or not (Collett *et al.*, 2014).

The accreditation of business rescue practitioners will address many of the complaints relating to these practitioners. The complaints are about practitioners filing for termination of business rescue too late in order to earn more fees (Du Preez, 2012), poor quality of work coupled with exorbitant fees (Pretorius, 2013b), and their inability to control costs (Visser, 2013). Du Preez (2012), when analysing the status of post commencement finance in South Africa, stated that a primary reason for the lenders' reluctance to fund a business rescue lies in the profile of a business rescue practitioner. In view of the fact that lack of an accreditation process was ranked as having the 4th highest impact on a failed business rescue, the adoption and implementation of a system to accredit business rescue practitioners will contribute immensely towards successful rescues.

An important component of a successful financial rehabilitation is competent leadership (Bibeault, 1999, p.97). Balgobin and Pandit (2001, p.304) concurred with these findings by stressing the importance of human resources to effect a successful turnaround. They identified that effective management of all stakeholders is a priority and will greatly improve the chances of a successful turnaround. In a legislated turnaround, effective leadership can be obtained through a system of accreditation. In England, the process of a legislated rescue is governed by the Enterprise Act of 2002. An important feature of this Act is the strict regulation of the appointment of an administrator (Museta, 2011, p.59). A person that is not a member of a professional body or authorised by the Secretary of State cannot be appointed as an administrator (Loubser, 2010, p.198). The South African business rescue legislation has many features in common with England's corporate rescue legislation (Loubser, 2010; Pretorius & Rosslyn-Smith, 2014, p.116). However, a key difference is the absence of a regulated practitioner in South Africa. Accordingly, Loubser (2010) recommended the implementation of a system of regulating the appointment of the business rescue practitioner in South Africa as a means of improving business rescue legislation.

The responses from the interviewees indicated that the earlier filing for business rescues will improve the success rate of rescues. This finding complements the findings of the quantitative methodology that businesses need to use early warning signals to anticipate financial distress. The study ranked this factor as having the 4th highest impact on a successful rescue. In order to successfully rehabilitate a distressed company, it is important that the company's economic vulnerabilities are diagnosed and responded to as early as possible (Bussiere & Fratzscher, 2006, p.956). In the South African context, it is essential that the commencement of business rescue occurs as early as possible to improve the chances of success (IoDSA, 2009, p.2). Levenstein (2011, p.4) recommended that companies must diagnose early warning signs and apply for business rescue as early as possible. The early detection of financial distress and a timeous response has been noted as a key success factor in the rehabilitation of a distressed business (Borio, 2012, p.5). An analysis of the business rescue process highlighted the need to be proactive by engaging with all stakeholders prior to the application for business rescue (Van der Burgh, 2013). This will facilitate the early application of a business rescue.

Due to the stringent deadlines and time frames that are imposed by business rescue legislation, the CIPC suggested that as much of the financial analysis of a distressed company as possible should take place prior to the application for business rescue (Terblanche, 2014). The benefits of an early application for business rescue were highlighted in the successful rescue of Shelly Point Hotel (Muller, 2014). Due to the owner's proactive stance in detecting financial difficulties relating to cash flow and working capital, an early application for business rescue was filed. This resulted in more time being available to arrange for post rescue funding and to reduce costs.

Whilst there is a convergence in the findings between the mixed methodology approach of this study and existing literature, the interviews established an effective method of facilitating the early application. It was recommended that the requirements of Section 129(7) of the business rescue legislation must be viewed in a more serious manner. This Section compels management of a distressed company to provide reasons to all affected parties as to why management did not apply for the commencement of business rescue. The enforcement of this responsibility will ensure financially distressed businesses apply earlier for business rescue.

Another factor the interviewees recommended to improve the success rate of business rescues is an increase in post rescue funding. The literature noted that a key success of the Chapter 11 rescues is the availability of rescue funding (Mindlin, 2013). This view is supported by Bharath *et al*. (2013, p.13) who correlated the increased success rate of Chapter 11 with the increase in funding available. The results of the quantitative methodology ranked the availability of post rescue funding as having the 5th highest impact on a successful business rescue.

The interviews identified innovative ways to increase the availability of post recue funding. Due to the concern of banks relating to the competency of the business rescue practitioner and management, an interviewee suggested the establishment of a closer relationship with funders. The close relationship will enable a funder to be involved in and monitor the business rescue. It will allow for additional oversight, management of the rescue and provide a level of comfort to the funder that their funds are properly invested. In this relationship, concerns that funders have about management can be effectively addressed by either replacing management or complementing their skills. The interviewees also highlighted the potential for the formation of private funding for business rescues in South Africa. Based on the international experience of an interviewee, there are many private funders in the USA Chapter 11 rescue sector. He believes that there are similar opportunities in South Africa to increase the post rescue funding.

The interviewees indicated that the establishment of specialised business rescue courts will increase the chances of a successful business rescue. This response is similar to the 9th highest success factor established by the findings of the quantitative methodology. It addresses the concerns raised about the ability of the South African judiciary to handle business rescue cases. The concerns relate to the lack of specialist business rescue judges, contradictory judgements and judges that do not understand business rescue legislation (Ensor, 2014). Pretorius (as cited in Visser, 2013) noted that there have been several contradictory business rescue judgments. This highlights the need for courts that have the necessary business rescue skills. According to Mindlin (2013, p.18), an important feature that contributes to the success of Chapter 11 rescues in the USA is the presence of experienced judges who have specialist knowledge. Until this is achieved, the interviewees stated that there must be more appeals against the SCA.

Although not established as a success factor by the results of the quantitative methodology, the interviewees felt that an increased awareness of business rescue legislation will improve the success rate. This can be undertaken by an educational campaign to improve the business community’s awareness and understanding of business rescue legislation. According to business rescue practitioners interviewed, there is a stigma attached to companies that file for business rescue. Business rescue must not be confused with liquidation, nor must it be perceived to be a death sentence. Creating an awareness of business rescue legislation will improve the success rate as companies will be able to file earlier.

The interviews also identified greater flexibility from labour on their demands that jobs are saved during business rescue. A primary objective of business rescue is the preservation of jobs (Rushworth, 2010). However, an effective turnaround strategy often involves aggressive retrenchment to prevent the further decline in the financial fortunes of a distressed business (Pierce & Robbins, 2008, p.129). In order to achieve a successful rescue, there must be a compromise between retrenchments and job preservation. The interviewees mentioned that there is an unnatural wish from role players, such as government organisations, to protect jobs at all costs. These parties will not support a business rescue unless all jobs are saved. However, due to the expenditure required to save jobs, the company is ultimately liquidated. A greater degree of flexibility from organised labour and government will increase the success rate.

The research results have highlighted the positive impact that the accreditation of a practitioner will have on the outcome of a business rescue. The interviewees were requested to provide the competencies that they reckon can be utilised to accredit a business rescue practitioner.

5.18. ESTABLISHING COMPETENCIES OF A SUCCESSFUL BUSINESS RESCUE PRACTITIONER

The interviewees were requested to provide the competencies that they reckon can be utilised to accredit a business rescue practitioner.

Table 5.8: Competencies of a successful business rescue practitioner

QUANTATITIVE	QUALITATIVE
An accounting qualification	Specific accounting skills relating to cash flow management
Accreditation as a turnaround manager	Restructuring and turnaround management skills
Effective cash management strategy skills	

	Specific legal skills relating to corporate law and financial distress
	Mediation and conflict resolution skills
A strong sense of decision making	

According to Table 5.8, the two methods approach highlighted certain overlaps in the skills and qualifications that are required to become an effective business rescue practitioner. Results of both methodologies indicate that the tasks of the business rescue practitioner must be multidimensional and that it is not sufficient to only possess a single qualification. These findings contradict business rescue legislation that requires a person to have either legal, accounting or business management skills in order to be appointed as a business rescue practitioner (Section 138).

The interviewees stressed the importance of a successful business rescue practitioner possessing restructuring and turnaround skills. A primary objective of the business rescue legislation is to achieve the rehabilitation or turnaround of a financially distressed business. Accordingly, the possession of effective turnaround skills will achieve help to the objective of the legislation. This finding is supported by the quantitative methodology results which indicated that the accreditation as a turnaround manager is an important qualification for a successful practitioner.

The interviewees also stated that legal and accounting skills are required to be a successful business rescue practitioner. However, they emphasised that these skills must not be of a general nature and must be focused on corporate recovery, which requires knowledge of corporate law. Additionally, the accounting skills must facilitate the rehabilitation of a business. These skills must be focused on cash flow management and enable a practitioner to generate cash for the distressed business. The findings of the quantitative methodology rated the ability of a practitioner to implement effective cash management strategies as an important skill for a successful business rescue practitioner. The focus on cash management skills is warranted due to the lack of post rescue funding being rated as having the highest impact on a failed business rescue.

In the current research setting, the quantitative and qualitative approaches both highlighted similar trends and principles.

5.19. CONCLUSION

This chapter presented an analysis of the interviews with seven of the top ten business rescue practitioners. The interviews resulted in the identification of practical difficulties during the implementation of the business rescue legislation, reasons for business rescue failure and factors that will contribute towards a successful rescue. The interviews further identified some of the skills and qualifications required to be a successful business rescue practitioner. As the research methodology encompassed a mixed methods approach, a triangulation of results was undertaken. The triangulation indicated that there was a significant overlap between the results of the quantitative and qualitative approaches. An important finding that emerged from the triangulation of results is the focus on accounting skills and cash management in the overall success of a business rescue. The next chapter presents the conclusion of the research, the limitations and areas for future research.

CHAPTER 6

CONCLUSIONS, RECOMMENDATIONS, LIMITATIONS AND AVENUES FOR FURTHER RESEARCH

6.1. INTRODUCTION

Chapter 5 presented the analysis of the qualitative-based interviews with South African business rescue practitioners. The feedback obtained from these interviews facilitated the generation of new knowledge that will contribute towards an improved business rescue success rate. The chapter included a triangulation of the results of the qualitative approach with the quantitative approach. The triangulation reflected a high degree of overlap among the key findings of the quantitative and qualitative approaches and the literature review.

This chapter presents a summary of the findings of the empirical research. Recommendations, based on the research findings, are made to transform the business rescue sector. Transforming the sector will ultimately result in the survival and growth of business rescue legislation and a strengthening of the South African economy. In order to further contribute towards knowledge on business rescue, some suggestions are made for future research.

6.2. CONCLUSIONS

Business rescue was welcomed by the South African business community in 2011, mainly due to its potential to prevent liquidations and save jobs. However, there was very little tangible support for the legislation at implementation. There was also uncertainty regarding the suitability of the required qualifications for a business rescue practitioner. Some deficiencies that existed at implementation have been rectified. However, when conducting the study, it was apparent that there are certain factors that still contribute to a failed business rescue.

6.2.1. Establishing and ranking factors that impact on failed business rescues in South Africa

The quantitative methodology results established that the following ten factors, in order of their mean ranking, had an impact on a failed business rescue:

1. Limited post rescue funding.
2. Poorly prepared business rescue plans.
3. Lack of effective planning prior to the application for business rescue.
4. Lack of accreditation process for the business rescue practitioner.
5. Management's ineffective communication with stakeholders during application for business rescue.
6. High costs of the business rescue process.
7. Management abuse of the business rescue process.
8. Cost escalations due to business rescue practitioners not meeting deadlines.
9. Lack of skilled courts to deal with business rescue cases.
10. Lack of support for the business rescue process from SARS.

These factors have contributed to the low business rescue success rate in South Africa. The study focused on identifying ways to improve the success rate by establishing and ranking factors of success of business rescues in South Africa.

The ranking of factors that result in a failed business rescue contributed to new knowledge, and specifically identified limited post rescue funding as the main cause of business rescue failure. This is a significant and new contribution that emphasises the impact of the scarcity of post rescue funding on a failed business rescue.

6.2.2. Compile and rank factors that result in successful business rescues in South Africa

The study established that the following top ten factors, in order of their mean ranking, will result in a successful business rescue:

1. Strict accreditation criteria are needed for the appointment of business rescue practitioners.
2. The business rescue practitioner must communicate effectively with stakeholders during the business rescue process.
3. An effective business rescue plan needs to be established.
4. Businesses need to use early warning signals to anticipate financial distress.
5. Post rescue funding must be available.
6. There needs to be early planning and preparation before the commencement of business rescue.
7. Creditors need to play an active role in the business rescue process.
8. Banks and other financial institutions need to be proactively involved in the business rescue.
9. Specialised courts need to be established to handle business rescue cases.
10. The business rescue practitioner must ensure that employees of the company are highly motivated.

In addition to the above ranked factors, the interviews indicated that an increased education and awareness of business rescue and greater flexibility from labour in permitting retrenchments will increase the success of business rescues.

The original contribution of this study is the identification of the need for an independent regulator to implement changes to the South African business rescue sector. The regulator must be responsible for overseeing changes to ensure the survival and growth of business rescues. In addition to the need for an independent regulator, the original contribution of the study relates to the identification of the following as success factors:

- The effective communication with stakeholders during a business rescue;
- The use of early warning signals to anticipate financial distress;
- The need for further education and awareness of business rescue legislation by the business community; and
- A greater flexibility from labour towards retrenchments during business rescue.

Furthermore, this study ranked the accreditation of a business rescue practitioner as the most important success factor for business rescues. The finding stresses the urgent need for a system of accreditation for business rescue practitioners.

6.2.3. The role of the business rescue practitioner in successful business rescues in South Africa

The literature review established the importance of the business rescue practitioner as a key success factor for business rescues in South Africa. Literature relating to turnarounds and international legislated rescue processes identified that the business rescue practitioner is of paramount importance in a successful rescue.

This view was further solidified by the ranking of a lack of an accreditation process for the business rescue practitioner as the 4th highest factor that impacted on the failure of business rescues. Furthermore, the establishment of strict accreditation criteria for the appointment of a business rescue practitioner was ranked as the highest success factor for a successful rescue. Due to the importance of the business rescue practitioner's role, the study established competencies, both skills and qualifications, required for one to be a successful business rescue practitioner.

6.2.4. Competencies required to be a successful business rescue practitioner

The most significant contribution of this study is the identification of competencies required to be a successful business rescue practitioner. The responsibilities of business rescue practitioners are multi-dimensional and they require a variety of competencies. Both the quantitative and qualitative research results emphasised the importance of the business rescue practitioner being competent in cash flow management and in the turnaround of financially distressed businesses. The quantitative methodology results indicated that the most important qualification required to be a successful business rescue practitioner is an accounting qualification and accreditation as a turnaround management professional. The important skills required to be a successful business rescue practitioner are the ability to implement effective cash management strategies and a strong sense of decision making.

The findings of the qualitative methodology indicated that both legal and financial qualifications are required to be a successful business rescue practitioner. However, the accounting and legal skills must not be of a general nature. They must be focused in the areas of cash flow generation, financial distress and company law. These competencies must be complemented by conflict resolution and mediation skills.

Overall, the core competencies of a successful business rescue practitioner must include effective turnaround management skills and they must have sound legal and accounting knowledge that focuses on the rehabilitation of a distressed business. The financial competencies must extend to the ability to effectively manage and generate cash flows.

6.3. RECOMMENDATIONS ARISING FROM THE STUDY

It is ironic that business rescue legislation, implemented to resuscitate financially distressed companies, is at a point of demise (Pretorius, 2013a). Its viability and survival have been questioned due to the low success rate (Naidoo, 2015). Business rescue practice and the turnaround of financially distressed business is an important pillar of democracy. In order for business rescue legislation to survive and have a meaningful impact on the South African economy, the following recommendations are made.

6.3.1. Department of Trade and Industry and the CIPC

An independent regulator must be established by the DTI and the CIPC to manage the business rescue sector. The role of the DTI and CIPC must be limited to facilitating the creation of a regulator. The management and functioning of the regulator must be independent of the CIPC.

The following core responsibilities of the regulator are essential:

- **Create an awareness of business rescue legislation**. Educational campaigns must be established to improve the business community's understanding of the potential benefits of business rescue legislation. Business workshops and seminars must be utilised to better inform business owners and management of the technicalities relating to the legislation. The improved understanding will result in an increased and more effective utilisation of business rescue legislation to rehabilitate financially distressed business. It will also result in an earlier application for companies intending to file for business rescue.

- **Establish a framework for the accreditation of business rescue practitioners**. The framework should include the skills and qualifications required for successful accreditation. There must be a focus on turnaround management, effective cash management strategy, accounting and legal skills (focused on turnaround and cash management) and conflict resolution and mediation skills. The regulator must, in collaboration with tertiary institutions, create an educational qualification for entry into the business rescue profession. For example, a four-year B.Com/LLB with a triple major in accounting, law and management must be investigated as a means of equipping potential business rescue practitioners with the necessary competencies to be successful.

  The framework must include a period of internship/mentorship whereby new entrants/recently graduated individuals work with more experienced business rescue practitioners. Thereafter, an examination based on the business rescue process must be completed to obtain a licence to perform as a practitioner.

- **Create a continuous development programme of training for business rescue practitioners.** This will ensure that practitioners remain updated on changes to legislation and industry trends.

6.3.2. The Justice Ministry

The Justice Ministry must establish specialised courts to handle and fast track business rescue cases. In the interim, courts must utilise assessors with expertise in business rescue legislation/commercial law.

6.3.3. Independent Regulatory Board for Auditors

The Independent Regulatory Board for Auditors (IRBA) must create a greater awareness of business rescue legislation amongst company auditors. When assessing the ability of a distressed business to continue as a going concern, external auditors must evaluate management compliance with Section 129(7) of the Act. This Section requires management to furnish all affected parties of an entity with reasons for not filing for business rescue when the company is in financial distress. Compliance with Section 129(7) will result in earlier filing for business rescue.

6.3.4. The financial sector

The financial sector needs to adopt a more proactive stance on the provision of business rescue finance. The proactive stance relates to the financial sector's involvement in commencing business rescue and the provision of post rescue funding.

Based on financial records maintained by banks, businesses could have a risk status indicator such as a yellow indicator for low risks and a red indicator for high risks. These indicators must be built on cash flows, profitability and debt ratios and can be used as an early warning system for indicating the need to file for business rescue.

The study indicated that there is potential for the expansion and growth of the funding for business rescues, similar to the funding industry in the USA. The growth can be achieved by the establishment of specialists funding vehicles for companies that are in or about to file for business rescue. Management of these funds would require an in-depth knowledge of business rescue legislation, such as the tight deadlines. Consideration must be given to the funder playing a more active role in the business rescue.

The current post rescue funding environment requires an improved working relationship between funders, management and business rescue practitioners. A closer working relationship will facilitate an effective mechanism for the business rescue practitioner to address concerns relating to the management of the business rescue.

6.3.5. Management

In addition to efforts by the regulator to improve the awareness of business rescue legislation, management must ensure that they understand and comply with business rescue legislation. Business rescue legislation must only be utilised for the intended purpose of rehabilitating a financially distressed firm. Any abuse of the legislation must be avoided. Strict penalties must be imposed on those found guilty of abusing the process.

In order to ensure that financial distress is detected timeously, consideration should be given to the use of early warning distress signals. The early detection of financial distress will facilitate an earlier application for business rescue. In the event that management decides to apply for business rescue, an effort must be made to communicate details of the filing to all affected parties. Due to tight deadlines, important decisions and planning must be undertaken prior to the application for the business rescue. Examples of these decisions are the appointment of a business rescue practitioner and the negotiation of post commencement finance.

It is important that a mechanism is created to involve creditors and financial institutions in the business rescue process. Consideration must be given to the establishment of a committee of creditors in accordance with Section 145(3) of the business rescue legislation. The creditors' committee will formalise and enhance communication with management and the business rescue practitioner.

In the event that management of a financially distressed company does not apply for business rescue, the requirements of Section 129(7) must be complied with immediately.

6.3.6. Business rescue practitioners

Business rescue practitioners must comply with the recommended accredited framework for the regulator. In the interim, their competency levels can be increased by improving their cash flow management expertise, conflict resolution and mediation skills. They also need to acquire legal and accounting skills that focus on corporate law and cash flow management respectively.

Practitioners must consider undertaking joint appointments on rescues where they lack some of the core competencies, especially during the initial stages of their career. This will facilitate a level of skills transfer from experienced practitioners to those that are learning the trade.

On appointment, the business rescue practitioner must consult with and keep all stakeholders informed of the progress of the business rescue. Care must be taken to ensure that assumptions made in the preparation of the business rescue plan are reasonable and that all stakeholders are widely consulted before the plan is finalised.

6.3.7. Tertiary institutions

In conjunction with the regulator, tertiary institutions must establish a curriculum in business rescue. This could be in the form of a post graduate qualification that focuses on legal studies, accounting, turnaround management, conflict resolution and mediation competencies. Consideration must be given to providing the qualification on a part time basis due to the existing responsibilities of practitioners.

6.3.8 Business rescue checklist

The use of the business rescue checklist in Table 6.1 will improve the chances of a successful rescue.

Table 6.1: Business rescue checklist

STAGE	ITEM
Commencement of business rescue	• A company must utilise early warning signals to identify the onset of financial distress as early as possible. • An application for business rescue of a financially distressed organisation must commence as soon as practically possible. • There must be early planning and preparation before the application for business rescue. • Management of a financially distressed entity that does not file for business rescue must comply with Section 129(7). • A suitable business rescue practitioner must be identified prior to the application for business rescue. • Attempts to secure post rescue funding must be made prior to the application for business rescue.
Appointment of business rescue practitioner	• Management must communicate effectively with stakeholders regarding the appointment of a business rescue practitioner. • The business rescue practitioner must possess an accounting qualification and effective cash management skills. • The business rescue practitioner must possess a strong sense of decision making. • The business rescue practitioner must ensure that there is no abuse of the business rescue legislation.

STAGE	ITEM
Preparation of a business rescue plan	• The business rescue plan must contain the elements of Section 150. • There must be focus on the commercial viability of the business in the plan. • All stakeholders must be consulted during the preparation of the business rescue plan. • The business rescue plan assumptions must be realistic. • A creditors committee must be established. This will allow creditors to play an active role in the business rescue.

Utilising the checklist in Table 6.1 will contribute towards successful business rescues.

6.4. LIMITATIONS

There were certain limitations to the study. These are presented next.

6.4.1. Lack of sufficient literature

As business rescue legislation is a relatively recent addition to corporate law, there was a lack of literature relating to the topic. The review was descriptive in nature and therefore focused on understanding rather than a critical assessment of existing literature.

6.4.2. Low response rate to questionnaire

The low response rate of 54% to the questionnaire was a limitation to the study. The findings of the study cannot be generalised due to the response rate. This limitation was addressed by obtaining expert statistical advice from a member of the School of Statistics at the University of Kwa-Zulu Natal. This ensured that the results were statistically significant, reliable and accurately interpreted.

6.4.3. Sample frame for interviews

The sample frame for interviews was the top ten business rescue practitioners in the country. The selection of a different group of business rescue practitioners may yield different findings.

6.5. FUTURE RESEARCH

The following are avenues of future research:

a) The study indicated that the establishment of accreditation criteria must be undertaken by an independent regulator. It was recommended that an independent regulator be established to oversee the accreditation of business rescue practitioners and to manage the affairs of the business rescue sector. More research is required to establish the scope and responsibilities of the regulator.

b) In order to implement a system of accreditation, the independent regulator must collaborate with tertiary institutions to design a curriculum for the business rescue practitioner which feeds into an internship and a “board” exam. Research can be undertaken into a competency framework for a successful practitioner. The future research must expand on the findings of this study and identify appropriate syllabi content.

c) An early warning system is required for business owners to anticipate financial distress. Research must be undertaken into an effective early warning system to identify financial distress that can be utilised for local business rescue purposes.

d) Banks must possess an early warning system to alert a company of the financial distress and to apply for business rescue. Research is required to develop a comprehensive system that can be utilised by the financial sector.

e) The study recommended the establishment of funding mechanisms focused on companies in business rescue. More research is required into the viability of this recommendation. Such a study must investigate the private funding mechanisms utilised for Chapter 11 rescues in the USA and assess the feasibility of establishing similar models in South Africa.

6.6. CONCLUSION

There are numerous countries in which the government implements legislation to prevent the demise of companies. In South Africa, business rescue legislation was implemented in 2011. The intention of the legislation was to facilitate the continued existence of financially distressed companies by means of a rehabilitation. However, the legislation has had a low success rate. The low success rate can be improved by adopting and implementing the recommendations of this study. The “Game-Changer” referred to by Pretorius (2013a) will be achieved by the establishment of an independent regulator to manage the business rescue sector. The implementation of an accreditation framework by the regulator will enhance the impact of business rescue legislation. This will facilitate a more vibrant business rescue sector and an improved the success rate, ultimately ensuring the survival of business rescue in South Africa. Using a triangulation approach, this study has confirmed existing literature, refuted existing literature and has contributed new knowledge in understanding business rescue in South Africa.

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ANNEXURE 1:

ETNICAL CLEARANCE

UNIVERSITY OF KWAZULU-NATAL

INYUVESI YAKWAZULU-NATALI

05 March 2015

Mr Rajendra Rajaram (892280779)
School of Accounting, Economics & Finance
Pietermaritzburg Campus

Dear Mr Rajaram,

Protocol reference number: HSS/0107/015D
Project title: Success factors for Business Rescue in South Africa

Full Approval – Expedited Approval

With regards to your application received on 27 February 2015. The documents submitted have been accepted by the Humanities & Social Sciences Research Ethics Committee and **FULL APPROVAL** for the protocol has been granted.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

Please note: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

....

Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Professor AM Singh
Cc Academic Leader Research: Dr H Ngalawa
Cc School Administrator: Mr Sihle Khuzwayo

Humanities & Social Sciences Research Ethics Committee
Dr Shenuka Singh (Chair)
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ANNEXURE 2:

QUESTIONNAIRE

Informed Consent Document- Questionnaire

I, Rajendra Rajaram, am a student currently registered for PhD degree on the Pietermaritzburg campus of the University of KwaZulu-Natal (UKZN). A requirement for the degree is a dissertation and I have chosen the following topic:

SUCCESS FACTORS FOR BUSINESS RESCUE IN SOUTH AFRICA

I can be reached on rajaramr@ukzn.ac.za or on 033 260 6267. My academic supervisor is Professor Anesh Maniraj Singh, based in the School of Accounting, Economics and Finance on the Westville Campus of the University of KwaZulu-Natal. He can be contacted on singham@ukzn.ac.za or on 031 260 2674 during office hours.

The aim of the study is to establish factors relating to the planning and execution of a Business Rescue that impacts on the success of a Business Rescue. This will be achieved by establishing factors that result in failed Business Rescues in South Africa, factors that result in successful Business Rescues in South Africa and developing a set of key competencies that are required to be a successful Business Rescue practitioner. The findings of this study will be utilized to make recommendations to the Companies and Intellectual Property Commission, the financial services sector, Business Rescue practitioners and companies that are intending to file for Business Rescue. The study seeks to improve the chances of a successful Business Rescue.

Please note that your name not be included in the report. The questionnaire does not require any personal information. The information will be seen only by me and my supervisor and examiner. Your anonymity and confidentiality is of utmost importance and will be maintained throughout the study.

Your participation in completing the questionnaire is completely voluntary. You have the right to withdraw at any time during the study.

I appreciate the time and effort it would take to participate in this study. I would be very grateful for your participation as it would enable me to complete my dissertation.

Please complete the section below:

I ………………………………………………………….. (full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.
I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Signature of Participant……………………………………..………

Date……………………………………………………..……..

BUSINESS RESCUE SURVEY

1. Age:

21-30	31-40	41-50	51-60	61 and over

2. Race:

AFRICAN	COLOURED	INDIAN	WHITE

3. Gender:

MALE	FEMALE

4. Highest level of education:

MATRIC	DIPLOMA	DEGREE	POST GRADUATE DIPLOMA/HONOURS	MASTERS	PHD/DOCTORATE

5. Area of specialization:

BUSINESS/MANAGEMENT	FINANCIAL	LEGAL	OTHER (SPECIFY)

6. Were you formally appointed by the CIPC as a Business Rescue Practitioner?

YES	NO

7. Since you answered yes to question 6, kindly state the number of years that you have served as a Business Rescue Practitioner?

1	**2**	**3**	**4**

8. Since you answered yes to question 6, state the number of Business Rescues that you have been appointed as Business Rescue practitioner.

1	2	3	4	5	+5

9. How many of your Business Rescue appointments reflected in part 8 falls into the following category?

	NUMBER OF BUSINESS RESCUES						
SUCCESSES	0	1	2	3	4	5	+5
FAILURES	0	1	2	3	4	5	+5
INCOMPLETE	0	1	2	3	4	5	+5

For questions 10-21, please indicate the impact of the following factors on failed Business Rescues in South Africa.

10. A company can only apply for commencement of Business Rescue if it anticipates financial distress in the ensuing six month period and not earlier.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

11. Management abuse of the Business Rescue process.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant Impact on failed Business Rescue

12. Lack of effective planning prior to the application for Business Rescue.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

13. Ineffective communication by management with stakeholders during the application for Business Rescue.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

14. Lack of an accreditation process for the appointment of a Business Rescue practitioner.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

15. Cost escalations due to Business Rescue practitioners not meeting deadlines.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

16. Poorly prepared Business Rescue plans.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

17. Limited post rescue funding.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

18. Lack of support for the Business Rescue process from SARS

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

19. Limited time period of three months to complete a Business Rescue.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

20. Lack of skilled courts to deal with Business Rescue cases.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

21. High costs of the Business Rescue process.

Has no impact on failed Business Rescue	Has minor impact on failed Business Rescue	Has significant impact on failed Business Rescue

For questions 22-34, indicate your level of agreement/disagreement whether a stated factor will result in a successful Business Rescue in South Africa.

22. Businesses need to use early warning signals to anticipate financial distress.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

23. There needs to be early planning and preparation before the commencement of a Business Rescue.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

24. An effective Business Rescue plan needs to be established.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

25. The Business Rescue time frame should be increased to six months to a year.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

26. Post rescue funding must be available.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

27. The Business Rescue Practitioner must communicate effectively with stakeholders during the Business Rescue process.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

28. The Business Rescue Practitioner must ensure that employees of the company in Business Rescue are highly motivated.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

29. A key focus of the Business Rescue must be the company strategy.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

30. Government and related agencies need to be proactively involved in Business Rescue.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

31. Banks and financial institutions need to be proactively involved in the Business Rescue.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

32. Creditors need to play an active role in the Business Rescue process.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

33. Specialised courts need to be established to handle Business Rescue cases.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

34. Strict accreditation criteria are needed for the appointment of Business Rescue practitioners.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

35. Please indicate the two most important qualifications that a Business Rescue practitioner should possess.

	A legal qualification	An accounting qualification	An MBA	Accreditation as a turnaround management professional
Most important qualification	○	○	○	○
Second most important qualification	○	○	○	○

36. Please indicate the three most important skills that a Business Rescue practitioner should possess.

	Ability to implement effective cash management strategies	Strong aptitude for success	Strong sense of decision making	Enhanced integration skills	Enhanced collaborative skills	Five to twenty five years of experience as a turnaround management professional
Most important skill	○	○	○	○	○	○
Second most important skill	○	○	○	○	○	○
Third most important skill	○	○	○	○	○	○

37. Do you believe that the accreditation process for a Business Rescue Practitioner must include a written examination? Please explain.

ANNEXURE 3:

INTERVIEW SCHEDULE

I, Rajendra Rajaram, am a student currently registered for PhD degree on the Pietermaritzburg campus of the University of KwaZulu-Natal (UKZN). A requirement for the degree is a dissertation and I have chosen the following topic: ***SUCCESS FACTORS FOR BUSINESS RESCUE IN SOUTH AFRICA.***

I can be reached on rajaramr@ukzn.ac.za or on 033 260 6267. My academic supervisor is Professor Anesh Maniraj Singh, based in the School of Accounting, Economics and Finance on the Westville Campus of the University of KwaZulu-Natal. He can be contacted on singham@ukzn.ac.za or on 031 260 2674 during office hours.

The aim of the study is to establish factors relating to the planning and execution of a Business Rescue that impacts on the success of a Business Rescue. This will be achieved by establishing factors that result in failed Business Rescues in South Africa, factors that result in successful Business Rescues in South Africa and developing a set of key competencies that are required to be a successful Business Rescue practitioner. The findings of this study will be utilized to make recommendations to the Companies and Intellectual Property Commission, the financial services sector, Business Rescue practitioners and companies that are intending to file for Business Rescue. The study seeks to improve the chances of a successful Business Rescue.

Please note that your name not will be included in the report. The feedback will be seen only by my supervisor, examiner and I. Your anonymity and confidentiality is of utmost importance and will be maintained throughout the study. Your participation in completing the interview is completely voluntary and you are in no way forced to attend the interview. You have the right to withdraw at any time during the study. I appreciate the time and effort it would take to participate in this study. I would be very grateful for your participation as it would enable me to complete my dissertation.

Please complete the section below:

I ……………………………………………………………. (full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Additional Consent for Interview

I hereby provide consent for my interview to be audio-recorded YES / NO

Signature of Participant…………………………………………

Date………………………………………………………………..

INTERVIEW SCHEDULE FOR BUSINESS RESCUE PRACTITIONERS

1. Age:

21-30	31-40	41-50	51-60	61 and over

2. Race:

AFRICAN	COLOURED	INDIAN	WHITE

3. Gender:

MALE	FEMALE

4. Highest level of education:

MATRIC	DIPLOMA	DEGREE	POST GRADUATE DIPLOMA/HONOURS	MASTERS	PHD/DOCTORATE

5. Area of specialization:

BUSINESS/MANAGEMENT	FINANCIAL	LEGAL	OTHER (SPECIFY)

6. Kindly state the number of years that you have served as a Business Rescue Practitioner?

1	**2**	**3**	**4**

7. State the number of Business Rescues that you have been appointed as Business Rescue practitioner.

1	**2**	**3**	**4**	**5**	**+5**

8. How many of your Business Rescue appointments reflected in part 7 falls into the following category?

	NUMBER OF BUSINESS RESCUES						
SUCCESSES	0	1	2	3	4	5	+5
FAILURES	0	1	2	3	4	5	+5
INCOMPLETE	0	1	2	3	4	5	+5

9. Do you think that South Africa was prepared for the implementation of Business Rescue legislation?

10. What are the reasons for the low success rate of Business Rescue in South Africa?

11. To what extent are Business Rescue practitioners the cause of Business Rescue failure? Please explain.

12. To what extent is the Business Rescue plan the cause of a Business Rescue failure?

13. What is the impact of post rescue funding on the outcome of a Business Rescue?

14. What are the factors that will contribute to an increase in the success of Business Rescue in South Africa?

15. What is the support for the current Business Rescue legislation in South Africa?

16. What impact will the establishment of accreditation criteria for Business Rescue practitioners have on a Business Rescue?

17. What are some of the competencies/qualifications that must be possessed by a successful Business Rescue Practitioner?

18. Who should establish the accrediting body?

ANNEXURE 4:

TURNITIN REPORT

Turnitin Originality Report

Final Submission by Raj Rajaram

From Research (Research Dissertation)

Processed on 23-Aug-2016 2:40 PM CAT

ID: 697465624

Word Count: 53450

Similarity Index

3%

Similarity by Source

Internet Sources:

3%

Publications:

1%

Student Papers:

N/A

ANNEXURE 5:

Editing Certificate

TO WHOM IT MAY CONCERN

Language editing

I, Jeanne Enslin, acknowledge that I did the language editing of **Raj Rajaram's** dissertation submitted in fulfilment of the requirements for the degree of Doctor of Philosophy.

The title of the dissertation is:

SUCCESS FACTORS FOR BUSINESS RESCUE IN SOUTH AFRICA

If any significant text changes are made to the electronic document that I sent to Raj Rajaram on 22 August 2016, the document needs to be returned to me to check the language of the changes. Detailed feedback about the work done has been provided to Raj.

Jeanne Enslin
Language editor
082-6961224.

Technical editing

I, Ronel Gallie, acknowledge that I did all aspects of the technical formatting, checking of reference list and cross-referencing of **Raj Rajaram's** dissertation submitted in fulfilment of the requirements for the degree of Doctor of Philosophy. Detailed feedback about the work done has been provided to Raj.

Ronèl Gallie
Technical editor
084 7780 292

ANNEXURE 6:

Raw Data Tables

SHEET 1

Response	var1	var2	var3	var4	var5	var6	var6_O	var7	var8
1	3.00	3	4	2	5	3		1	3
2	5.00	5	4	1	4	1		1	4
3	2.00	2	4	2	5	2		1	5
4	2.00	2	2	2	3	3		1	4
5	2.00	2	4	2	3	3		1	2
6	3.00	3	4	2	4	2		1	4
7	1.00	1	4	2	5	3		1	5
8	3.00	3	4	2	5	4	Inv/PE	1	2
9	4.00	4	4	2	5	3		1	4
10	2.00	2	4	2	5	3		1	3
11	3.00	3	4	2	3	2		1	5
12	4.00	4	4	2	4	1		1	4
13	3.00	3	4	2	4	3		1	4
14	2.00	2	4	2	5	2		1	5
15	1.00	1	4	2	4	2		1	2
16	2.00	2	4	2	3	2		1	5
17	4.00	4	4	2	5	3		1	5
18	4.00	4	4	2	4	3		1	5
19	3.00	3	4	2	5	2		1	5
20	3.00	3	4	2	3	3		1	4
21	5.00	5	4	2	3	3		1	5
22	4.00	4	4	1	4	1		1	5
23	3.00	3	1	2	5	3		1	5
24	2.00	2	4	2	5	3		1	5
25	3.00	3	4	2	5	1		1	5
26	4.00	4	3	2	4	1		1	4
27	3.00	3	4	2	4	3		2	0
28	2.00	2	1	2	3	1		2	0
29	4.00	4	4	2	5	2		2	0
30	2.00	2	4	2	4	2		2	0
31	3.00	3	4	2	5	2		2	0
32	3.00	3	4	2	4	3		2	0
33	4.00	4	4	2	6	1		2	0
34	4.00	4	4	2	5	1		2	0
35	3.00	3	4	2	5	1		2	0
36	5.00	5	4	1	6	3		2	0
37	4.00	4	4	2	4	4	academic	2	0

Response	var1	var2	var3	var4	var5	var6	var6_O	var7	var8
38	3.00	3	4	2	5	3		2	0
39	2.00	2	4	2	4	1		2	0
40	4.00	4	1	2	2	2		2	0
41	2.00	2	4	2	4	2		2	0
42	5.00	5	4	2	5	1		2	0
43	4.00	4	3	2	4	2		2	0
44	2.00	2	1	2	5	1		2	0
45	3.00	3	3	2	4	2		2	0
46	3.00	3	4	2	4	2		2	0
47	4.00	4	3	2	5	1		2	0
48	2.00	2	1	2	4	3		2	0
49	3.00	3	4	2	4	2		2	0
50	3.00	3	4	2	4	1		2	0
51	4.00	4	1	2	5	1		2	0
52	4.00	4	4	2	2	2		2	0
53	2.00	2	3	1	4	2		2	0
54	3.00	3	3	2	5	1		2	0
55	4.00	4	2	1	4	1		2	0
56	4.00	4	3	2	4	3		2	0
57	3.00	3	1	1	4	2		2	0
58	2.00	2	4	2	4	2		2	0
59	3.00	3	4	2	1	1		2	0
60	3.00	3	1	2	5	2		2	0
61	2.00	2	3	1	4	2		2	0
62	4.00	4	4	2	3	3		2	0
63	4.00	4	1	2	3	1		2	0
64	2.00	2	3	2	3	2		2	0
65	3.00	3	3	2	4	1		2	0
66	2.00	2	4	1	4	2		2	0
67	4.00	4	1	2	3	2		2	0
68	3.00	3	4	1	5	2		2	0
69	4.00	4	4	2	4	3		2	0
70	2.00	2	4	2	3	1		2	0
71	3.00	3	4	2	5	3		2	0

SHEET 2

Response	var9	var10	var11	var12	var13	var14	var15	var16	var17	var18
1	2	1	3	1		1	3	3	2	1
2	6	7	4	6		2	2	3	3	2
3	6	7	3	7		2	3	2	2	3
4	4	3	2	2		2	1	2	2	3
5	2	1	1	3		2	3	3	3	3
6	6	5	3	6		2	2	3	3	3
7	5	4	2	2		2	3	3	3	3
8	6	5	1	2		3	1	3	2	2
9	6	5	4	3		1	3	3	3	2
10	6	5	4	6		1	2	3	3	3
11	6	5	3	4		2	1	3	3	2
12	6	6	3	2		2	3	3	3	2
13	5	2	4	3		3	3	2	2	3
14	6	3	4	3		2	3	3	3	3
15	6	2	3	6		1	3	2	2	3
16	4	2	3	2		2	3	3	3	3
17	6	7	7	7		3	3	3	3	3
18	2	2	2	1		3	3	3	2	3
19	6	7	7	7		2	3	3	3	3
20	6	3	7	7		3	2	2	2	3
21	6	7	7	7		2	2	2	3	3
22	6	7	7	4		2	2	1	2	3
23	3	2	2	2		1	1	2	2	2
24	6	7	7	7		1	2	2	3	3
25	6	7	7	7		2	2	2	2	2
26	3	2	2	2		3	2	3	3	3
27	0	0	0	0		1	3	2	3	2
28	0	0	0	0		1	1	3	3	3
29	0	0	0	0		3	3	3	3	3
30	0	0	0	0		2	3	3	3	3
31	0	0	0	0		3	2	3	3	2
32	0	0	0	0		1	2	2	2	3
33	0	0	0	0		3	3	3	3	1
34	0	0	0	0		1	3	3	2	2
35	0	0	0	0		1	3	3	2	3
36	0	0	0	0		2	3	3	3	3
37	0	0	0	0		2	3	3	2	1
38	0	0	0	0		1	2	3	2	3
39	0	0	0	0		1	3	3	3	3
40	0	0	0	0		3	3	3	3	1
41	0	0	0	0		3	2	3	3	3

Response	var9	var10	var11	var12	var13	var14	var15	var16	var17	var18
42	0	0	0	0		2	3	3	2	3
43	0	0	0	0		3	3	3	3	3
44	0	0	0	0		3	3	3	3	3
45	0	0	0	0		3	3	3	3	3
46	0	0	0	0		3	3	2	3	3
47	0	0	0	0		2	3	3	3	3
48	0	0	0	0		2	3	2	2	3
49	0	0	0	0		1	2	3	3	2
50	0	0	0	0		3	3	2	3	3
51	0	0	0	0		2	3	2	3	3
52	0	0	0	0		2	3	3	3	3
53	0	0	0	0		3	2	2	2	3
54	0	0	0	0		3	2	3	3	2
55	0	0	0	0		2	2	3	3	3
56	0	0	0	0		1	2	3	2	2
57	0	0	0	0		2	2	2	1	2
58	0	0	0	0		2	1	2	2	2
59	0	0	0	0		3	2	2	1	2
60	0	0	0	0		1	1	2	1	2
61	0	0	0	0		1	2	2	1	2
62	0	0	0	0		2	3	3	2	2
63	0	0	0	0		1	1	2	2	2
64	0	0	0	0		1	1	2	2	2
65	0	0	0	0		2	3	3	3	3
66	0	0	0	0		2	2	2	2	3
67	0	0	0	0		1	2	2	2	3
68	0	0	0	0		1	2	2	2	3
69	0	0	0	0		2	2	2	2	2
70	0	0	0	0		1	2	2	2	2
71	0	0	0	0		1	3	3	3	3

SHEET 3

Response	var19	var20	var21	var22	var23	var24	var25	var26	var27	var28
1	1	1	3	1	1	1	2		5	4
2	2	3	3	3	1	2	2		5	4
3	2	3	3	2	3	3	3		4	4
4	3	3	3	2	2	2	2		4	4
5	3	3	3	3	3	3	3		5	5
6	3	2	2	3	2	2	2		5	5
7	2	3	3	3	2	2	2		4	5
8	2	2	3	2	2	3	2		5	5
9	2	3	3	2	2	3	3		4	5
10	2	2	3	2	2	3	3		3	3
11	2	3	3	2	1	1	3		4	4
12	2	3	3	2	3	2	3		5	4
13	3	3	3	3	1	2	2		5	4
14	3	3	3	3	2	3	3		5	5
15	3	3	3	3	2	3	2		5	4
16	2	3	3	2	3	2	3		4	4
17	3	3	2	2	2	2	2		5	4
18	2	3	3	2	3	2	3		5	4
19	3	3	3	3	2	3	3		4	4
20	2	2	2	3	2	2	2		4	4
21	2	3	3	3	3	2	3		5	4
22	2	2	2	1	2	2	2		4	4
23	2	2	2	2	2	2	3		4	4
24	2	3	2	2	2	2	3		5	4
25	3	3	3	2	2	2	2		3	3
26	2	3	3	2	2	2	2		3	3
27	2	3	3	1	2	2	2		4	4
28	2	3	3	1	2	2	1		5	4
29	3	3	3	2	2	2	3		5	5
30	2	3	3	3	2	2	3		5	5
31	2	3	3	2	3	3	3		4	4
32	3	3	3	2	2	2	3		4	3
33	3	3	3	1	3	3	3		5	5
34	2	3	3	2	2	2	2		4	5
35	2	3	3	3	2	3	2		5	5
36	3	3	2	2	2	3	3		5	4
37	3	3	2	3	3	3	3		5	3
38	2	3	3	3	2	3	2		5	5
39	3	3	3	3	2	3	3		5	5
40	3	3	2	2	3	2	3		5	5
41	2	3	3	2	2	2	2		5	5

Response	var19	var20	var21	var22	var23	var24	var25	var26	var27	var28
42	2	2	3	2	2	3	2		5	5
43	3	3	3	3	3	3	3		4	4
44	3	3	3	2	3	3	3		5	4
45	3	3	3	3	3	3	3		4	4
46	3	2	3	1	3	3	2		5	3
47	3	3	2	3	1	2	3		4	5
48	3	2	3	3	3	2	2		4	4
49	2	3	3	3	2	2	3		3	3
50	3	3	3	2	3	2	3		4	4
51	3	2	3	3	2	3	2		5	4
52	3	3	3	3	2	3	3		5	5
53	2	2	2	1	1	1	2		4	3
54	3	3	3	3	2	3	2		3	4
55	2	2	3	2	2	2	2		4	4
56	2	3	2	3	3	2	2		4	3
57	2	3	3	1	2	2	2		4	4
58	2	2	3	1	1	2	3		4	4
59	3	2	2	2	2	2	3		4	4
60	2	2	3	1	2	2	2		3	3
61	2	2	3	1	1	2	2		3	4
62	2	2	2	1	1	2	2		2	3
63	2	2	2	1	1	2	2		3	4
64	2	2	1	1	1	1	2		2	3
65	2	2	3	3	3	3	3		4	4
66	2	2	3	1	1	2	2		3	3
67	2	2	2	1	1	1	2		3	3
68	2	3	2	2	1	2	2		3	4
69	2	3	3	1	1	2	2		3	4
70	2	2	2	1	2	2	2		3	3
71	2	3	3	2	3	3	2		4	4

SHEET 4

Response	var29	var30	var31	var32	var33	var34	var35	var36	var37	var38
1	5	4	5	5	4	1	2	4	5	1
2	5	5	5	5	5	5	4	5	4	4
3	5	5	5	5	5	4	5	5	5	3
4	5	4	5	5	3	4	2	3	3	4
5	5	4	5	5	5	4	5	5	5	4
6	5	3	5	4	4	4	4	4	4	4
7	5	4	5	5	4	5	3	5	4	2
8	5	4	3	5	4	3	4	5	5	5
9	4	4	4	4	4	5	4	4	5	5
10	2	3	4	4	3	5	5	4	4	5
11	5	3	5	3	3	4	4	4	4	4
12	5	3	3	5	4	5	4	5	5	3
13	4	4	4	5	2	3	4	4	4	3
14	4	4	5	5	5	5	4	4	5	5
15	4	3	5	5	4	3	5	5	5	5
16	4	4	4	5	4	3	3	5	5	5
17	5	4	4	4	4	4	4	5	4	4
18	4	5	5	5	5	3	4	4	4	5
19	5	4	4	4	4	3	4	5	4	4
20	3	4	3	4	3	3	3	3	4	4
21	4	4	4	4	2	3	4	4	5	4
22	4	2	5	3	3	2	2	4	4	4
23	3	2	4	4	4	3	4	4	4	4
24	4	2	4	4	2	4	3	3	4	4
25	4	2	5	4	3	4	4	4	3	4
26	4	4	3	3	3	3	4	4	4	3
27	4	2	4	5	4	5	2	4	4	4
28	5	1	5	5	4	2	4	4	4	4
29	4	3	4	5	4	4	3	4	3	4
30	5	3	3	5	4	5	4	5	4	4
31	4	4	4	4	4	4	4	4	4	4
32	4	4	4	4	4	4	4	4	4	5
33	5	1	2	5	1	5	4	2	5	5
34	5	3	4	5	3	4	3	4	4	4
35	5	2	4	5	3	4	4	5	5	5
36	4	4	4	5	4	4	2	4	5	4
37	4	5	4	4	4	4	5	5	4	4
38	5	4	5	4	4	3	4	5	5	5
39	5	3	5	5	5	3	5	5	5	5
40	4	5	4	5	4	4	1	4	4	4
41	5	4	5	5	5	5	5	5	4	4

Response	var29	var30	var31	var32	var33	var34	var35	var36	var37	var38
42	5	4	5	5	5	5	2	5	3	5
43	4	4	4	4	4	4	4	4	4	4
44	5	4	4	5	5	3	3	5	4	4
45	4	4	4	4	4	4	4	4	4	4
46	4	4	5	4	3	3	5	4	4	4
47	5	3	4	4	3	3	4	4	4	4
48	4	4	4	4	3	4	4	4	5	4
49	4	3	3	3	4	3	3	3	4	4
50	5	3	5	3	3	2	2	4	4	4
51	3	4	4	4	2	3	3	4	4	4
52	5	5	4	4	5	3	5	4	4	5
53	3	4	5	4	4	4	4	5	4	4
54	4	4	4	4	3	3	4	4	4	4
55	4	5	4	3	2	3	4	4	4	5
56	4	4	4	4	3	2	3	3	3	3
57	4	4	3	4	4	4	2	3	4	3
58	4	2	4	4	2	2	2	2	3	3
59	3	2	4	3	2	3	4	4	4	4
60	4	2	4	4	2	1	1	3	4	5
61	3	3	3	4	3	3	3	3	2	3
62	3	3	3	2	3	2	3	3	2	3
63	4	4	4	3	3	4	4	4	3	3
64	3	3	3	3	3	3	2	2	2	3
65	4	4	4	4	4	4	4	4	4	4
66	3	2	3	4	3	3	3	3	4	4
67	3	3	3	4	4	4	4	4	4	4
68	4	2	3	3	3	3	3	3	3	3
69	4	4	4	4	4	4	4	3	4	4
70	3	3	3	3	4	4	4	4	4	4
71	5	3	5	5	3	4	3	4	4	5

SHEET 5

Response	var39	var40	var41	var42	var43	var44
1	5	1	3	6	1	2
2	5	4	2	6	3	5
3	5	4	3	1	3	6
4	5	3	1	1	2	3
5	5	1	2	1	3	5
6	5	2	4	1	2	3
7	4	1	2	3	1	4
8	5	4	3	1	3	6
9	5	2	3	1	2	3
10	5	1	2	3	2	4
11	5	2	3	1	3	2
12	5	4	2	4	3	1
13	3	1	4	1	2	6
14	5	2	3	1	2	4
15	5	2	1	3	2	1
16	5	2	3	1	2	3
17	4	1	2	2	3	2
18	5	4	2	2	3	2
19	4	4	1	5	4	2
20	4	4	2	3	4	3
21	4	1	4	1	2	3
22	5	2	3	1	3	4
23	5	2	3	2	3	4
24	5	1	2	1	2	3
25	4	2	3	1	2	3
26	5	2	2	1	2	4
27	5	4	2	6	5	1
28	4	4	3	3	1	2
29	5	4	2	6	3	5
30	5	4	2	6	5	3
31	4	2	4	1	5	3
32	5	2	3	2	3	1
33	5	4	3	5	3	4
34	4	1	2	5	6	5
35	5	3	1	6	1	4
36	5	1	4	2	5	1
37	4	2	1	1	5	6
38	5	2	4	5	6	1
39	5	3	2	1	3	5
40	4	4	2	6	1	3
41	5	2	1	6	3	1

Response	var39	var40	var41	var42	var43	var44
42	5	4	3	6	3	5
43	4	4	2	1	3	6
44	5	4	3	1	5	3
45	4	4	3	6	1	2
46	5	4	1	6	1	3
47	5	4	2	1	3	4
48	4	4	1	6	3	3
49	4	4	2	1	2	4
50	5	3	2	2	3	6
51	5	2	4	6	4	3
52	5	4	2	1	5	3
53	4	1	2	3	4	4
54	4	4	2	1	2	4
55	5	2	3	2	4	3
56	3	4	2	6	4	3
57	4	1	4	2	6	3
58	4	2	3	4	3	2
59	4	2	3	1	3	4
60	4	2	4	2	3	4
61	4	2	3	1	2	3
62	2	1	2	3	5	4
63	3	1	2	1	2	3
64	3	2	3	2	3	6
65	4	4	2	6	1	2
66	4	2	3	5	4	3
67	4	1	2	2	3	4
68	3	4	2	4	3	2
69	4	1	4	6	3	4
70	5	2	4	4	3	2
71	5	2	3	6	1	5

SHEET 6

Response	var45
1	No. Academic qualifications with proof of relevant experience will suffice
2	Possibly - practical experience is more important than theory. Business management experience and expertise is very important and the ability to be a team player.
3	Yes. The current process only requires a prospective BRP to indicate how many years of experience he or she has in assisting companies. This is not readily verifiable. An entry exam or aptitude test of some sorts will qualify all BRP's into the industry.
4	Yes. This will ensure that standards are consistent.
5	Most business rescue matters require a team effort in order to be successful. The two most important skills sets are legal and accounting/financial. A business rescue practitioner should be required to pass an examination.
6	Yes. This will enable the accrediting body to determine whether the BRP's skills are adequate.
7	Yes, a once-off examination should be mandatory in cases where the prospective practitioner has not completed a specific business rescue qualification/study.
8	for applicants with less than ten years of turnaround management experience
9	Yes. This will improve the chances of a successful rescue.
10	Yes, this will root out the BRPs that are giving the sector a negative image.
11	Yes.
12	Basic legal financial accounting and communications kills should be assessed. A strong ethical approach should also be assessed
13	Yes. This will contribute to an improved success rate.
14	Yes.
15	No as an effective Business Rescue may be achieved in various different ways. Enforcing a written examination will have the effect of limiting creativity and cause a narrow minded approach to Business Rescue. Accreditation should involve a combined analysis
16	Definitely. This will enhance the image of the sector and contribute to better acceptance.
17	Yes. The exam should be administered as an undergrad university qualification.
18	yes. without a doubt. Similar to the bar or board exam
19	Yes, The exam should test all aspects of legal and financial skills.
20	No. Experience on a Business Rescue is sufficient.
21	Yes.
22	Not Sure. Too many liquidators are tarnishing the image of the industry.
23	Yes. Only for a freshman.
24	Yes, this is necessary to compliment those skills that the practitioner does not possess.
25	Yes, the exam should be based on areas that the practitioner does not have a qualification.
26	I did a Unisa course, which was very useful. The court decisions are important.
27	Yes. The exam that BRP's write in every BR is the Plan. They need to be tested on their ability to write plans.
28	Yes, The BRP should display skills in management, legal and accounting/finance.
29	Yes - this will assist to ensure that a minimum standard of competency in a variety of disciplines important for the BRP (i.e. finance, management, legal/law and ethics/corporate governance) are upheld.
30	Yes, the model of the UK should be followed in which all practitioners need to pass examinations (UK: JIEB) which qualify them to become BRP's.

Response	var45
31	Yes, in areas not previously examined, i.e., if BRP is a CA(SA), then exam in legal aspect needed to demonstrate competence.
32	Yes. This will ensure that only competent individuals are allowed to practice as a BRP.
33	yes - see the forthcoming CRA from TMA
34	No Motivation should suffice
35	Accreditation through life experience is much more important than a written examination. Minimum qualification and experience is important
36	Yes. Practitioners contravene the Act, have no knowledge of what is required from them and are ignorant about their duties. They should be compelled to acquire at least a basic knowledge of the process before appointment.
37	Yes
38	Only if certain minimum qualifications are absent
39	Yes, need to prove they understand accounting, legal and business to be able to make proper calculated decisions during the BR process.
40	No
41	Yes.
42	NO BECAUSE IF THEY ARE ACCREDITED AS A TURNAROUND PROFESSIONAL THIS WILL SUFFICE
43	Exam to test competence is vital
44	Yes, I do. One cannot assume that a legal/Finance qualification on its own would be sufficient in determining a well rounded BRP or a successful BR. Training and assessment in Finance, Legal, Business management (strategic planning, marketing, sales, HR,
45	No, ability of business rescue practitioner unlikely to come through in an exam
46	No, it should be based primarily on the person's years of financial and TMA experience, then qualification, then accreditation via scoring these 2 factors.
47	Yes. The accreditation should also include CPD
48	Yes. But we must be careful of not theorising the process.
49	Not necessarily, one could have a track record of being successful in Business.
50	Yes. A formal exam will ensure that prerequisites are met.
51	Yes. This is the only way to test if the person is fully competent.
52	Yes - it is important that a standard is set for the accreditation of BRP's.
53	No. Practical experience is more important.
54	Not really. The accreditation must be based on experience and not academic qualifications.
55	Yes
56	Yes. Could possibly be similar to the Chartered Accountants board exam
57	Yes. The written exam must be based on a case study.
58	No.
59	It depends. If someone is a chartered accountant, they wont need an exam.
60	Yes. This will standardise the level of expertise in the industry.
61	This is not necessary
62	No, not required
63	No. There are other courses available that do not require an exam.
64	Yes. BRPs will become more competent.
65	Experience more relevant
66	No. Provided there is continuous professional development and sufficient experience.

Response	var45
67	It will contribute to success.
68	No.
69	Yes, the BRP must not be allowed to undertake a rescue unless he passes a written examination.
70	An exam will be an important part of the process.
71	Qualified professionals with extensive commercial experience only. An exam is not a substitute for properly qualified individuals with extensive commercial experience.