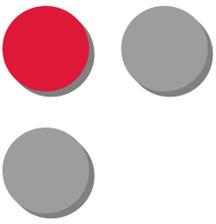


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ACKNOWLEDGEMENTS

The authors gratefully acknowledge inputs received from all participants including the subjects of the research, the representatives and the principal. Without their inputs, this research is not possible. This research was commissioned by the CIPC for the SCCL.

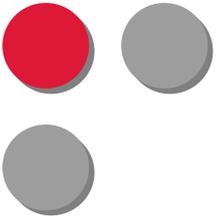


Abbreviations and Acronyms

<i>Abbreviation/Acronym</i>	<i>Description</i>
ADR	Alternative Dispute Resolution
BR	Business rescue
BRP	Business rescue practitioner
BRiL	Better Return than in Liquidation (S128(1)iii)
CIPC	Companies and Intellectual Property Commission. CIPC is also referred to as the Regulator.
PCF	Post Commencement Finance (funding)
RP	Reasonable Prospect
SCCL	Specialist Committee on Company Law
TMA	Turnaround Management association – SA chapter of the International body

Definitions and explanations

<i>Term/Concept</i>	<i>Description</i>
Appointment of BRP	A firm that voluntarily files for rescue appoint the BRP. Alternatively a court may appoint a BRP. Thereafter licencing must be completed.
Bootstrapping	Referred to in sub section 4.1.6.1 meaning “making due” with minimum support and resources
Licensing of BRP	Following appointment, an application for an “ad hoc” license is submitted to the CIPC
Opinion	Opinion is often not fact based and highly variable. These were obtained during interviews of various kinds with different subjects representing different relevant groups.
Public opinion	Respondents whose knowledge are deemed limited to “about rescue” but deficient to the details of the processes in contrast to the rescue knowledgeable respondents who may include any or



	all of: Legal specialists in BR, Relevant bank staff, BRPs, Academics doing research in BR, Some directors after filing excluding labour.
Success in Business rescue	See sub section 3.1

Report Outlay

This research has as its main aim to understand the status of the business rescue regime after three years.

The format of the report is that of a response to the various questions (Chapter 1) posed by the brief when commissioned.

Chapter 1 states the brief from the principal and consequent approach.

Chapter 2 explains the extent of the research design, methods, data sources and data collection.

Chapter 3 clarifies some key issues of relevance for understanding the results as well as the context in which the findings must be interpreted.

Chapter 4 reports the findings without real interpretation thereof. This chapter contains the factual data as the quantitative report.

Chapter 5 then attempts to make sense of the findings especially by considering the contextual issues to consider as the qualitative report.

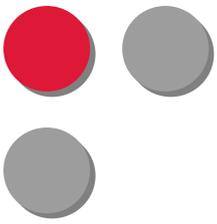
Chapter 6 discusses the issues for the reader while,

Chapter 7 proposes some recommendations and directives for consideration.

This is the final report after amendments as required by the “comments report” of the CIPC working committee.

Speed read Note:

For readers who want to access key data only (at first glance) it is advisable to read/follow the diagrams that contain the cryptic key information obtained from the research process. Thereafter, if interested, readers could pursue in depth – reading associated with relevant diagrams.



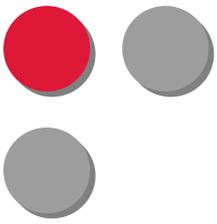
Executive Abstract

This research has identified the key issues that drive and restrain the BR industry after the first three years of its existence following the introduction of Chapter since March 2011.

Business rescue is perceived as a successful regime in the process of overcoming its “childhood” problems. Despite some restraining forces, it appears to save jobs and businesses similarly to that achieved by international regimes.

The key findings of this report (extensively discussed in Chapter 6) include inter alia:

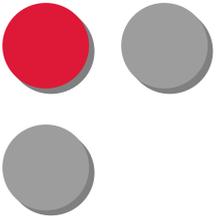
1. Success in BR is regularly misunderstood with limited creditor knowledge (except for banks)
2. The BRP is central (disproportionate influencer) to the process and therefore draws most attention, criticism and blame for process related concerns.
3. Affordability of business rescue is a limiting factor and especially so when legal proceedings are part of the process.
4. Reasonable prospect, its definition, understanding, measurement and determination is central to BR. Much future research required.
5. Conflict exists in the industry especially between banks (as main creditors) and BRPs. Post business rescue also reports conflict between filing directors and BRPs.



6. Post Commencement funding/finance (PCF), which is a key determinant in BR success for reorganisation is not readily available. Various reasons for it is explained.
7. The Regulator is a “real bone of contention” for BRPs and affected persons alike. This is especially so for timeous response, accuracy, capacity and authority to act.

The final chapter proposes some focus areas to be addressed by future actions of the Regulator to be pursued or to be transferred to a “relevant body/bodies for execution. The key recommendations include but are not limited to:

1. Establishment of an expert advisory panel to support the regulator. This should be done in association with a professional body such as TMA.
2. Accreditation of BRPs through revisiting an accreditation body to assist with education, post mortem evaluation, peer review and licensing. This is the most pressing issue.
3. BRP competency development – could be part of point 1.
4. Enhancement of the legal procedures that hamper BR execution, especially time limitations by investigating specialized courts, ombudsman, tribunal, enhanced complaints procedures, alternative dispute resolution and more as alternative processes.
5. Initiating a process for revisiting Chapter 6 issues that were identified as inconsistencies, practical problems or shortcomings. These may include clarifications for:
 - Factual measure for reasonable prospect

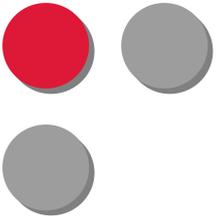


- PCF priorities in liquidation

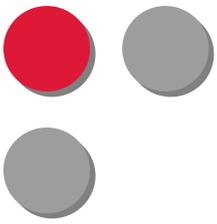
This may include amendments but also practice notes applied within the current execution structures of the Regulator.

6. General education of directors, employees and affected parties
7. Licensing to be kept on ad hoc basis

The research report identified the issues, explored some alternatives and guidelines for action to be taken by role players (mainly the Regulator).



Business Rescue
Chapter 1
Background and Research brief
by principal



1. Background for understanding the context of the research

In South Africa, Chapter 6 of the Companies Act 71 of 2008 came into effect on 1 May 2011. This Act has led to the birth of a new phenomenon: the business rescue practitioner (BRP). BRPs face a challenging job. The rescue industry is less than four years old, following this new legislation and the rescuer's 'new' trade is generally unstructured, complex, not generic, as well as being business and industry specific, thus making for complex and challenging decision-making. There is, as yet, little case law and only scanty scientific research to support rescue as a strategy.

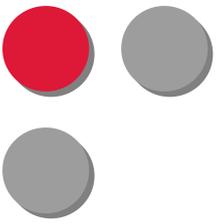
The Companies Act 2008 sets out the purposes it seeks to achieve in section 7, one of which is specifically to 'provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders'.¹ Others include 'promot[ing] the development of the South African economy by . . . encouraging entrepreneurship and enterprise efficiency [and] creating flexibility and simplicity in the formation and maintenance of companies'.² **Chapter 6 of the Act contains an all-new system of corporate reorganization called 'business rescue', the term itself defined to mean:**

'proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for – (i) the temporary supervision of the company, and of its affairs, business and property; (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company'.³

¹ Companies Act 2008, s 7(k).

² Companies Act 2008, s 7(b)(i) and (ii).

³ Companies Act 2008, s 128(1)(b).



Since the Act came into force in May 2011, the business rescue procedure has been widely utilised, but not without difficulty. The Companies and Intellectual Property Commission ('CIPC')⁴ reported over 1500 filings (see findings chapter for detail) over the first 36 months with an apparent steady annual increase. There have been a number of what may either be teething problems, or signs of deeper underlying flaws, and at this stage it may be too early to determine which of these it is.

The Companies and Intellectual Property Commission (CIPC) as the regulatory body may license any 'qualified' person to practise as practitioner in terms of Chapter 6, and may also suspend or withdraw any such licence. The Minister (through the CIPC) may make regulations prescribing standards and procedures to be followed in carrying out its licensing functions and powers.

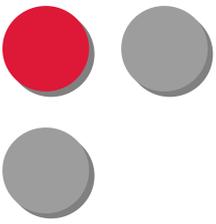
1.1. **Brief for understanding the context of the research**

The research has been conceived by the SCCL (Specialist Committee on Company Law) and commissioned by the CIPC with the following specific guidelines (but not limited to):

CIPC Terms of Reference requires:

1. Engage CIPC and
2. Clarify process and principles on BR with reference to accreditation and licensing of practitioners;
3. How many companies have gone into BR?
4. How many went to BR by resolution of the board?
5. How many went into BR by court order? (who initiated court proceedings?)
6. How many applications to court have been refused?
7. How many companies have come out of BR successfully?

⁴ Lotheringen, A. J. of the Companies Intellectual Property Company by personal communication, 27 March 2014.



8. How many companies in BR subsequently went into liquidation?
9. What are the time dimensions of the entire process, i.e. From initial application and thereafter?
10. What are the cost implications, particularly costs incurred to the BRPs?
11. Of those companies that went into BR but which failed to come out successfully, were their creditors better off than had they not gone into BR??

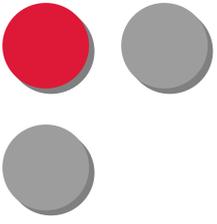
The scope should further cover:

1. Where BR failed, why did it fail?
2. Was there a reluctance to give finance after the company went into BR?
3. Is there evidence that the failure of BR was attributable to a lack of support by the banks, major suppliers, major customers?
4. How often has there been a failure to approve the BR plan?
5. Has failure been due to poor performance of the BR practitioners?
6. Did experience/qualification of the BR Practitioner have any effect on the success or failure of the BR process?

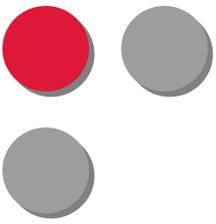
Process investigation:

1. Has failure been due to any defects in the Companies Act?
2. Is the problem that there was a mistake in having put the company into BR in the first place, i.e. that there was no realistic possibility that it could succeed?
3. Some feedback on the performance or nonperformance of BRPs (BR practitioners).
4. Some feedback on the extent to which jobs were saved as a result of BR
5. Some feedback on the overall implementation of BR by CIPC.
6. Feedback on creditors in terms of their role and experiences.

By default, the brief guided the research approach to focus on liabilities faced in the BR industry.



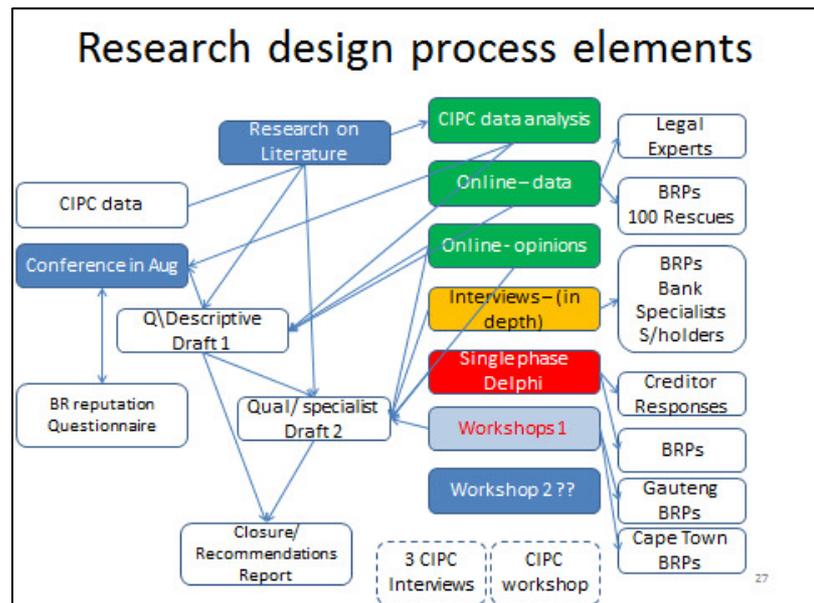
Business Rescue
Chapter 2
Research design and validity



2. The Research design and processes followed

In this section, the detail of the research process is shortly described. This is necessary to ensure validity of the data collection, analysis and interpretation thereof. The governing principle of the research design was to optimise “triangulation” (multiple sources of data) as to ensure no oversights. The diagram shows the process agreed upon by the CIPC committee on appointment.

The diagram shows the research design that was carefully followed by the research.



2.1. Sources of data and triangulation

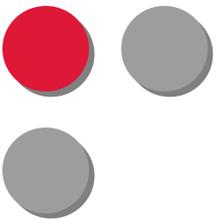
There were several sources of data. This was further done to ensure the widest possible involvement and consultation. These were mainly (but not limited to):

2.1.1. Statistics kept by the CIPC business rescue division

Access was obtained to the following sets of statistics from the CIPC:

2.1.1.1. Core BRP appointment related data that include

- Dates
- Levels
- Firms appointed to,



- COR filings associated with each business.

2.1.1.2. Annual figures for various aspects of BR

2.1.1.3. Previous data reported by CIPC at forums, training and conferences

Overall, the status of the available data about business rescue was determined in order to establish the need for additional sources. Appendix A depicts the status at the onset of the research and the consequent design strategies pursued.

Over the period and seeking validity and reliability, it became clear that these data sets contain systemic discrepancies. The data were thus scrutinised for use and when deduced from it, interpretation was limited to the extent of what the data can explain and what not.

In all such cases the data sources were identified and the reader warned about interpretation.

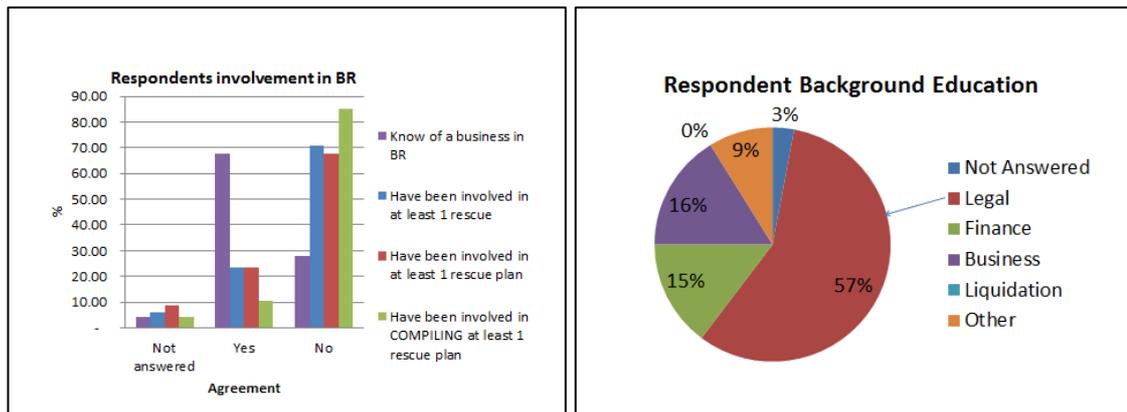
Diagrams in the text normally indicate the relevant sources thereof.

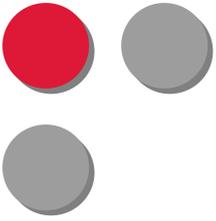
2.1.2. Literature sources informing the research

Academic literature, research reports on business rescue and consulting reports available were scouted for relevant information that could inform the research questions. All articles published on business rescue in SA in academic journals were obtained for references purposes. Important sources are indicated as footnotes to assist readers to access these sources.

2.1.3. Questionnaires collected from participants at annual Law Conference

Data from 68 respondents were obtained covering 32 items on a paper survey completed with options ranging from strongly disagree to strongly agree on a five point scale. The respondents in this sample were characterised as follows:





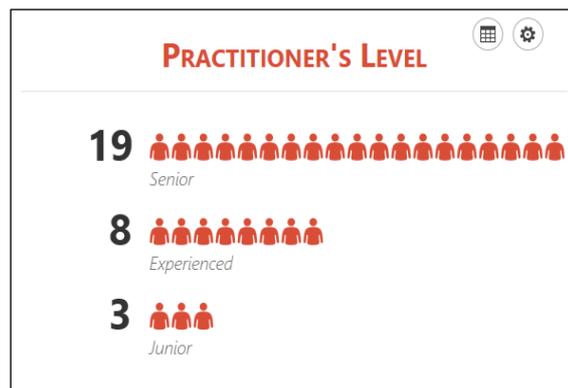
From the diagram it is clear that this sample originated mainly from the legal fraternity (57%), followed by finance (15%) and business (16%) sectors. Most respondents did not have direct knowledge of BR proceedings. Therefore this set of data must be considered as informing from a “rumor” perspective. When interpreting the specific data from this section, it should be also deliberated that a legal bias might exist.

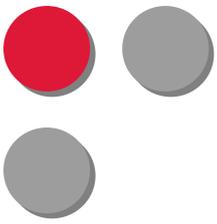
The results from this specific section of the research is referred to in the report as “public opinion” as its origin are respondents that are generally not knowledgeable about the details of business rescue. See also definitions about opinion.

2.1.4. Survey data obtained from BRPs to inform the research

Data from 30 BRPs covering 4-6 rescues each totalling 133 companies were obtained through an online survey containing randomly sampled rescues for each BRP. Eighty seven yielded useful comparative data. The response rate of this survey was less than 33% despite various reminders through telephone calls and follow-up emails.

The diagram shows the spread of the responding BRPs as mainly senior level practitioners.





Most respondents originated from Gauteng (73%) and Western Cape (20%).



2.1.5. Interviews with affected parties to inform the research

Interviews were held with BRPs (the sample happened to include removed / replaced BRPs), Bank officials, Lawyers involved in BR cases, affected persons, directors, academics. The protocol used was open ended and interviewers allowed the interviewees to lead to discussion towards issues of concern to them.

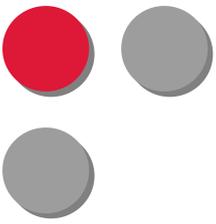
Interviews depend on a high level of trust and goodwill between interviewer and interviewee. Researchers therefore took care as not to force subjects to divulge information that they deem private. This refers mainly to fees, costs and potential benefits.

2.1.6. Email Delphi data to inform the research

Purposively selected individuals in the BR industry were targeted in a Delphi-process where they shared their opinions on specific issues posed to them. Data was aggregated for use to respond to the specific research questions posed to them.

The key questions posed to the respondents were:

- How should BRPs be selected, appointed, their competencies evaluated, and governed by the regulator or other?
- Who must regulate and licence?
- Who must evaluate?

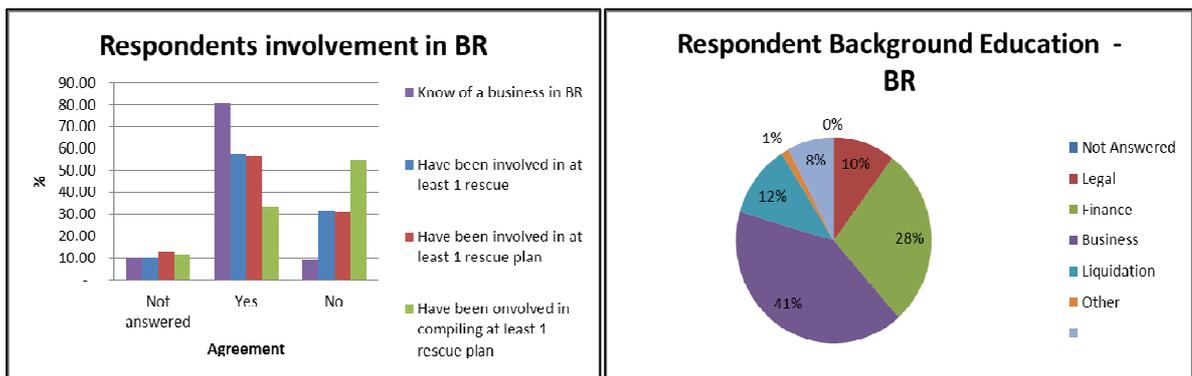


- How to select the evaluators?
- What form should evaluation take?
- How to remunerate the evaluators?

2.1.7. Email aggregate data survey from BRPs

The BRPs with the most rescues were asked to give aggregate data on the outcomes and success of the rescues under their supervision. This was mainly to attempt determination of the relationship between Reorganising vs better return than in liquidation (BRiL) as a success ratio.

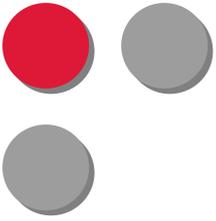
2.1.8. Questionnaires collected from participants at a Business Rescue Conference



Survey data from 78 respondents were obtained covering 32 items in a paper survey completed with options ranging from strongly disagree to strongly agree on a five point scale. The respondents in this sample included BRP's, SARS officials, Banks, government officials and other interested parties. More (63%) respondents were from business and finance backgrounds.

2.1.9. Workshop attended/arranged data of expressed views from participants

Different smaller workshops were attended and held. These were mainly opportunistically pursued by the research team. For example: When invited to address relevant audiences around the country, I used all these opportunities to interview individuals as well as use the introduction phase to elicit knowledge levels, perceptions and requirements of such audiences. Groups included:



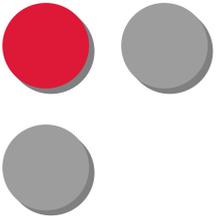
Lawyers interested in BR invited to a private breakfast session in Cape Town

IDC bank officials during an arranged workshop

CA trainees in Gauteng

TMA practice workshop

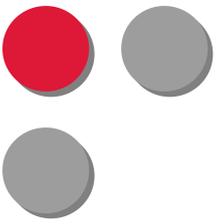
- 2.1.10. General voluntarily feedback offered comments (mainly email) from interested parties over and across the industry



Business Rescue

Chapter 3

Issues to consider before interpreting the findings



3. Issues to consider before interpreting the results

At heart, the aim of this document is to establish if BR as a regime can be described as successful or not and to guide the Regulator (for Legislator) to consider improvements and/or amendments to the Act. Thus, there are several clarifications that are needed to be understood before interpreting the content of this document. The selection of the sections and topics in this chapter serves to establish comparable concepts whether read from business, legal, financial or other perspectives. The aim is not to repeat the Act but to highlight the key concepts and their relevance in this chapter.

Additionally, the language is that of business rather than that of law.

3.1. Success in BR – what does it mean?

Within Chapter 6, there are different interpretations associated with what BR success means. Much of this depends on who is asked and what benefit the answer will have to the relevant party considering the answer. It is necessary, at this early junction to clarify what success can entail within Chapter 6.

Sections 128 and 155 describe the outcomes that can be associated with success of the business rescue regime. Each option is explained to inform readers what is meant by success and the different options available to the BRP to pursue.

Potential Outcomes of Business rescue?

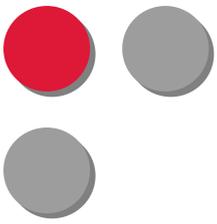
1. **Reorganise the business entity – going concern principle (not legal entity)**
2. **Better Return than in liquidation (for Creditors)**
3. **Other – S 155 arrangement, Business sale, mergers, asset sales, takeover – all could be part of 1 and 2)**
4. Other combinations
5. Liquidation
 1. Immediately before 1st creditors if no reasonable prospect
 2. After investigation when BRP determines no reasonable prospect
 3. Not obtaining the vote for the plan at 2nd creditors

3.1.1. Section 128(1b)(i) – Reorganisation

“Business rescue” means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for—

(i) the temporary supervision of the company, and of the management of its affairs, business and property;

Ultimately the reorganisation /rehabilitation (turnaround) of the business is the optimal success within business rescue. However, the Act makes provision for an alternative if this not possible. Creditors have to vote for the plan.



3.1.2. Section 128(1b)iii = Better Return than in Liquidation (BRiL)

This subsection states that if this restructuring as in S128(1b)(i) is not possible the alternative is If it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company. Thus, this option can be pursued as an alternative success outcome.

This alternative is not unique to Chapter 6 in South African context and can be found in similar legislation for Canada, UK and Australia. This BRiL definition for success is not well understood (and accepted) by many role players within the SA regime of business rescue. Although not accepted as success factor, the Act further makes provision for another alternative if reorganisation is not possible. Creditors also have to vote for the adoption of the BRiL plan.

3.1.3. Section 155 – Compromise between the company and its creditors

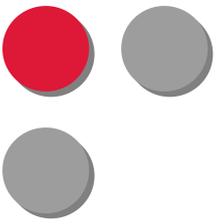
(1) Section 155 applies to a company, irrespective of whether or not it is financially distressed as defined in section 128(1)(f), unless it is engaged in business rescue proceedings in terms of this Chapter.

(2) The board of a company, or the liquidator of such a company if it is being wound up, may propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors, by delivering a copy of the proposal, and notice of meeting to consider the proposal, to— (a) every creditor of the company, or every member of the relevant class of creditors whose name or address is known to, or can reasonably be obtained by, the company; and

This option allows for “alternative options” within the BR regime. Creditors have to vote for the plan.

3.1.4. Other options

Although not specified in the Act itself, it appears that the “spirit” of the Act provides for actions that are associated with the “benefit of the common” that includes business in general, economic growth and employment protection (section 7). Thus, alternatives such as business sales through mergers (defensive) or acquisitions can be contemplated as successful outcomes. Creditors have to vote for the plan.



3.1.5. Liquidation

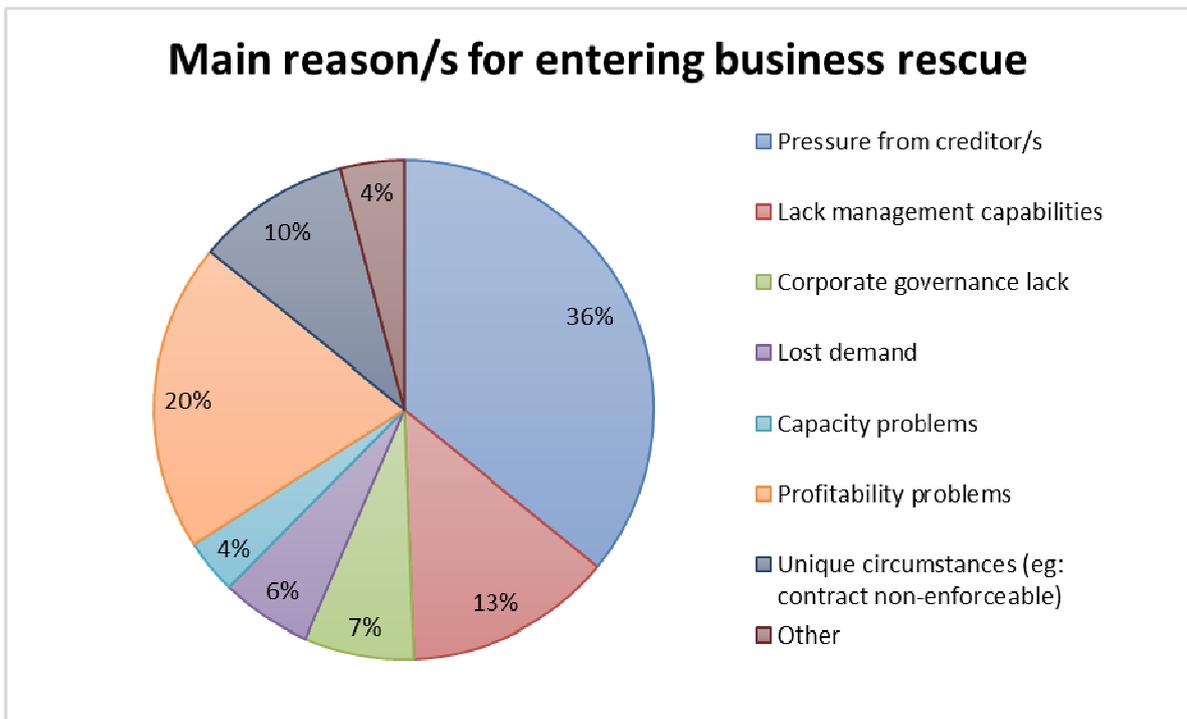
Although liquidation is not a “success” option, it serves as the benchmark against which both BRiL and compromises are measured. BRiL is pursued if it compared favourable to the projected liquidation value.

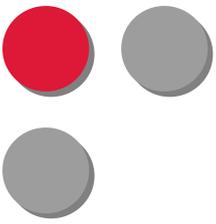
Liquidation is the benchmark used – the minimum benefit alternative.

3.2. Reasons (causes) for filing

While being an outcome of the research findings, it is necessary at this junction to report the main reasons (causes) that business reported when filing for business rescue. Understanding these reasons is paramount to the background context in which distressed businesses operate.

As shown the main reasons for financial distress, it springs from creditor pressure (36%), profitability problems (20%), Management capabilities (13%) and unique circumstance (10%). Cash flow is the sign of distress and not a cause and therefore not reported.



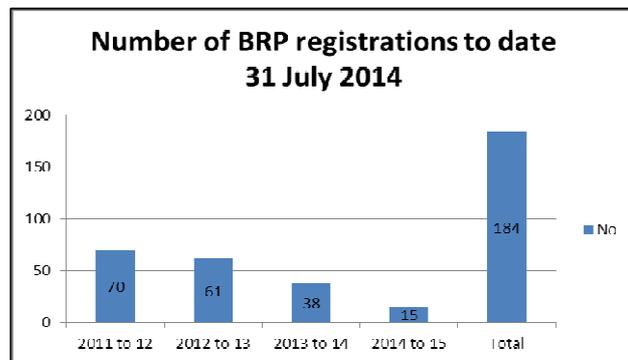


3.3. Business Rescue Practitioner (BRP)

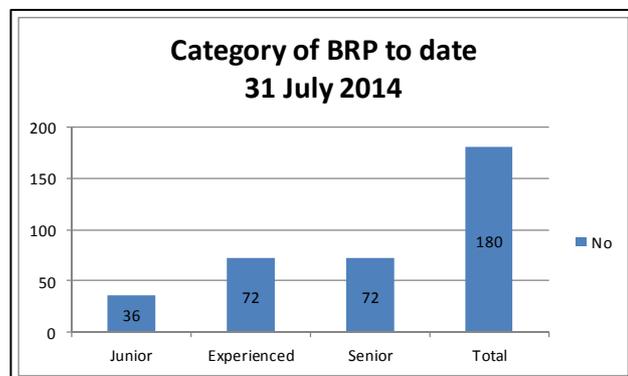
The BRP is the Chapter 6 equivalent of the turnaround manager (Chapter 11) or administrator found in the international regimes. Shortly, to add to the prescriptions in the act, the tasks and competencies of such a person is explained. (See also Appendix B for more detailed descriptions)

3.3.1. Appointment and licencing history of BRPs

Distressed businesses appoint BRPs while the Regulator license them after an administrative process (see also definitions). Licences are done on an ad hoc basis for each rescue and level of appointment is determined by the PI score of the company.



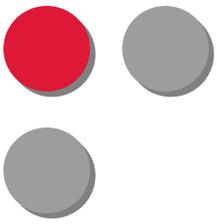
The distribution of licences is shown by the graphs. New appointments appear to be decreasing.



3.3.2. Tasks of the BRP

The tasks are broadly described in the Act to include four (4) tasks. Research has shown the activities⁵ associated with these tasks. These include the following:

⁵ Pretorius, M. 2013. Tasks and activities of the business rescue practitioner – a strategy as practice approach. South African Business Review. December 17 (3). P1-26. [Tasks and activities of the business rescue practitioner: a strategy as practice approach](http://www.unisa.ac.za/contents/faculties/service_dept/docs/Sabview_17_3_Chap%201.pdf) or http://www.unisa.ac.za/contents/faculties/service_dept/docs/Sabview_17_3_Chap%201.pdf



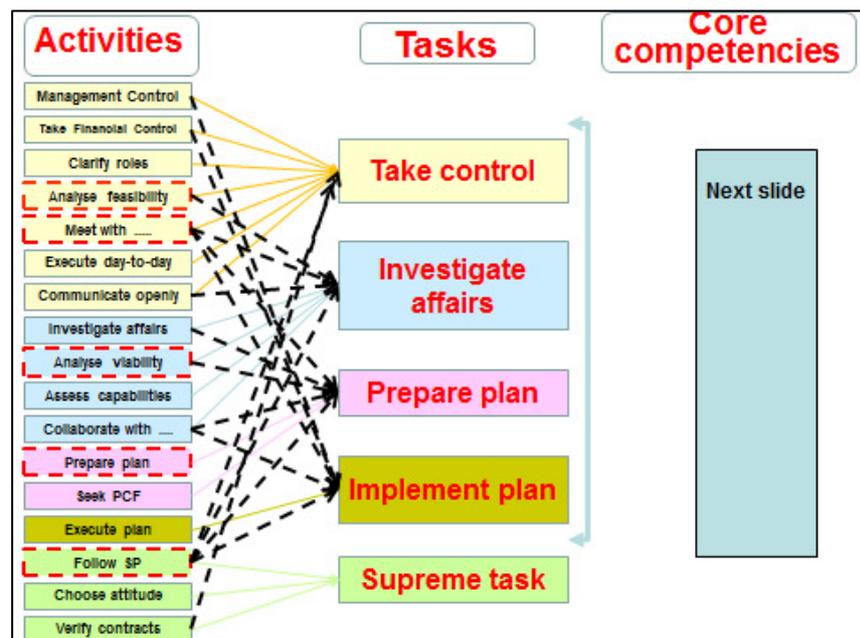
3.3.2.1. Prescriptions in Chapter 6 Section 140(1)

(1) During a company’s business rescue proceedings, the practitioner, in addition to any other powers and duties set out in this Chapter— (a) has full management control of the company in substitution for its board and pre-existing management; (b) may delegate any power or function of the practitioner to a person who was part of the board or pre-existing management of the company; (c) may— (i) remove from office any person who forms part of the pre-existing management of the company; or (ii) appoint a person as part of the management of a company, whether to fill a vacancy or not, subject to subsection (2); and (d) is responsible to— (i) develop a business rescue plan to be considered by affected persons, in accordance with Part D of this Chapter; and (ii) implement any business rescue plan that has been adopted in accordance with Part D of this Chapter.

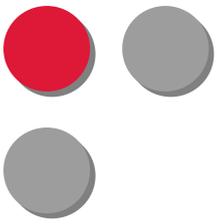
Section 140(1) thus instructs the BRP as follows with 4 tasks namely: must therefore 1) take management control, 2) investigate the affairs of the company, 3) prepare a rescue plan and if voted for, 4) implement the plan. Research adds another task namely to execute the above within the statutory guidelines of the Act.

3.3.2.2. Research findings about the tasks of the BRP

Research has confirmed the tasks of the BRP as described in the Act but also includes the “supreme task”. It basically states that the four tasks must be executed within the confines of the Act. Within the tasks, there are different activities that the BRPs execute to comply with the tasks.



The activities overlap significantly for the tasks.



3.3.3. Competencies of the BRP

Competency requirements are described in Section 138(1).

3.3.3.1. Prescriptions in Chapter 6 Section 138(1) to include:

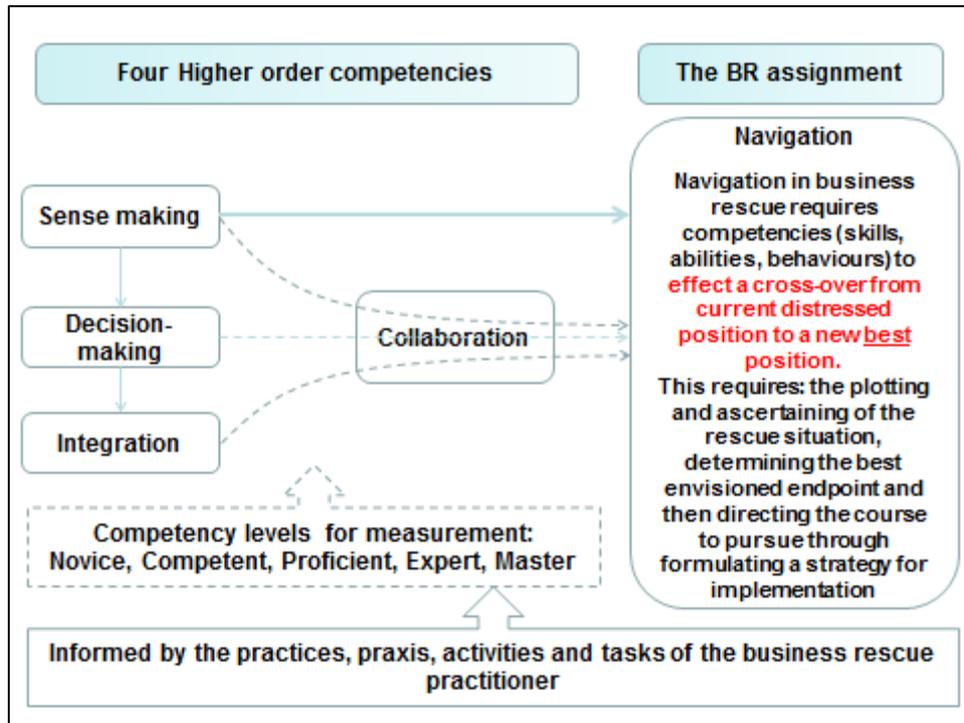
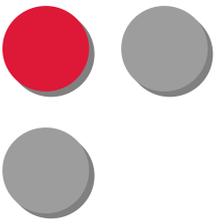
- (1) A person may be appointed as the business rescue practitioner of a company only if the person— (a) is a member in good standing of a legal, accounting or business management profession accredited by the Commission; (b) has been licensed as such by the Commission in terms of subsection (2); (c) is not subject to an order of probation in terms of section 162(7); (d) would not be disqualified from acting as a director of the company in terms of section 69(8); (e) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; and (f) is not related to a person who has a relationship contemplated in paragraph (d).

Section 138 guidelines do not refer to any competencies and therefore the research is reported to direct the reader towards the critical competency elements.

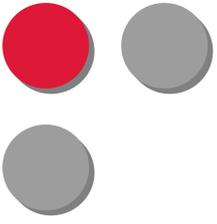
3.3.3.2. Research findings to direct the competency requirements for BRPs

Within the tasks of the BRP, research⁶ has identified the competencies to include sense making, decision-making, integration and collaboration as the core competencies to successfully navigate the business to a new best position. The diagram shows the main assignment and the relevant competencies required. The BRP is assigned to navigate the company towards a new “best position” and then has to convince the creditors that it is the reality.

⁶ Pretorius, M. 2014. A competency framework for the business rescue practitioner profession **Acta Commerci**. 14(2), Art #227 15 pages. <http://dx.doi.org/10.4102/ac.v14i2.227> .



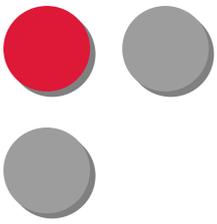
The four higher order competencies are interrelated and can be considered “unspecific” and could be applicable to CEOs and the turnaround manager as strategic leader. Each competency depends on a network of skills, knowledge and activities within the specifics of the individual rescue context. All four competencies contribute to the assignment of the BRP – that is “navigation”. Navigating a business rescue suggests a cross-over from the current distressed position to a new best position. I specify “best” position as the BRP is required to identify the best alternative and should not be confused with the alternative of finding a better return for shareholders.



Business Rescue

Chapter 4

Direct Findings – The status of BR



4. Findings - The Status of business rescue industry-

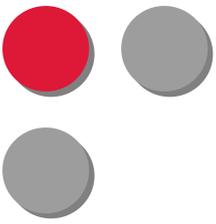
What follows in this section include the specific individual questions posted in the brief followed by the data presented as figures, graphs and diagrams. Each is supported by an indication of the relevant sources. This is generally followed by a short discussion of the relevance and an interpretation referring to the significance for the industry. Where possible, the discussion is enriched with quotes from interviews. Finally the key issues of relevance for the industry are identified and discussed with a view to make potential recommendations.

The affected parties were included in this research. The table shows the awareness levels of all participants to the study.

Table 4.1 Awareness levels of participants

Affected person	Level of awareness and knowledge about BR	Comments
Directors and shareholders	Low at filing. Increase over process	
Employees	Non existing	Several attempts during the research were aborted as there was no knowledge about the concept or process
Secured creditors	Medium to high	Banks are now very knowledgeable
Unsecured creditors	Low	Especially small businesses ⁷
BRPs	Varies	This research shows the levels (see sub section 4.1.16)
Specialists and advisors	Average but improving	
Public	Low	See also public opinion in definitions

⁷ Le Roux, I. & Duncan, K. 2013. The naked truth: Creditor understanding of business rescue. A small business perspective. SAJESBM, Vol 6 p57-74.



4.1. Specific results and findings per question in the brief

The period of this report covers the first 3 years and 3 months of business rescue since 1 May 2011 until 31 July 2014. Where available, the findings are presented per annum or per month but are indicated as such.

4.1.1. How many companies have gone into BR?

Filings are regarded as legal when all the requirements and pre-requisites are complied with. It excludes nullities (incomplete filings) that are not processed and removed from the data base.

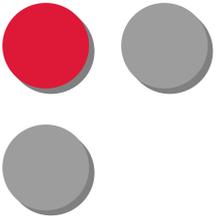
It appears that the 400-450 filings per year can be regarded as the appetite for business rescue over the past three years. It is mainly private

companies that use the procedure. Filings include the appointments by courts as in both cases (voluntary and court), the Regulator issues a license to the appointee.

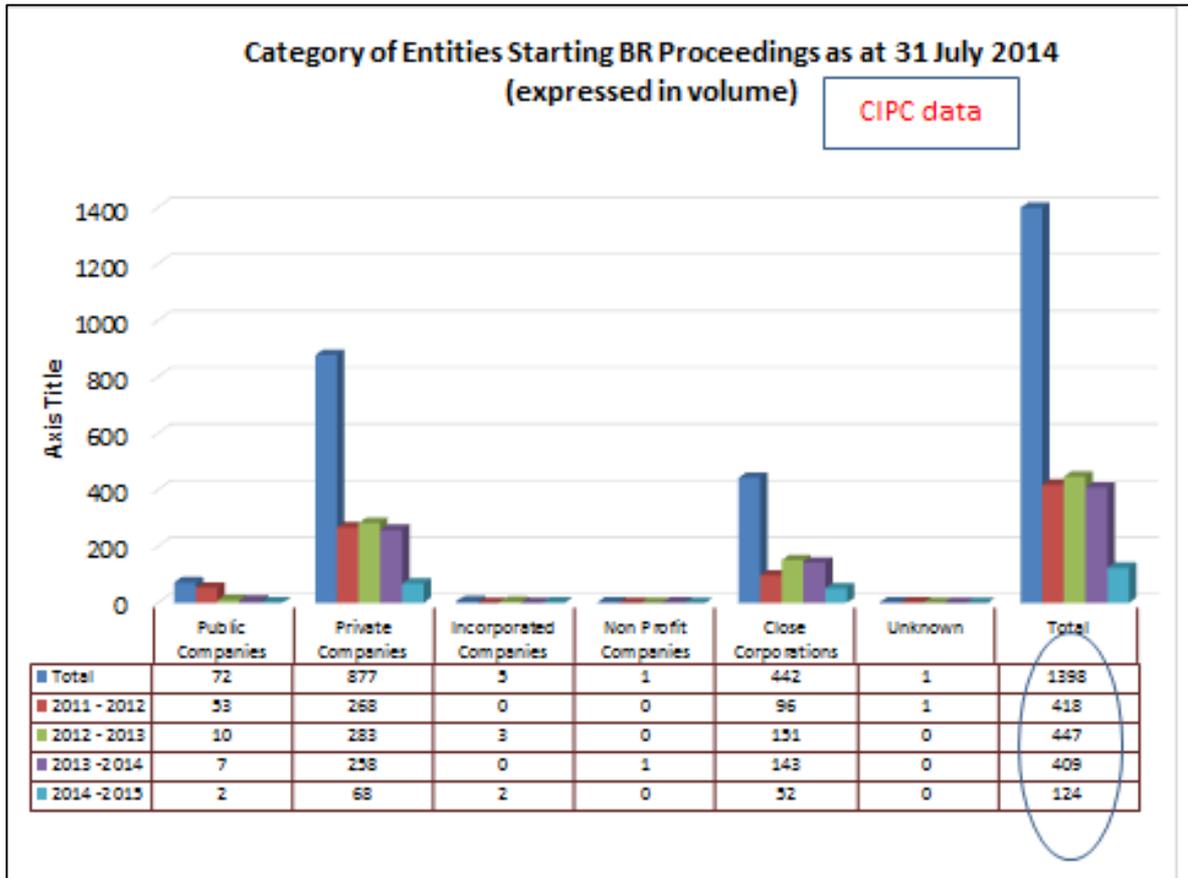
Detailed analysis of the CIPC data suggests that:

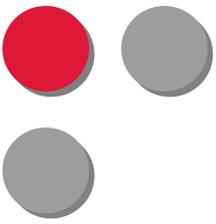
- BR is mostly used by private companies followed by close corporations
- Public companies use the process to a lesser extent
- Over the first three years the filings per category were similar.





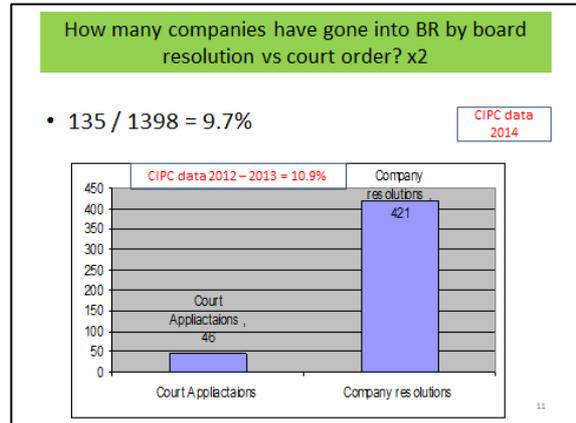
- Mathematical projection suggests that this reporting year (2014-2015) the 500 filing per year mark might be reached.



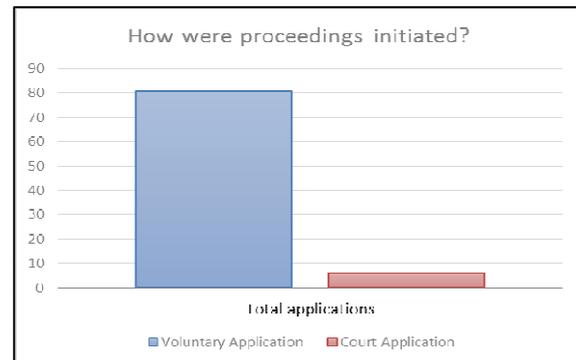


4.1.2. How many companies went to BR by resolution of the board?

This number was determined by subtracting the court filings from the total filings. The findings show that 90% of filings are voluntary filings done by directors of the companies while 10% (9.7-10.9%) are court applications.



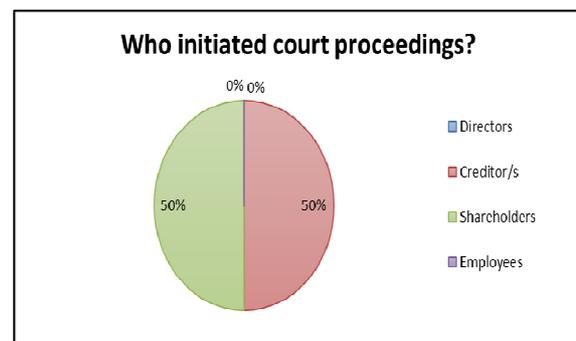
Survey data indicate/confirm the court applications as just less than 10%.

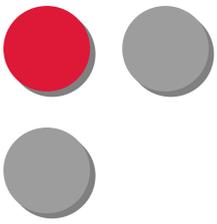


4.1.2.1. Who initiated court applications?

The interview data suggests that court applications are mainly driven by “disgruntled creditors”.(50%) and shareholders (50%).

Three cases (not part of the sample) of court orders originating from employees are also known to the industry. One involves a farm (Solar





Spectrum⁸) where the employees approached the court for BR after being under judicial management for several years. The court appointed a BRP and through a sale the permanent workers kept their jobs.

The others involved individual disgruntled employees that were knowledgeable about their respective businesses but relationships with management soured.

Generally, data points to the fact that the court avenue appears exclusive in nature for affected parties other than major creditors because of the high costs of such applications. This suggests that court applications are mainly used by banks, high value creditors and shareholders to a lesser extent.

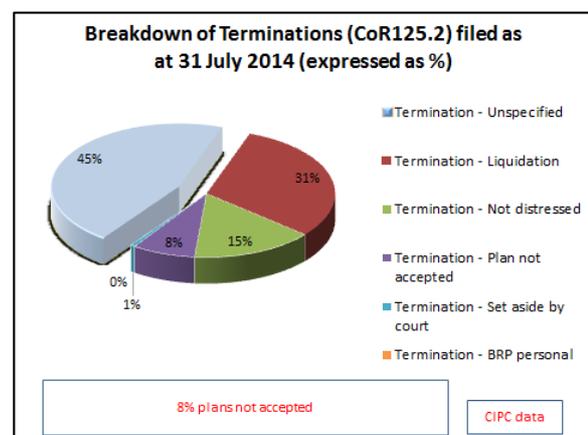
4.1.2.2. How many applications to court have been refused?

There is no official figure to answer this question. However, at the World Bank Regional “doing business” conference in 2013 in Durban, Adam Harris⁹ reported that in only three cases from 35 judgements they investigated where firms in liquidation applied for business rescue were granted. He stated that “courts have been reluctant to sanction where malfeasance is suspected”. This number approximates 8.57% for such cases.

4.1.3. How many companies have come out of BR successfully?

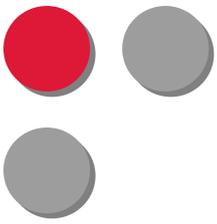
Generally, statistics are inconsistent with unreliable validity as many discrepancies were found when analysing the data.

For this figure (success by reorganisation and BRiL) to be projected, the termination figures (COR 125.2) were the only proxy that could be used for “success”. This form requires the BRP to file with the CIPC the reason for terminating the BR. Unfortunately the document does not provide for distinguishing between success reasons (ex reorganised vs



⁸ Case prepared for education purposes available from BRP and also author.

⁹ Attorney who specialises in BR from Bowman Gilfillan. Interviewed as legal specialist.



better return than in liquidation vs S155 arrangement etc.). As is clear, 45% of the terminations are unspecified. **Since September 2014, a practice note has been issued by the CIPC to capture the required information in the future filings to address this question.**

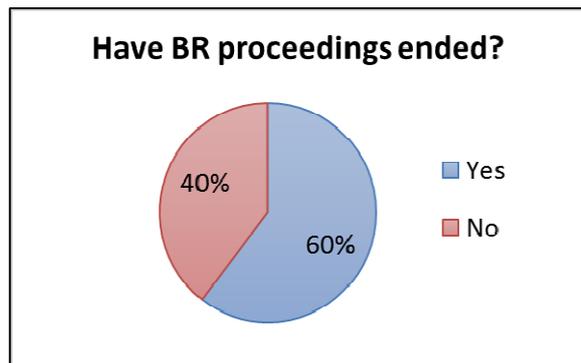
From the substantial implementations filed (COR 125.3) the available figures refer to terminations only and appear to be $132/1398 = 9.4\%$. Compared to the USA Chapter 11 success rate reported of approximately 5%, this figure appears to be high.

How many companies have come out of BR successfully?

- 132 successes CIPC data
- Figure is success definition dependent
 - Reorganisation
 - Better return than in Liquidation
 - (No distinction between reorganisation and/or Better return than in Liquidation or other)
- **Substantial implementation filed** COR 125.3
- Translates into: 9.4%

Opinionnaire states 42% respondents supported the statement that the success is between zero and 25% (Deloitte 2014:20) 54

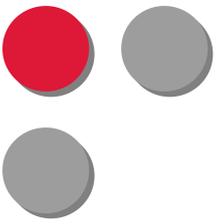
This figure is quite different when reported by the BRPs themselves on their own success. This highlights the dependence on the definition of success (Section 3.1) which can be somewhat confusing when interpreted by different stakeholders. Further, the provision in the act for both reorganisation / restructuring (S128(1)i) and better return than in liquidation (S128(1)iii) contributes to the confusion. Another alternative is available through S155 for compromise between company and creditors.



Factual data reported by BRPs suggest that of 87 rescues in the sample, 40% is still in the process of BR (have not terminated rescue). Again the statistics are not supported with reasons or additional information to enlighten the percentages.

Sub-section 4.1.8.2 however report the reasons for non-implementation of business rescue plans.

The statistics kept by the CIPC do not distinguish between the different options that are regarded as “success in BR” as it does not provide for recording the specifics for reorganisation vs BRiL.



4.1.4. How many companies in BR subsequently went into liquidation?

From the termination data (after filing) reported to the CIPC, 31% reported liquidation as the reason for termination. This figure must be interpreted within the context of 45% terminations that were unspecified. Also to be considered is that 8% of the terminations were because plans were not accepted. No reasons other than an insufficient vote can be deduced. It is not clear if these rescues were then eventually also liquidated. Interviewed subjects reported such cases during interviews.

4.1.5. What are the time dimensions of the entire process, i.e. From initial application and thereafter?

Statistics vary widely on the duration of business rescue. It appears that duration of a rescue (from filing until substantial implementation or termination) is subject to:

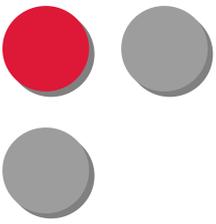
- Industry effect (mining very long and retail industry short).
- Sources of PCF sought (international vs local funders require different times to complete due diligences etc.).
- Shareholder country of origin vs that of creditors relative to South Africa (influence on travel, negotiation, exchange controls)
- Number of times creditors request revisions of the proposed plan.
- Legal proceedings initiated by affected parties during the process of the rescue. These can be of various natures.
- Nature of the cause of decline/distress
- External and environmental factors (ex. Businesses in the platinum belt are suffering due to the strike)

What are the time dimensions of the entire process?

- 5.6 - 6.3 months CIPC data
- Varying between 6 -24 months but influenced by various factors Interview data
- Target = 6 months Interview data
– Court delays influence this significantly

62% of respondents expect no change in the time dimensions (Deloitte report, 2014:11)

15



Previous data¹⁰ suggested 6.3 months as the average and BRP's further state they would like the duration to be six months or less in order to move on to the next rescue.

Considering that 40% of rescues reported on appear to be “in process” (albeit for various reasons), the duration of any one business rescue may be influenced by many factors. This is complicated by poor and incomplete reporting of status reports submitted to CIPC.

4.1.5.1. General time lines prescribed in the Act

The prescribed timelines is generally perceived as “not sensible” (mostly unattainable) but it is also acknowledged by subjects that they do understand them as time is one of the key determinants of a successful rescue.

Rescue practitioners have found ways to “stretch” these timelines by certain practices that they institute. One such practice is to state at the first creditors meeting that it will not be possible to have the completed plan within the 25-day time frame and get the creditors to vote for an extension.

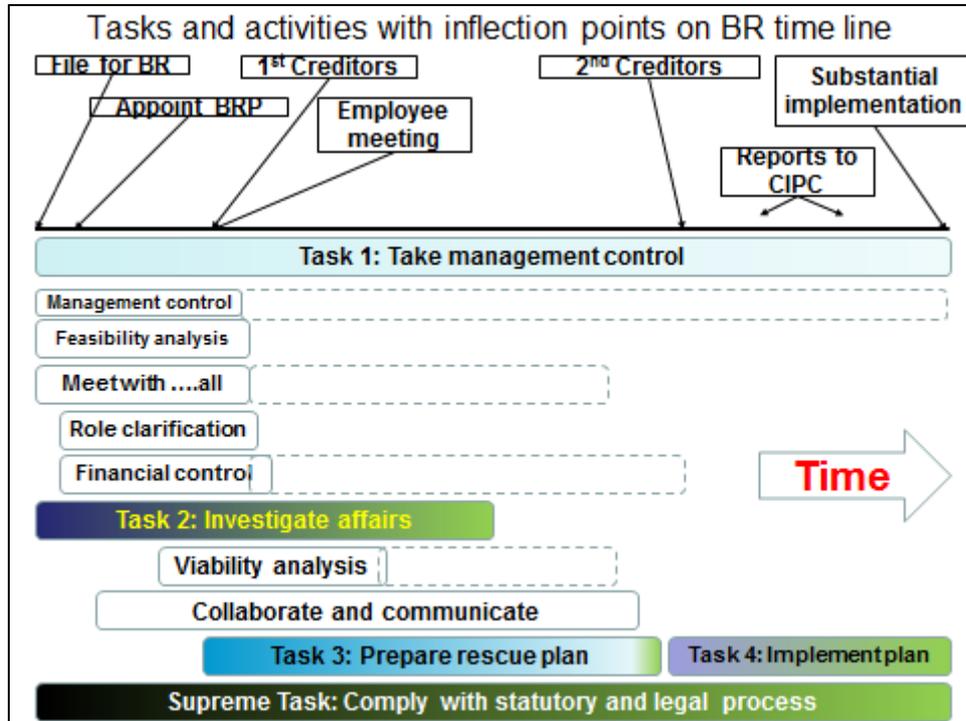
Legal proceedings are mostly identified as the key reason for extending the proposal of the plan. Creditors need to agree to this extension.

The diagram below shows the key inflection points associated with the five BRP tasks within the process. Inflection points are directly governed by prescriptions in Chapter 6 especially;

- Appointment of BRP – ss 129(3)
- First creditors meeting – ss147(1)
- Second creditors meeting – ss 151(1)

It is clear from the diagram that the bulk of the tasks and activities that are time consuming for the BRP happen immediately after appointment. The time lines associated with the inflection point are very important to comply with legal processes.

¹⁰ CIPC statistics reported during 2012/13

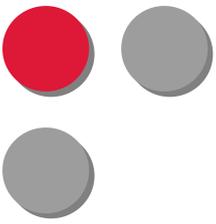


4.1.6. What are the cost implications, particularly costs incurred to the BRPs?

Quantification of this number is fully dependent on who the question is asked to. There is reluctance by all those interviewed to make specific figures available to the researchers because of “confidentiality”. Typically the cost implications are determined by the following elements:

- The BRP hourly fees as prescribed in the Act
- The costs incurred by the BRP – s 143(1)
- “Advisor fees” charged by BRPs¹¹ which may include any one or all of the following:
 - Specialist advisors – ex. = industry marketing consultants to determine trends and demand factors influencing reasonable prospect.
 - Forensic investigators

¹¹ Braadvedt, Keith. 2014. Costs of business rescue. Without Prejudice. October. Reporting the case: of Trevor John Murgatroyd v Theodore Wilhelm van der Heever N.O. and seven other respondents. Case number 20456/2014. South Gauteng Local Division.



- Valuators
- Independent liquidators / insolvency practitioners determining the liquidation value required for BRiL
- Debtor clerks to monitor claims – often part of the structures of a BRP consulting firm
- Insurance taken by the BRP (to protect against liabilities)
- Possible additional success based remuneration (performance contracts)
- Costs of a second/co-appointed BRP during dual appointments
- Litigation fees

These additional fees are over and above the fees prescribed by the act. Success fees are agreed on appointment.

Specific responses by the various affected persons in BR vary as follows:

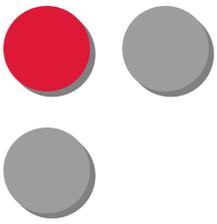
4.1.6.1. Bank representative opinion

Reports of abusive costs by BRPs, especially related to advisor fees and alternative remuneration (contracts) are rife in the industry (see also sub section 4.1.6.3 for rand values).

Banks further state that when the directors must file for BR, they are under stress and agree to almost anything (contracts/agreements) proposed by the BRP. These may include success fees and commissions on asset sales – this is frowned upon.

Banks are also concerned with BRPs who charge fees for subsidiary companies within a BR thereby escalating the overall cost without supplying the corresponding services associated (For example: charging for similar plans within the overall plan while it is essentially one plan).

Success fees are specifically opposed by some banks while BRPs consider it as cost effective (type of bootstrapping strategy) and motivational to the rescue in general. Banks suggest that success fees make BRPs to hold on to rescues where no reasonable prospect exists.



Banks specifically ask whether businesses can afford BR as they are already financially distressed.

It seems that where banks are the main creditors (most cases), they are generally unwilling to ratify performance agreements. The same is true for dual or co-appointments.

4.1.6.2. BRP opinion

Practitioner opinion is that the fee structure prescribed in the act is too low. For example they equate it to be equal to that at which a candidate attorney is claimed for. One BRP reported that legal costs made up approximately 60% of the total cost to the company. Legal battles take long and that has the further effect of more hours claimed by the BRP.

BRPs are of the opinion that specialist advisors must be used to comply with time prescriptions. They also reason that by doing the job quickly (when using advisors or teams), they save on overall costs.

When the company in rescue is involved in legal disputes, the cost of BR escalates significantly.

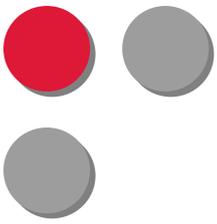
The prescribed tariffs were determined before 2008 and did not make provision even for basic inflationary effects.

4.1.6.3. Shareholders opinion

Especially those directors who have lost everything, submitted complaints about the BRP for misapplication, neglect and abuse, have complained about exorbitant fees. During the interviews with shareholders, the observation was made that fees are reasonable in some instances while others are exorbitant. Some subjects reported monthly fees as high as R130 000 to R200 000 per month and that excludes bonuses, costs of expert advisors and success fees (as outlines in section 4.1.6). These were not for large businesses (PI score > 500).

Those who complained to the Regulator reported the CIPC as “toothless” in this regard.

4.1.6.4. Public opinion



Public opinion (assumed based on rumour) appears to be that the fees are exorbitant. Especially at public forums attended during the research period, practitioner fees were regularly “a bone of contention” and frowned upon.

A general question is also “why must BRPs use consultants/specialist advisors? Are they not competent? Why then do they take the appointment?” This will be explored under the BRP competency discussion (See sub section **4.1.16**).

4.1.6.5. Affordability considerations

Apart from the discussion about the fees of the BRP, is to consider is the affordability of the rescue process rather than the exact quantum associated with it. The general view is that distressed businesses cannot afford the cost of business rescue and it is blamed specifically for firms eventually landing in liquidation anyway. This also contributes to the conflict between banks and rescue practitioners and can be traced back to reasonable prospects at filing, its measurement and the perceptions about it. See also the discussion chapter.

4.1.7. Of those companies that went into BR but which failed to come out successfully, were their creditors better off than had they not gone into BR?

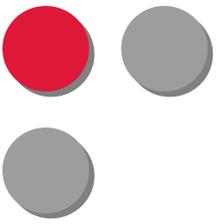
As explained in Section 3.1 of this report success measures are multiple. Not being successful in BR means liquidation and nothing else. However, BRiL is the associated condition and therefore influences that answer to the question whether creditors were better off or not.

Interviewed subjects responded as follow to the question:

4.1.7.1. Bank responses (as the main creditors and being secured)

Banks are blamed for preferring liquidation over BR. Banks are generally secured creditors and therefore will be preferent in liquidation.

Banks, to this point, have considered the pursuit of BRiL as very negative and equate it to abuse of the process by BRPs in most cases. Their opinion is that the eventual outcome of this option will be liquidation most of the time. It was identified as a factor that contributed significantly to the Bank-BRP conflict.



Unfortunately the BRiL option is associated mostly with abusive practices of BRPs and shareholders.

Banks are mostly secured creditors and therefore experienced some “protection” in these cases.

Banks are of the opinion that the BRPs know there is no reasonable prospect to save (read reorganise) the business – because the banks state that they know it. BRPs then stretch the process (and “milk” with their fees every last bit in pursuing BRiL) which eventually is nothing more than liquidation.

Research¹² has indicated that the banks consider the attitude of the BRP after appointment as a crucial indicator of competency. If the BRP pursues BRiL immediately without showing that reorganisation was contemplated, it is perceived as “abusing the process for gain”.

4.1.7.2. “Concurrent” creditors (unsecured)

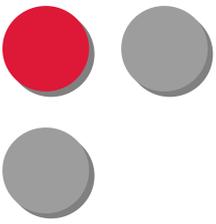
Smaller creditors preferred restructuring over BRiL and liquidation. The reason is that they are mostly unsecured creditors and therefore are last in line both for BRiL and liquidation. During reorganisation they can benefit from continuing trade which benefit them (often on a cash before delivery basis). There are rarely benefits for concurrent creditors in liquidations Because they are unsecured, smaller creditors report limited returns when this option was pursued.

4.1.7.3. BRPs

BRPs are not creditors but their opinions were considered.

BRPs consider the BRiL option as valuable. One Delphi- respondent reported it as “one of the strengths of Chapter 6” as he reported saving several jobs in two different rescues where he could pursue this option.

¹² Pretorius, M. 2014. Addressing principal-agent conflict in business rescue. Presented at the 26th SAIMS conference in Vanderbijlpark, South Africa. 14-17 September 2014. (Best paper award for qualitative research). <http://www.brportal.co.za/resources>.

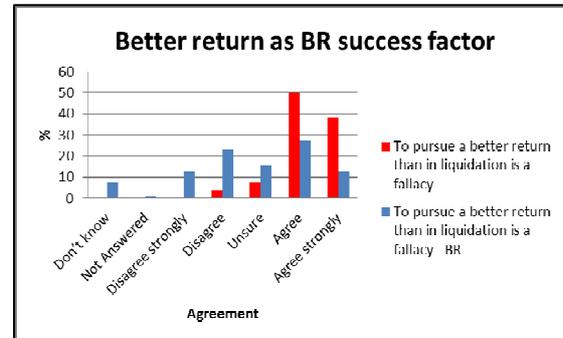


4.1.7.4. Shareholders and directors

Shareholders expectation at filing is that the BRP will reorganise the business and therefore save it.

Shareholders and directors mainly file when they realise the distress and pending insolvency.

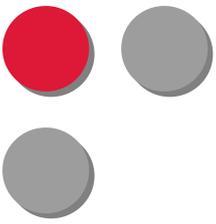
They seem to prefer the BRiL option to liquidation. Unfortunately, as mentioned there is possibility for abuse if the BRP is not “straight”. There is a general tendency of shareholders who disagree to blame the BRP for being in “cahoots” with the other shareholders.



4.1.7.5. Public view

Public view on this matter showed that respondents reported they are unsure (22%), don't know (13%) and not answered (4.5%). Those who disagreed with BRiL being a fallacy was 29%. So it seems that opinion is approximately split in three groups namely support for BRiL, No support for BRiL and those who don't know and are unsure.

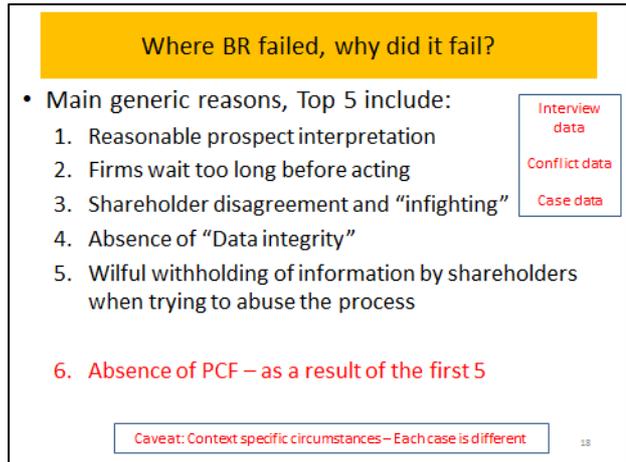
Those with experience in the industry support the BRiL option more as an alternative.



4.1.8. Where BR failed, why did it fail?

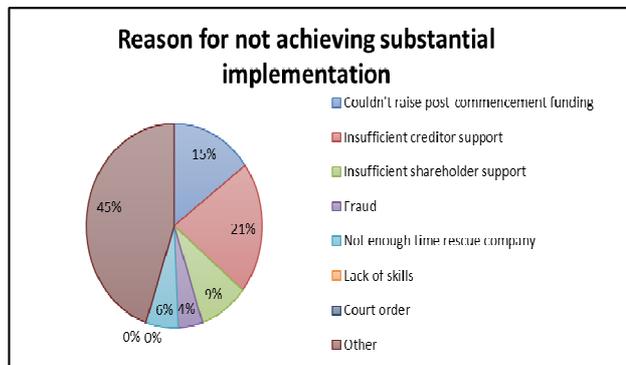
4.1.8.1. Interview data

Different sources directed to the main generic reasons to include reasonable prospect, waiting too long, shareholder disagreement, data integrity and wilful withholding of information. These are discussed shortly to show their relationship to PCF.



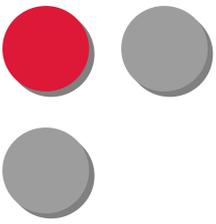
4.1.8.2. Factual data from rescues

The sample data for the 87 rescues confirmed PCF access (15%), Insufficient creditor support (21%) and insufficient shareholder support (9%) as the main reasons for not substantially implementing the rescue plans. Forty-five per cent (45%) of reasons however were associated with other



elements/reasons that included a wide variety of interesting and sometimes unique factors including:

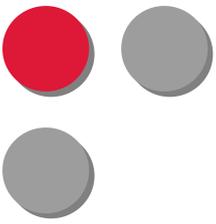
- Member/Manager of the business gave up on the business
- The rescue is in the process of resolving Shareholders dispute
- The process was a nullity – mentioned several times
- Business Model Problem which made it unworkable/unsustainable – mentioned several times
- The company remains in business rescue until the company has been wound down. A decision was taken to wind down rather than liquidate.
- Divorce



- Bulk of stock stolen in a robbery
- Contract with Co XYZ on SANRAL had defaulted. Loss of contract meant no means to trade with existing overheads and liabilities due to banks
- Contracts for new work not forthcoming
- Labour unrest in Rustenburg depleted all assets
- High Court litigation by BRP to liquidate opposed by shareholders
- Delay in sale of asset to raise capital
- Shell company for doing projects for the main company. Main company had lost contracts and could no longer trade out with huge damages claims from the Eskom Medupi contracts
- Came to the conclusion that there no longer existed a reasonable prospect of rescue and made application to court to liquidate.
- IDC and Post Commencement Funder could not agree.
- The Company was liquidated by the banks
- Adopted Plan requires implementation over a 12 month period. As yet not finalised or Business rescue proceedings are ongoing. Substantial implementation envisaged by end of October 2014 or Plan was implemented substantially or In process of implementing the plan
- Delay in securing stock due to mining strike in Rustenburg area
- Ineffective cash flow management by Directors
- Inextricably tied to Hi-Tech Automotive industry
- Finalising sale of asset.
- BR Plan adopted currently being implemented.
- Unsustainable business model and lack of funding
- Inextricably tied to Hi-Tech Automotive

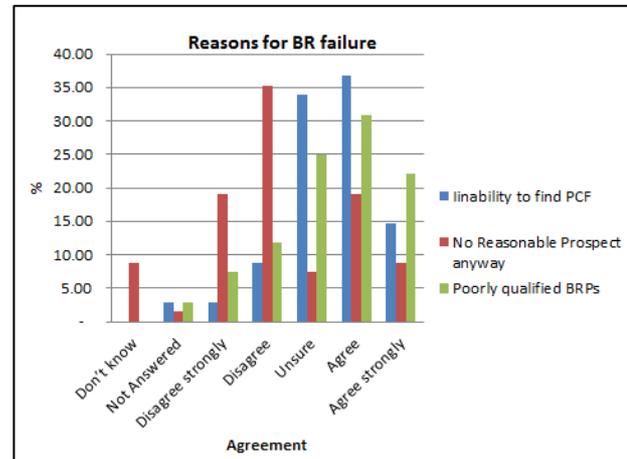
What is clear from the data is that there is a high level of uniqueness to individual rescues suggesting there is no simplified recipe for executing a business rescue.

THE MAIN FACTORS ARE NOW EXPLORED (See also Chapter 5,6,7)



4.1.8.3. Reasonable prospect

A statement often repeated in the interviews was that “the business should not have been in BR in the first place” as there was “no reasonable prospect” anyway for it to be rescued. The absence of a factual measure to determine reasonable prospect may be a contributing factor. This is especially relevant for the directors who consider filing during the period when the BRP cannot be involved for reasons of being independent. This then also leads to the next reason.



4.1.8.4. Firms wait too long before acting and filing for BR

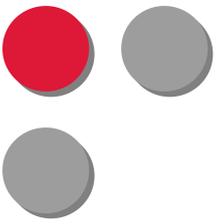
As a result of the above point, firms wait too long before they acknowledge problems that may exist. However, it is not a new problem as literature has pointed this out for over 50 years. It is suggested that rescue is more probable when the firm is illiquid compared to insolvent.

Research¹³ conducted at the University of Pretoria stated that in general, small business entrepreneurs and owners were unaware of BR as an option to pursue. Fifty eight percent respondents reported that they know either nothing, heard about it or read about it only. Sixty percent confirmed that they are not aware of business rescue in any business.

Reasons may include those reported for filing (see also Section 3.2) especially the pressure from creditors which forces the distressed business to pursue this option of BR. They generally act on the advice of their legal or accounting advisors.

4.1.8.5. Shareholder disagreement

¹³ Le Roux, I. & Duncan, K. 2013. The naked truth: Creditor understanding of business rescue. A small business perspective. SAJESBM, Vol 6 p57-74.



During appointment, expert BRPs state that shareholder disagreement is a potential reason for “not accepting” the rescue as an assignment. Thus, disagreement is normally a “verifier determinant” of long standing problems and also associated with the previous point of waiting too long before acting.

Shareholder disagreement directly influences management decision making. Management capability referred to as “failure from the top” is reported in the literature to contribute as much as 85% of the reasons for business decline and distress. Shareholder disagreement includes:

- Family members which are often small business partners
- Directors/entrepreneurs
- Investor partners
- BEE partners not directly involved in operations

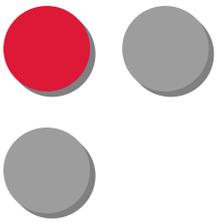
4.1.8.6. Absence of data integrity

Data integrity refers to the “truthfulness and trustworthiness” of especially the status of financial and operational figures supplied by the directors and their financial advisors. BRPs indicate that they need time to verify balance sheet items, income streams, assets, capacity, value, projections, contracts etc in order to determine reasonable prospect. Often, the state’ that the “skeletons only surface after a period”. Especially when there is disagreement between shareholders (as directors) and abusive motives associated with the filing, this becomes problematic.

Absence of data integrity forces the BRP to use extensive tools and professional advisors to validate data provided. BRPs report that often they use investigators (forensic) to trace funds that were moved around between entities before the filing took place.

Interesting though is that BRPs claim that banks do have data and information (with integrity) of value to the BRP but are generally unwilling to divulge such information due to “confidentiality” issues.

The opposing view of BRPs is that they are functioning as “directors” of the company under rescue and therefore are entitled to this “confidential” information.



4.1.8.7. Wilful and deliberate withholding of information by shareholders

Associated with the above two points, it is very difficult to ensure all information is made available. BRPs report that despite directors and shareholders signing sworn statements of declaration about information transfer, it happens often that certain important details were “conveniently forgotten”.

Shareholders often deliberately withhold information from the BRP. Such information may include “ghost companies” that they do “business” with and pay exorbitant fees for products or services (ex. transport, rent or storage) while these companies belong to their family members and therefore actually to them. These businesses hold account in other banks.

The direct effect of this is that the BRPs are limited while they investigate the affairs.

4.1.8.8. Absence of PCF

All five the above reasons make it very difficult for any post commencement financier to “put new money” into a distressed venture (which is already risky). This is especially true for banks and existing security holders that got a fright by the filing for BR in the first place.

South Africa also appears to have a very small venture capital market which is typically the type of private investor that may be interested in PCF for distressed companies.

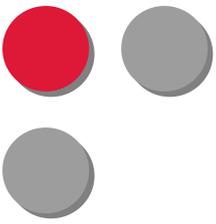
The perceived “low preference” that a PCF investor will hold in case of an eventual liquidation (if rescue fails) also contributes to the adversity to PCF provision. Related to the lack of data integrity, potential PCF providers perceive the risk as too high for the allocated preference.

An unwritten rule¹⁴ reported by some BRPs is:

“No PCF means no reasonable prospect for rescue - unless proven otherwise”.

Therefore the different perceptions of reasonable prospect as different parties have various hopes and beliefs in the availability of PCF.

¹⁴ TMA Practice note workshop 22 October 2014



4.1.9. Was there a reluctance to give finance after the company went into BR?

The previous section has addressed this question to some extent already. However, there appears to be a general lack of appetite for post commencement finance.

Was there a reluctance to give finance after company went into BR?

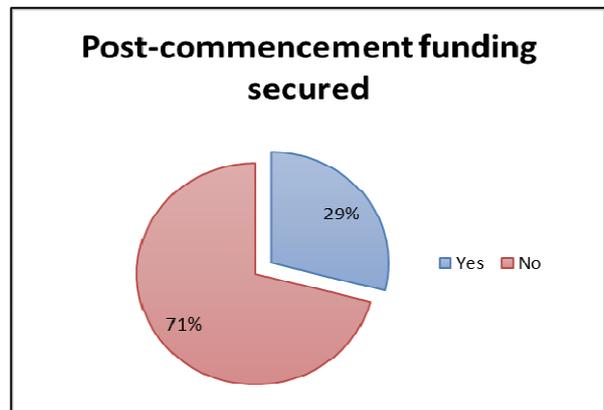
- Yes – definitely
 - Banks currently the main source
 - Very few distress funds available
 - Data integrity problem flagged again

Interview data

Opinionnaire confirms by stating: there is a lack of appetite for distressed funding in SA (Deloitte 2014:21).

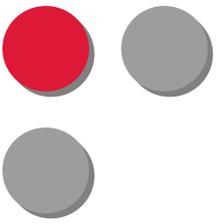
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Factual data points out that BRPs could only obtain PCF in 29% of the cases. This may contribute to the perception that BR is unsuccessful due to the non-availability of PCF.

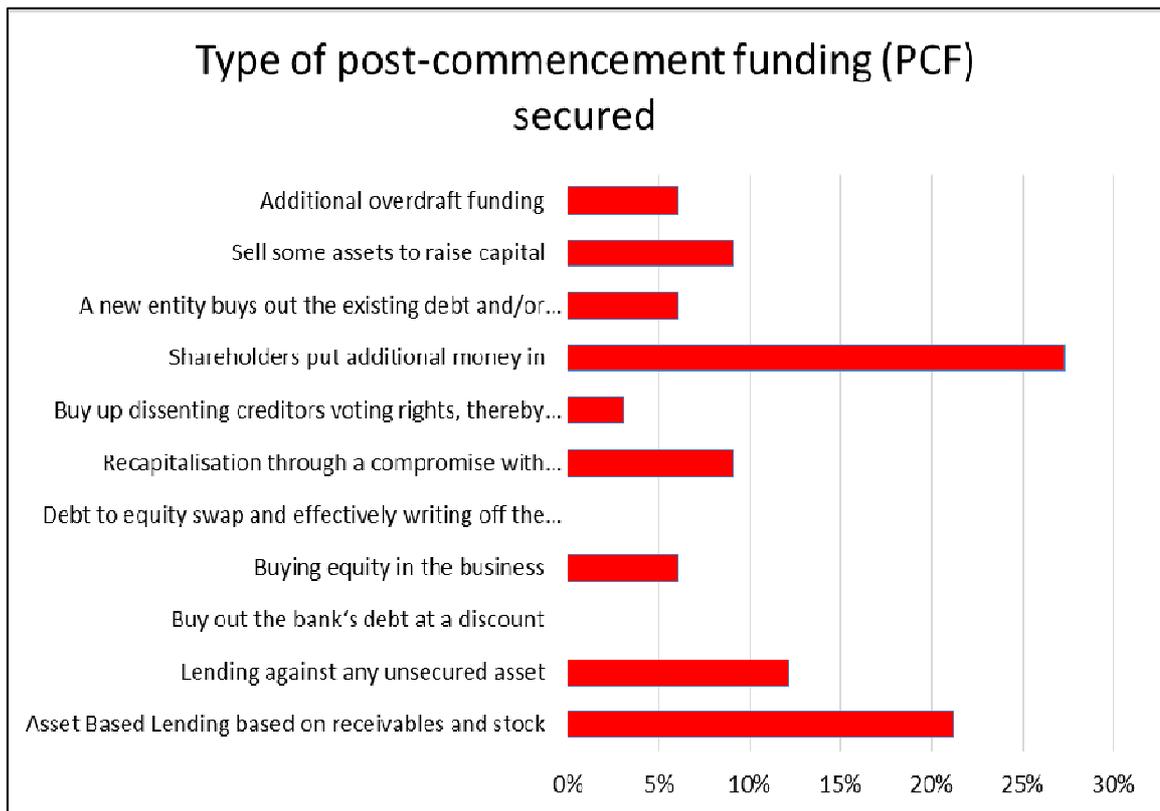


When BRPs reported the type of PCF they obtained and used during these rescues, the results indicated that, from a variety of alternatives known to the industry, the two major sources used were:

- Shareholders contribute additional funds to business
- Asset based lending - based on receivables and stock

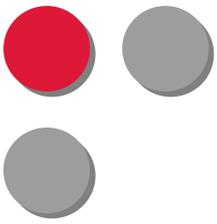


While some of the other options (sources) were used, it depends on the specificity of the rescue's context. Mostly assets are fully encumbered by the time filing takes place and rescue is initiated. Advanced financing options like debt swaps and buying the bank's debt seem under-utilised options. Again the liability of data integrity may play a role here.



PCF availability is definitely a limitation to BR success. It is however important to understand why it is not forth-coming. (See also¹⁵)

¹⁵ Pretorius, M. & du Preez. 2013. Constraints on decision making regarding post commencement finance in business rescue. South African Journal of Entrepreneurship and Small Business Management. 6.168 - 191. <http://bit.ly/18s3NrK>



4.1.10. Is there evidence that the failure of BR was attributable to a lack of support by the banks, major suppliers, major customers?

Banks definitely were identified to be unwilling to support BR. However, banks reported they are willing supporters but only when sufficient evidence of reasonable prospect and BRP competency is shown.

See also Appendix E.

Is there evidence that the failure of BR was attributable to a lack of support by the banks, major suppliers, major customers?

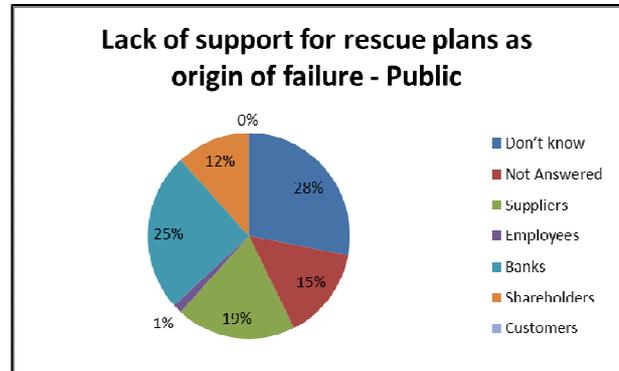
- Definite yes for banks
- Very case dependent
- Influenced by industry, business size and customer
 - Retail sector – more likely
 - Government as client – more likely
 - Smaller business – more likely as alternative suppliers can be found easily

Interview data

Suppliers are mostly willing to supply on cash before delivery basis

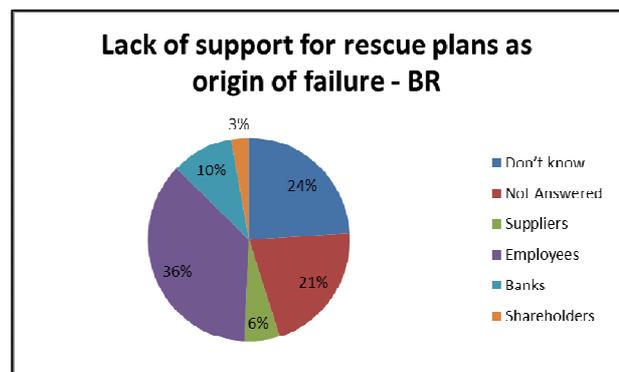
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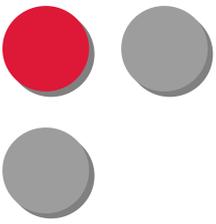
Lack of support for rescue plans varied widely confirming the specificity of each case. Excluding the 43% don't know and not answered responses, banks were identified by 25% respondents to not support rescue plans. Care should be taken to generalise based on these findings.



Interestingly, the respondents knowledgeable about BR identified less “non-support” from banks and more “non-support” from employees for rescue plans.

These differences are significant.





Thus, lack of support by banks appears to be a function of value, risk and data integrity rather than unwillingness. Mathematically the relationship can be expressed as:

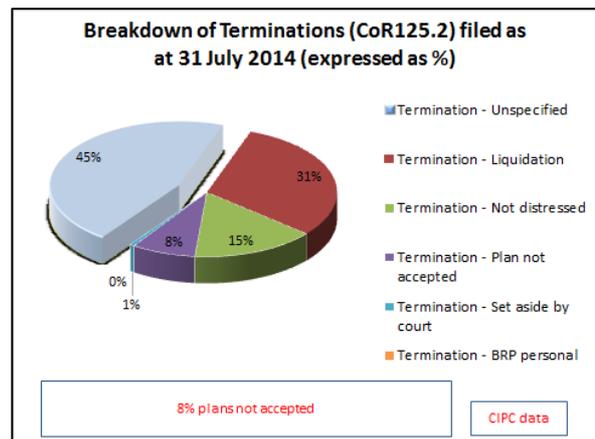
$$\text{PCF support by banks} = f \text{ value} \times \text{risk} \times \text{data integrity}$$

If the BR plan does not address this objectively, it is hard to blame banks for not supporting BR. This also relates to the competency of the BRP – again.

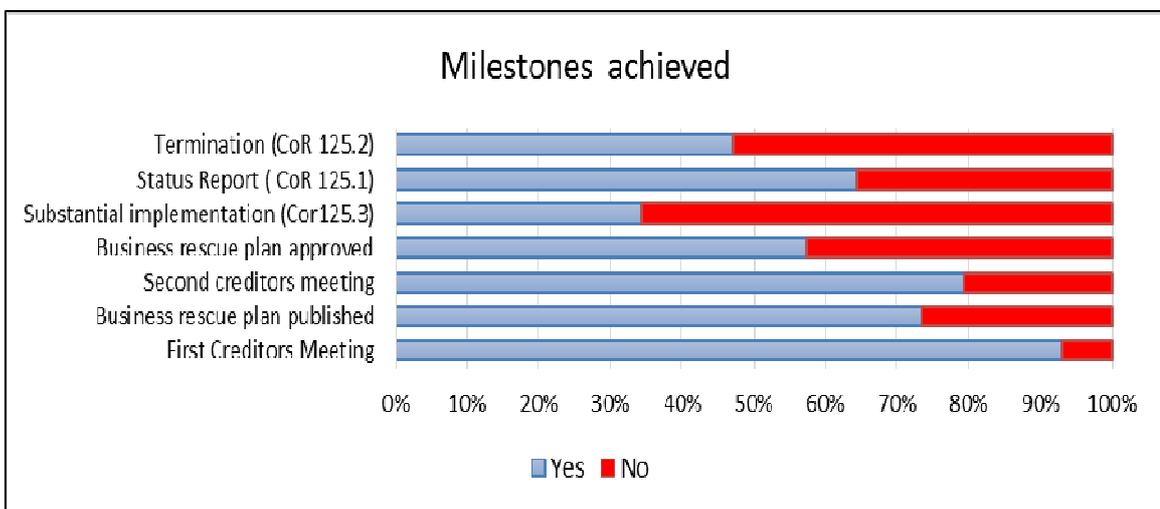
4.1.11. How often has there been a failure to approve the BR plan?

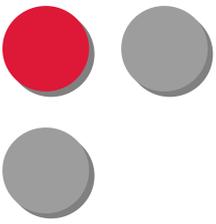
Formal termination data suggest that 8% of rescue plans were not accepted and thereafter the rescues were terminated for that reason.

What is known and reported by role players is that in most cases, BRPs will request time to amend, alter the plan or even pursue S155 compromises. Detail about the success thereof is unknown.



The next diagram (Factual data from sample) shows that just over 70% of rescue plans have been published and 80% second creditors meeting held. Rescue plans approved were 57%.





A discrepancy exists between CIPC statistics gathered from the termination forms submitted and the sample data reported by BRPs.

4.1.12. Has failure been due to poor performance of the BR practitioners?

While performance of BRPs have been blamed on many occasions for the failure, these were always biased and depended on the respondents/subjects that have been involved in the interview or responded to the questionnaire.

4.1.12.1. BRP opinion

BRP generally disagreed that bad BR performance is due to them – as is obvious. However, it is interesting that many reported an increase in the requests they receive for “take overs” in troublesome rescues.

Has failure been due to poor performance of the BRPs?

- No factual data available CIPC data
- Proved to be the main reason reported by creditors – especially banks Interview data
- But also directors who filed, legal advisors, academics
- **There is a significant demand for “Take over requests” reported by “top” BRPs**
- **New trend: Brokering for profit**

Opinionnaire states only 21% respondents believe that there are some of the BRPs who are adequately skilled and qualified (Deloitte 2014:20)

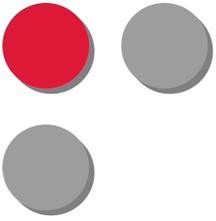
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It appears the “takeover” route is a way used by creditors, within the confines of the Act, to remove poor BRPs. Initially a second BRP is appointed and the original BRP is marginalised (coerced or voluntary). Eventually the original BRP role then becomes insignificant.

4.1.12.2. Bank opinion

Banks are outspoken about poor BRPs. Research¹⁶ reported at the BR conference supported and explained this extensively. It underlies much of the conflict that exists between banks and BRPs.

¹⁶ Pretorius, M. 2014. Addressing principal-agent conflict in business rescue. Presented at the 26th SAIMS conference in Vanderbijlpark, South Africa. 14-17 September 2014. (Best paper award for qualitative research). <http://www.brportal.co.za/resources>.

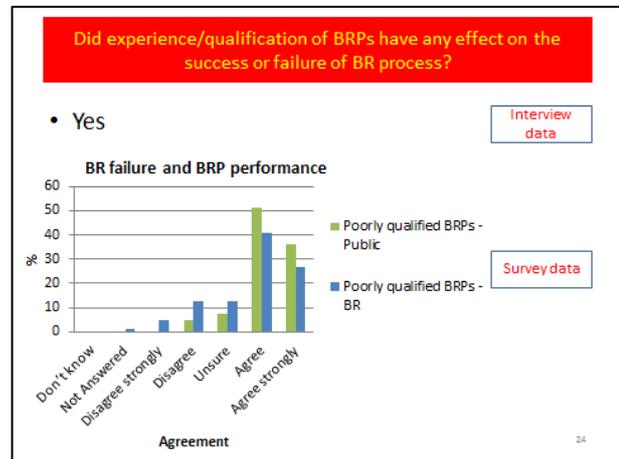


4.1.12.3. Director/shareholder opinion

Directors who lose all their rights after filing for business rescue are generally disgruntled and blame the failure of BR (if it failed) on the BRP. Different reports have been obtained (including “horror accusations and complaints). However, in cases where BR was reasonably successful (reorganised, BRiL and compromise) this was not the case. It is obvious that aggrieved directors and shareholders (especially where BR was pursued for abusive reasons) did blame poor BR performance on BRPs.

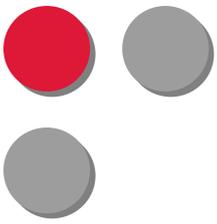
4.1.12.4. Public opinion

Public opinion suggests some agreement to the statement that: BR is a result of poor BRP performance as is shown in the figure. Over 85% of respondents agreed and strongly agreed with the statement. This sentiment is slightly less supported by those within the industry but still is over 70%.



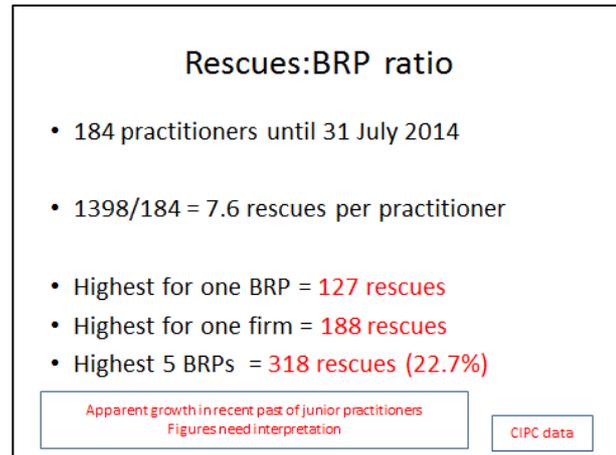
4.1.12.5. Summarised opinion

Opinion generally is therefore that given the role of the BRP in rescue, looking at the obligations associated with the tasks from the Act, the BRP is central to the success.



4.1.13. Did experience/qualification of the BR Practitioner have any effect on the success or failure of the BR process?

There is no doubt that the competency of BRPs is the most contentious issue within business rescue. Every interview, discussion, workshop, seminar referred to it. Competency is also the underlying issue for the previous question about failure and BRPs. This section will explore the associated reasons for what is regarded of poor performance of BRPs. Competency of BRP research¹⁷ expands the requirements adequately.



4.1.13.1. BRP opinion

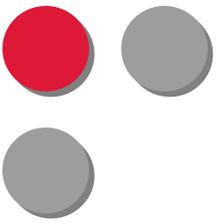
Competency of BRPs originates from experience and qualifications. This is a sensitive issue especially with marginalised, removed and those blamed for poor performance – obvious statement. As the Act is the only prescriptive guideline, BRPs quite it to state their compliance as the competency.

4.1.13.2. Bank opinion

Bank opinion is however the opposite. General consensus appears to state that there are less than 20 competent rescue practitioners. Trying to attach names to this list proved very difficult as no bank subjects were willing to name specific BRPs during interviews and discussions (both poor and good).

Associated with competency of BRPs judgment are the perceived intentions of the BRPs. Banks consider those BRPs that are not collaborating, not communicating and going it alone as the poor ones. Banks doubt those

¹⁷ Pretorius, M. 2014. A competency framework for the business rescue practitioner profession **Acta Commercii**. 14(2), Art #227 15 pages. <http://dx.doi.org/10.4102/ac.v14i2.227..>



BRPs that do not have the intention to reorganise and are suspicious of those pursuing BRiL all the time.

4.1.13.3. CIPC opinion

Licencing of the BRPs proved difficult to the CIPC division as the provision in the Act is insufficient as far as proper guidelines. Further, the process is constrained by the time limitations to do proper investigations into the claimed qualifications and disqualifications of BRPs at appointment.

4.1.13.4. Summarised opinion

The complicating factor influencing the competency judgment is the number of rescues taken by any one BRP. The question is simple: If each rescue has more than 800¹⁸ obligations demanded from the BRP, how can they attend to so many rescues at once. The highest reported figure by one BRP (see diagram) equals 127. Despite these including many property companies in syndications, no one person can meaningfully do justice to such a job.

Competency of the BRP is extensively addressed in the recommendation section (Chapter 7 of this document).

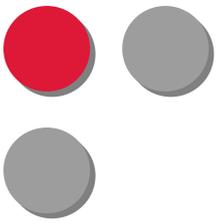
4.1.14. Has failure been due to any defects in the Companies Act?

No subjects or respondents reported that deficiencies in the Chapter 6 led to the failure of BR as such. At the same time, many did report it to contribute to uncertainties and problems contribution to protracted legal proceedings that are costly to the business in rescue. This section reports on the issues identified by the research as relevant to the question of defects.

It is necessary to understand the complexity of Chapter 6. In a document containing over 400 pages (to be published end 2014), the authors¹⁹ extensively

¹⁸ Gribnitz, K. & Applebaum, R. 2014. Business Rescue and Compromise offers – A practical analysis of the obligations and rights as set out in Chapter 6 of the Companies Act 71 Of 2008 as amended.

¹⁹ Gribnitz, K. & Applebaum, R. 2014. Business Rescue and Compromise offers – A practical analysis of the obligations and rights as set out in Chapter 6 of the Companies Act 71 Of 2008 as amended.



and meticulously analysed the Act from an obligations and rights perspective. Judgements on business rescue in terms of Chapter 6 of Companies Act, are contradictory and confusing and there is, to date, not enough SCA cases to guide the industry in terms of business rescue.

The complexity of the Act is enormous and led to some issues as will be highlighted by the following characteristics in Chapter 6 namely:

- 10 383 words and 132 sentences (longest = 154 and shortest = 45 words).
- 28 sections and 125 sub-sections.
- 862 rights and implied rights are described. Of these the filing directors have zero.
- 367 obligations are described of which more than 50% is that of the BRP.
- 2155 cross references between subsection and the rest of the act identified.
- There are several opposing judgements suggesting potential oversights in the act.

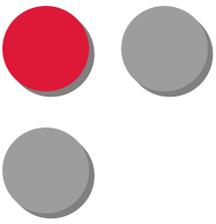
There appears to be an untested relationship between BR success and the associated litigation within the process. The net effect appears to be one of paralysis which extends the process for such a time that there is no “viability” left for the BRP to work with when judgment is given. Depending on the agenda of the affected parties, reports suggest that this relationship is also abused.

4.1.14.1. Amendments proposed – for investigation

4.1.14.1.1. Reasonable prospect

The “term²⁰ “reasonable prospect for rescuing the company” used in sections 129 and 131 remains problematic despite the decision of the Supreme Court of Appeal in *Oakdene Square Properties*”.

²⁰ Written feedback obtained from Prof David Burdette from Nottingham in the UK who is a co-author on Meskin Chapter 18 on BR.



He further²¹ states: “While there have clearly been many attempts to abuse the BR process - the BR process should of course be aimed at saving VIABLE COMPANIES, and it would have been useful if the court could have at least tried to develop a test or threshold as to when a company is still viable”.

Rodgers²² echoed the above.

4.1.14.1.2. Liquidation proceedings

The use of the term “liquidation proceedings” in subsections (6) and (7) of section 131 is problematic. There is contradictory case law and a definitive decision is needed on this sooner than later.

4.1.14.1.3. Lack of 417 and 418 procedures in BR

Rodgers²³ identified the lack of such procedures within Chapter 6 of the Act as a weakness. This hampers the ability of the BRP (compared to the Liquidator).

4.1.14.1.4. Binding offers

Prof David Burdette states that²⁴ The meaning of “binding offer” in section 153(1)(b)(ii) seems to be problematic and there is contradictory case law on this. Rodgers²⁵ concurred with this especially the value of the offer.

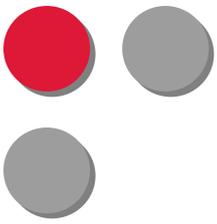
²¹ Meskin, Insolvency Law and its operation in winding-up, para 18.4.3.

²² Judge Owen Rodgers – Law conference 2014.

²³ Judge Owen Rodgers – Law conference 2014.

²⁴ Burdette - discussion of this in Meskin paras 18.7.3 and 18.7.4.

²⁵ Judge Owen Rodgers – Law conference 2014.



4.1.14.1.5. Commencement of BR proceedings

There seems²⁶ to be some doubt as to when exactly business rescue proceedings commence.

The response from respondents to this part of the investigation was very weak – respondents purely indicated that it will take too long to contribute extensively. As those who could contribute were mostly professionals (lawyers, accountants) this was expected and therefore the research design based on the many sources.

4.1.15. Is the problem that there was a mistake in having put the company into BR in the first place, i.e. that there was no realistic possibility that it could succeed?

The Act provides clearly the conditions for filing namely financial distress and reasonable prospect.

Financial distress is often described through the “zone of insolvency” where circumstances deteriorate starting from illiquidity and digressing towards insolvency. Similar to the discussion in sub-section 4.1.8.4, waiting too long is a key contributor.

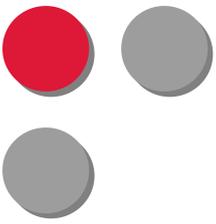
Some of the competent BRPs report that they do a pre-assessment on financial distress and reasonable prospect when approached for accepting the appointment. If not feasible they decline the appointments. In this way they eliminate those businesses with no realistic possibility of being rescued. Unfortunately, others (opportunists often desperate to become BRPs) then pursue such options.

The general view of especially BRPs, Banks, SARS and academics is that by the time the companies file for BR, little chance exists that reasonable prospect could be found.

The other side of this is that often, filing is done by directors out of desperation and then generally there is no reasonable prospect.

The lack of formal measures for reasonable prospect is critical. Various interpretations for it exist.

²⁶ Burdette - discussion of this in Meskin para 18.5.1.



4.1.16. Some feedback on the performance or non-performance of BRPs.

Definitely 3 groups of BRPs are referred to by respondents and subjects interviewed. Most of these opinions arose from banks, disgruntled directors, concurrent creditors and shareholders. Interestingly though, even in the BRP interviews, references were made to the “other” categories of BRPs including the following:

4.1.16.1. The Competent group

The competent group reports their concern with rumours and complaints about bad BRPs that go around. They fear that their own reputations are tainted by these general perceptions.

One characteristic of this group is that they have become selective in the taking rescues. Before they do so, they execute “quick and dirty” analyses to establish feasibility beforehand.

They also specialise and say no to business from industries that they do not have expertise in.

Typically their focus is reorganisation/restructuring rather than BRiL. However, they can apply both BRiL and S155 successfully.

This BRP category generally honours time lines from the Act as they realised that doing so is beneficial to their reputations.

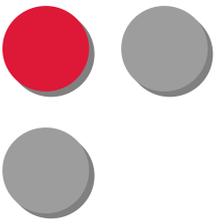
They are generally experienced in at least two of the three knowledge categories as described in the Act (Business, Finance, Legal).

They are further well connected to legal and financial advisors, investigators and other collaborators such as forensic auditors and valuers.

They are further actively involved with furthering education and participate in provisional bodies mainly TMA but also other.

4.1.16.2. The opportunists

This category includes people who recognised the opportunity to profit significantly from the uncertainties in the BR environment. It is also the



category that Banks report their most problems about. While they originate from all three knowledge categories, they have limited competencies required for leading a business rescue.

They lack general basic business education. Some of this category also originate from the liquidation industry under the misperception that BR is similar to liquidation.

Banks specifically refer to these BRPs as a category who do not attempt to reorganise the business at all – the pursue BRiL from the start and extend the process optimally to benefit financially from it for as long as possible. While BRiL is an important and valuable option – opportunist contributed to it being seen as “glorified liquidations”, thus contributing to BR’s attractiveness for liquidators – See also Appendix on scenario analysis.

Many of those categorised as opportunist are also poor at collaboration and therefore frustrate the banks extensively.

4.1.16.3. Once-off appointments and removals

It is estimated that during the first three years, several BRPs were appointed but as the industry developed and the complexity become clear, many has not made themselves available for new appointments.

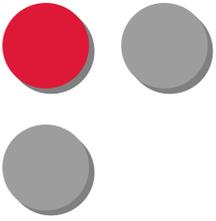
The second part of this category includes those who have been removed by creditors. There are some cases where creditors have and are removing BRP through court applications. Various reasons exist, but banks, specifically are hesitant to discuss any of these issues.

4.1.16.4. Those who should never have been licenced

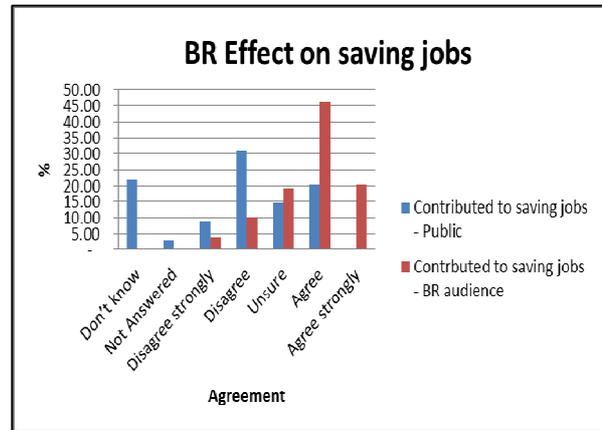
This category can be described as “nascent” BRPs. They prepare through training and plan to enter the industry and would do anything to get a first appointment.

After the first appointment, it appears to be much easier to obtain the next appointment – As if there is an invisible list of BRPs.

4.1.17. Some feedback on the extent to which jobs were saved as a result of BR.



Saving jobs was high on the priorities of the writers of the legislation (Judge Davies, Law conference). The beliefs of the different parties appear somewhat aligned.



4.1.17.1. Public opinion

Public opinion suggests support for BR as a job saving mechanism. Over 65% of respondents support the statement that BR contributed to job being saved.

4.1.17.2. BR audience

Those who are involved on BR reported much higher agreement that jobs are saved during business rescue.

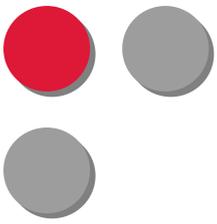
4.1.17.3. Factual data

From a sample of 87 businesses, 16% (14 businesses) reported not having any employees at filing. For the 84% (71 businesses) reported employment of 7443 jobs at date of filing. From these, 4479/7443 jobs were saved suggesting 60% jobs saved in the sample.

4.1.17.4. Projection based on factual sample data

Assuming mathematical averages and projection, together with the assumption that the alternative to rescue is liquidation, the following can be deducted and projected for the industry:

- Projecting over the total of 1398 rescues in the first 3.25 years, translates into a projected total of 10 865 jobs saved in total.**



- **Considering that each person holding a job, on average supports four to six people, BR did affect at least 40 000 citizens.**

The above data suffer bias as there is a tendency to report success more extensively and downplay failure. These projections must therefore be applied with **extreme care** – speculative projections.

The number of companies that are shell companies or property companies that filed for BR is concerning.

4.1.17.5. Summarised opinion

Based on the above, and subject to the limitations of the data, the rescued businesses did contribute to saving jobs.

4.1.18. Some feedback on the overall implementation of BR by CIPC

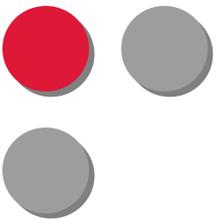
4.1.18.1. Background

Interviews with key personnel within CIPC and dealing with business rescue related matters were conducted. The interviews provided in-depth analysis into the inner operations of how business rescue is dealt with and exposed fundamental issues that are and will lead to difficulties in the near future.

The diagram (Appendix C) reflects the basic workflow across sections within the CIPC from the start of a rescue to its final form of engagement. The figure clearly distinguishes between the three functional areas of relevance that handle business related activities namely:

- Proceedings status management
- Practitioner assurance unit
- Enforcement unit

Each unit has been tasked with specific duties, some of which depend on the tasks performed in a different unit and others without loops. The flow of information is depicted by arrows with activities demarcated in the various shapes. Importantly to note is that the feedback flow of information is apparently absent from the diagram. The repercussion of which is that each



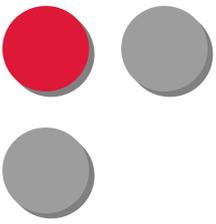
unit operates in isolation to the opposing two causing limited insight and room for possible miscommunication.

Proceedings are initiated with the inflow of information into the Proceedings status management unit where the required documentation is filed. While a sworn affidavit is mandatory, there is not evaluation on whether the company truly meets the criteria of business rescue. While it is not obligatory for the CIPC to conduct such an analysis, it might serve as a deterrent for companies that are looking to abuse the process.

After the necessary documentation is filed and a practitioner has been chosen by the company, the CIPC is tasked with certifying the practitioner. This task is handled by the Practitioner assurance unit. For previously appointed practitioners, the process of certification is relatively seamless. This presents some concerns over practitioners that have been found unfit to operate in the position yet continue to receive appointments without any intervention by the CIPC. If the practitioner hasn't previously been appointed, stipulated documentation is required which undergoes a limited analysis due to time and skill constraints. A major concern from public stakeholders is the matter of criteria used to select and approve practitioners; it is evident from this workflow why this is so. Though the Act is clear in its expected time lines for the approval of the practitioner, it should not limit innovative solutions in determining the competencies required from the practitioner.

Following the appointment of the practitioner the workflow returns to the proceedings status management unit for the purposes of filing the CoR123.2. Thereafter notices of proceedings are required to be submitted until the termination of proceedings is reached. It was apparent from the discussions that a large number of rescues fail to submit their status reports. Furthermore these status reports contribute little to revealing how proceedings are going and if there is reason to keep the company in business rescue. Those that do report on their work fall on deaf ears as the reports are not critically analysed or mitigated. Failure to submit substantial implementation or termination reports has not been met with any penalty, contributing to a growing attitude that CoR documentation post of filing is of little concern.

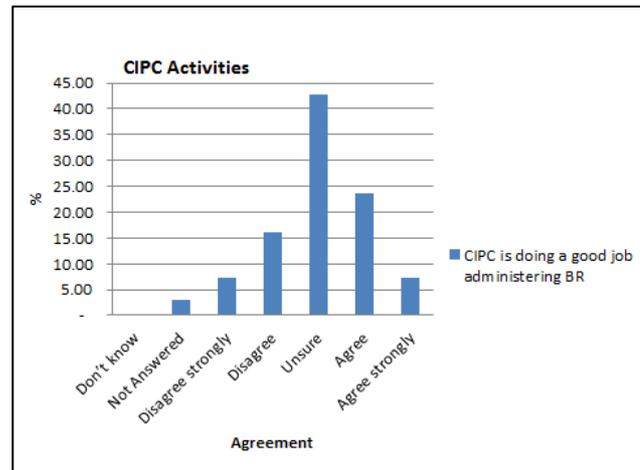
An import deduction from the diagram is the absence of any flow of information into the enforcement unit of the CIPC. Though there is an opinion that the CIPC lacks the authority to enforce, it must be argued that without any enforcement how sustainable is the CIPC's role in the business rescue regime. Continuing to neglect this division may cause a continuous corrosion



of the legitimising of the CIPC and as a consequence have a serious impact on the industry.

4.1.18.2. Public evaluation of CIPC

When asked about the performance of the CIPC the general public was mainly unsure. Detailed analysis pointed to the following.



4.1.18.3. Problems experienced by the Regulator

Unfortunately the CIPC and specifically the unit responsible for licencing is marred in controversy and complaints. These are mostly based on systemic issues such as access, response rate rather than staff attitude. Generally, staff can't be reached especially by telephone.

Below is an example of the typical complaint received about the situation based on a received e-mail:

Dear Marius

Do you have any advice for me?

It is really difficult to go onto the CPIC website to log a query as to also reach any of the consultants just to speak to anyone.

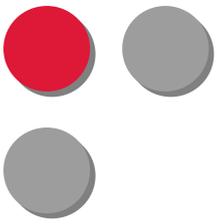
Yesterday we were holding for more than 2 hours just to get through and was still unsuccessful of making contact via the call centre.

BR certificates are urgent and the process of getting to the consultants to obtain these certificates is very cumbersome and frustrating.

Please advise me - is there no quicker way of speeding up this process.

Also we were advised that a BR certificate will only be issued once a court order has been granted. We don't want the process to be hampered or delayed as this matter is extremely urgent.

4.1.18.4. Challenges within CIPC



4.1.18.4.1. Resource constraints (Staff)

Business rescue at the CIPC appears understaffed. As a case in point, after restructuring in 2013/2014, the new head of this division is responsible for a portfolio of which BR contributes only 15%. General opinion is that BR is not receiving the priority it is supposed to get.

If BRPs do not comply with requirements of reporting, there is no capacity to identify and follow up such cases. This is further visible in the status of the statistics available. While those who execute these functions do so, it appears impossible to expand this function and include other statistics required.

4.1.18.4.2. Knowledge requirement

While several employees have attended BR related courses, the field requires much more than the administration functions associated with these functions. There seems to be an increased understanding of the complexities of BR in this division.

4.1.18.4.3. Challenges

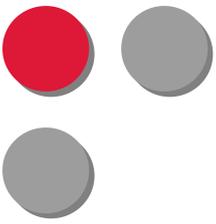
The business rescue proceedings team further²⁷ identified two focus areas (other than normal processing of applications and documents) to pursue:

- Regular follow-ups with Business Rescue Practitioners on the status of business rescue proceedings for which status reports have not been received as required by section 132(3)b(ii) of the Act.
- Regular monitoring of liquidation proceedings for entities in business rescue and those for which the proceedings ended (termination, set aside by court and substantial implementation).

4.1.19. Feedback on creditors in terms of their role and experiences.

Creditors originate mostly from the ranks of banks for finance, suppliers for products of the business, landlords for premises to operate from and employees for continued supply of services.

²⁷ Internal CIPC documentation dated October 2014



4.1.19.1. Bank experiences

Banks are mostly secured and their roles and issues have been covered extensively in this document so far.

4.1.19.2. Supplier experiences

Suppliers are exposed to the extent to which they supplied products on credit as well as potential consignment stock forwarded. Mostly suppliers are not secured creditors and will not get any return in liquidation with other concurrent creditors.

- Supplies on credit

Experience suggests that suppliers will immediately stop supplying on credit and convert to a “cash before delivery” system of supply. The effect of this on the business in rescue is that they now face extended pressure on immediate cash flow.

- Consignment stock

Experience suggests that suppliers will remove any consignment stock immediately from the business in rescue.

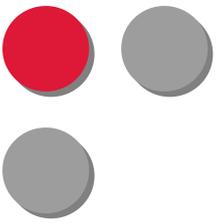
4.1.19.3. Landlord experiences

Landlords are in a difficult position as BRPs can cancel contracts during the moratorium while landlords cannot evict tenants. During this time, landlords lose rental income and are still responsible for utilities.

It is often the case that when filing, businesses have exhausted most alternative avenues to generate cash or stop leaking cash. One option is renting shops, facilities and land rather than owning it – thus potentially aggravating the problem for landlords.

4.1.19.4. Employee experiences

Employees have their rights protected under the creditors in general as well as being a specific category of creditors and have a priority preference in liquidation.

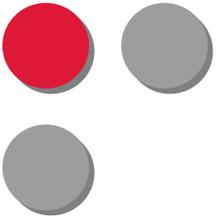


Research initiated by the Department Business Management at University of Pretoria into the experiences of the employees was abandoned as employees (as subjects) were completely uninformed and in the dark during business rescues. Even some employee representatives that attended creditor meetings were uninformed. Unions, so far, showed little interest.

4.2. Summary

The data presented in Chapter 4 should be interpreted by always considering the context relevant to each data set.

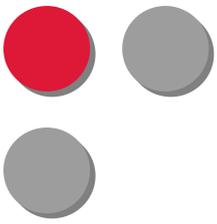
Chapter 5 of the report proceeds with sense making of all the data reported in Chapter 4.



Business Rescue

Chapter 5

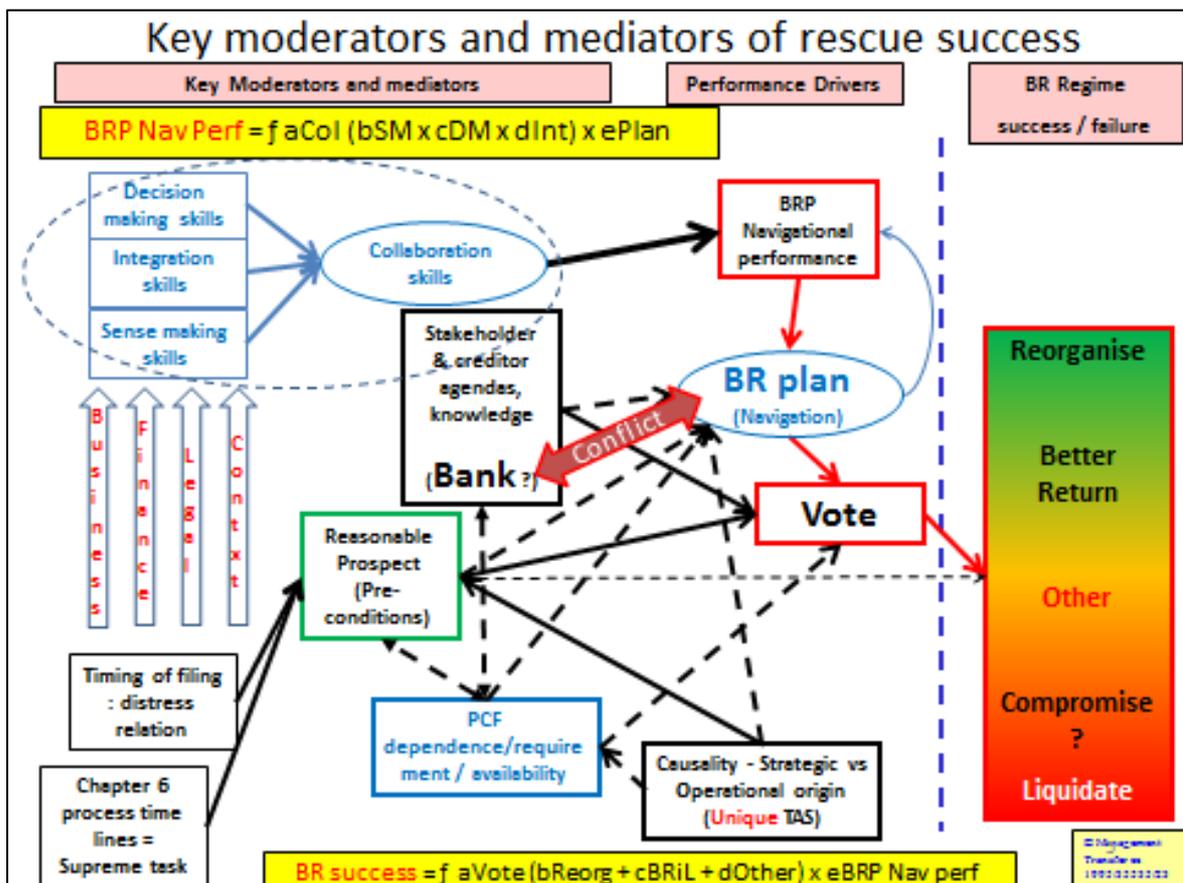
Making sense

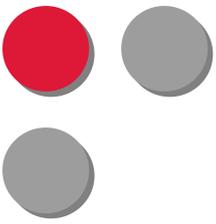


5. Making sense of the issues

Chapter 4 has mostly stated the data findings from the different researches executed. This chapter however gives perspective by converting the data to information that can be used for decision making by the industry and specifically by the SCCL (research principal), CIPC, professional bodies, industry participants, affected parties and academics. Many of the questions addressed on this research relate to this framework.

Based on the insight from the research and experiences of the writer, what is addressed here is to contextualise all the issues as depicted in the framework below. Each element is explained.





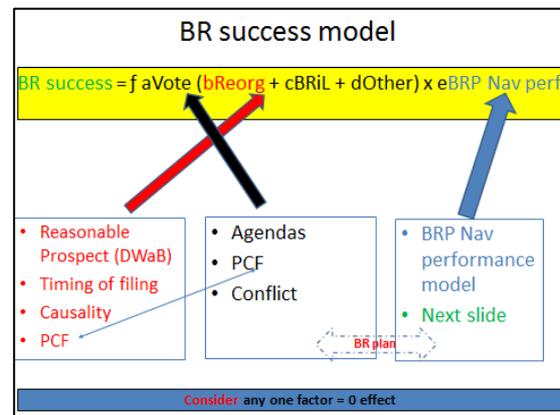
5.1. Success view

Chapter 3 explained the options to pursue for rescue success as reorganisation, BRiL, other alternatives and S155 compromises. Any one of these options can be presented to creditors for a vote. Thus, BR success can be described as follows:

$$\text{BR Success} = f \text{ aVote } (b\text{Reorg} + c\text{BRiL} + d\text{Other}) \times e\text{BRP Nav Perf}$$

Where:

- Vote = the support/non-support for the proposed plan by the creditors
- Reorg = Rescue plan proposing reorganising/restructuring for a future going concern that is solvent
- BRiL = Rescue plan to achieve a better return than in liquidation
- Other = Rescue plan for alternative like a sale (Could be part of Reorg)
- BRP Nav Perf = Refers to the performance of the BRP to navigate the business to the new “best future position” (may include Reorg, BRiL, Other and/or S155).
- a – e are constants with values between zero and one.

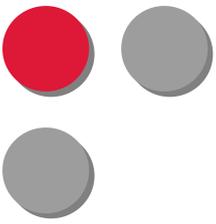


Each of these key factors is expanded further.

5.2. Vote by Creditors

The vote is the ultimate decision provided for in the Act with its roots in insolvency law over centuries. Creditors determine the outcome of this vote. However, several elements influence the outcome of the vote. The Act makes provision for the creditors to vote and shareholders can also vote under certain circumstances. Case law indicates that the court can also be approached to overturn the vote.

The vote mainly depends on the rescue plan that is prepared by the BRP under the guidelines of s150.



5.3. Business Rescue Plan

The Act obliges the BRP to formulate a plan to be presented to the creditors for a vote. S150 describes the minimum content required of such a plan. The plan should consider three key issues required by the creditors to enable an informed vote namely:

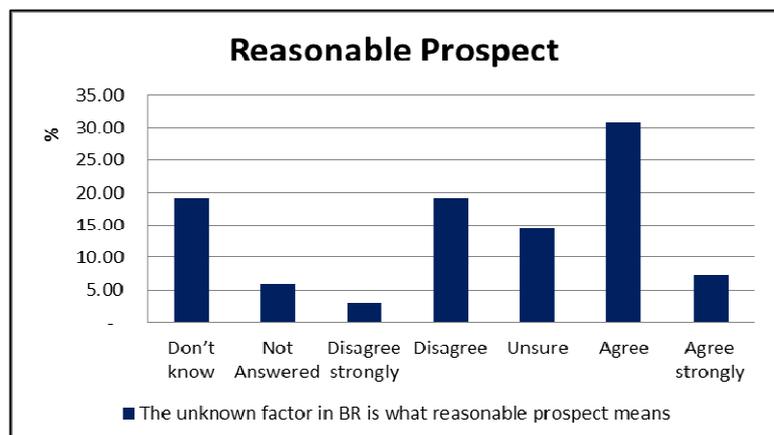
5.3.1. Reasonable prospect

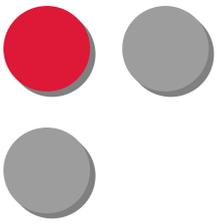
Reasonable prospect was identified as the core determinant of conflict between banks and BRPs. Several court judgments have also referred to the importance of this issue. The specific important inflection points where RP must be determined namely:

- S 129(1)b – Voluntary filing by directors require the directors resolution that they believe reasonable ground exist to declare RP of saving the business (Also the employees – S 148(1)a).
- S 130(1)a(ii) – Objections by creditors if they are of the opinion that no reasonable prospect exists and they want to object through the court proceedings.
- S 131(4)a(iii) – Court proceedings where an affected party applies for BR and need to convince the court.
- S 141(2)a – If the BRP concludes there is no reasonable prospect he must so inform the court. This may happen anytime during the proceedings and therefore, reasonable prospect must continuously be considered and determined by the BRP.

5.3.1.1. The importance of Reasonable prospect

Reasonable prospect has been identified and discussed several times in this document suggesting its importance and relevance to different aspects in BR. As can be seen in the Figure, over 35% agree with the





statement that RP is the unknown factor. More important in this case is the almost 40% respondent that reported they don't know or was unsure. Reasonable prospect has also become a key discussion point under BRP's. See also sub-section **4.1.8.3**

5.3.1.2. Need for factual measure

Reasonable prospect is not "due diligence" thus suggesting that it is determined based on less data, early in the process and requires judgement and specific industry experience to enhance the judgment.

Judge Dennis Davies²⁸) voiced the requirement for factual measures of reasonable prospect.

The stages where RP determination is required often hinges on incomplete information that suffers data integrity. To determine factual reasonable prospect requires pre-assessment. It then relates to issues of independence of the BRP if they involve themselves in pre-assessment before the directors file (Some confusion exists about pre-involvement and independence).

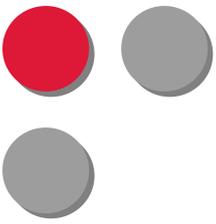
Reasonable prospect can also be hidden in data overload situations where BRPs require specialist assistance to ascertain the value of such data and make sense about RP. The requirement for reasonable prospect may therefore also have a cost implication at an early stage of the process.

5.3.2. Post commencement finance (PCF)

PCF has been described as the key component of business rescue success. Generally PCF is sourced from outside the business which brings about several complexities. PCF has been the subject of several researches. Some elements to consider are:

- Directly related to / dependent on the perception of reasonable prospect of the potential provider.
- Directly related to the cause of the distress – discussed below (Turnaround situation and causality).

²⁸ Law conference presentation, 2014. Monte Casino, Gauteng. August



- Often influences the vote as plans may depend on PCF access or PCF depends on the vote for the conditional plan – both ways.

5.3.3. Causality

Causality refers to the reason why the business became financially distressed in the first place. The causality of decline has been the topic of research for many decades.

The two main categories of causality are:

5.3.4. Strategic reasons

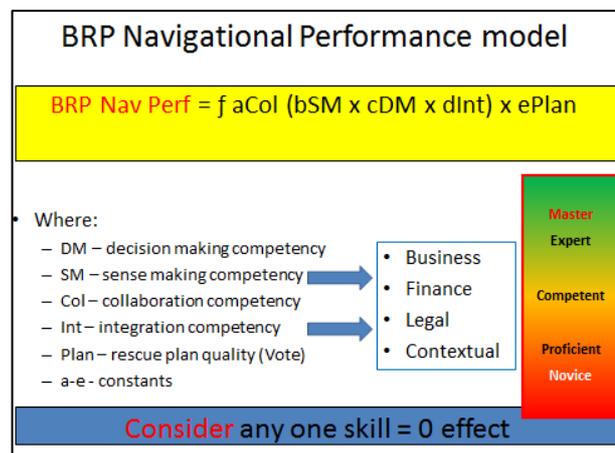
These are reasons originating from outside the business and mostly impacts on demand for the products of the organisation. It often happens suddenly to the business with no real long term signs. **Strategic reasons will make it more difficult to prove reasonable prospect and obtain PCF** – obviously indirectly influencing the vote to a large extent.

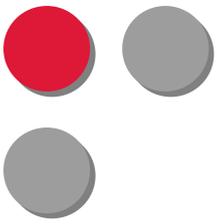
5.3.5. Operational reasons

Operational reasons originate from within the business and mostly are a result of poor management decisions. Basically directors are said to “do their business poorly”. This is the ideal situation for rescue and these turnaround situations are mostly “relatively easy” to fix by an experienced BRP, thus, better reasonable prospect and probable PCF lenience.

5.4. BRP navigational performance

The most contentious issue in BR is the navigational performance of BRPs. BRPs are blamed for most of the negatives associated with BR. Sources of blaming involve creditors, banks, directors, shareholders, employees, the regulator, academics and commentators.





It is crucial to understand that the competencies required to navigate a BR successfully requires the BRP to make sense of what the best future alternative for the business is. This has been described as “CEO 300” level knowledge and ability that is required. Competencies required are at the levels of competent, expert and master. BRP navigational performance therefore hinges on:

$$\text{BRP Nav Perf} = f \text{ aCol (bSM x cDM x dInt) x ePlan}$$

Where:

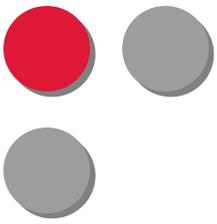
- BRP Nav Perf = Refers to the performance of the BRP to navigate the business to the new “best future position” (may include Reorg, BRiL, Other and/or S155).
- Col = Collaboration competency
- SM = Sense making competency
- DM = Decision making competency
- Int = Integration competency
- Plan = Rescue plan quality
- a – e are constants with values above zero

Few individuals do exist who have all the required competencies (in one person). What is observed in the industry is the development of BR firms with teams of specialists and “foot soldiers” who can respond very quickly within the time limitations.

Another alternative observed is to function as the BRP specialist who contracts specialists if and when required. This option appears more expensive but have lower risk and long term overhead costs than the approach of a firm.

5.5. Substantial implementation vs termination

Data reported to the CIPC on terminations and substantial implementations (COR 125 (2) and (3) is incomplete for meaningful decision making on success / not success in BR. This is mostly due to incomplete reasons submitted for terminations



or not filing forms at all. Embarking on interpretation thereof will only be speculative and therefore not done.

5.6. Legal costs

Legal costs and the time that the legal process requires have been identified as major stumbling blocks in the BR process. The following supports the reasoning namely:

5.6.1. Exclusivity due to costs

The costs associated with legal proceedings seem to exclude smaller business (who carries the legal costs) from using this avenue or opposing aggressive creditors or shareholders.

5.6.2. Time delays

Remains a crucial element as time delays are the enemy of BR.

5.6.3. Require alternatives to legal process

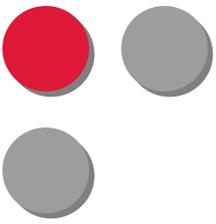
Several ideas have been proposed during interviews such as ADR, Ombudsman or Specialised Courts. Views of respondents on these are reported in the next chapter.

5.7. Status of BR plans

The general view is that many BR plans are insignificantly complete for any potential PCF supplier or bank to get involved – despite the guidelines supplied in S 150 of the Act. Some issues of relevance reported include:

5.7.1. Plagiarism (Copy and paste)

During the research, plans presented to creditors were shown to the researcher where such plans were “copied and pasted” from plans of other BRPs for other businesses without the details of such companies being removed. Creditors voted on such plans without identifying these discrepancies.



This places a serious question mark over the competencies of the responsible BRPs as well as the creditors reading such plans. Research has indicated that creditor knowledge is generally very low.

5.8. Trends observed in the BR industry

Specific trends are being observed and needs monitoring namely:

5.8.1. Business Rescue Takeover requests

There appears to be a significant increase in requests to the “good” BRPs to avail themselves to “take over” business rescues that are not going anywhere according to directors or even creditors.

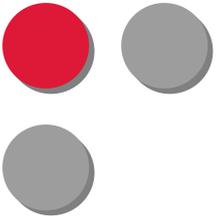
5.8.2. Business Rescue brokering

It has been reported that there are firms that canvass legal and accounting firms as part of their networks to access potential BR cases. These firms then “broker” these rescues to nascent BRPs that will do anything to obtain their first license.

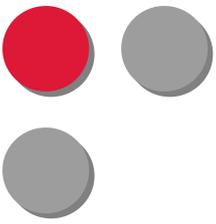
5.8.3. Firm formations

One of the positive signs observed on the industry is the formation of specialist firms. In some of these cases it provides for “apprenticeships” of junior practitioners as they are overseen by seniors. This is also done to reduce costs to the firms that are small.

Chapter 6 of this document proceeds by discussing the key findings.



Business Rescue
Chapter 6
Discussion of findings



6. Discussion of the findings

Chapter 3 explained some key issues, Chapter 4 reported the actual findings based on the collected data while Chapter 5 assisted with making sense about the findings for meaningful interpretation. This chapter now proceeds with a discussion of the findings to guide the final chapter (Chapter 7) with recommendations for the business rescue industry/fraternity.

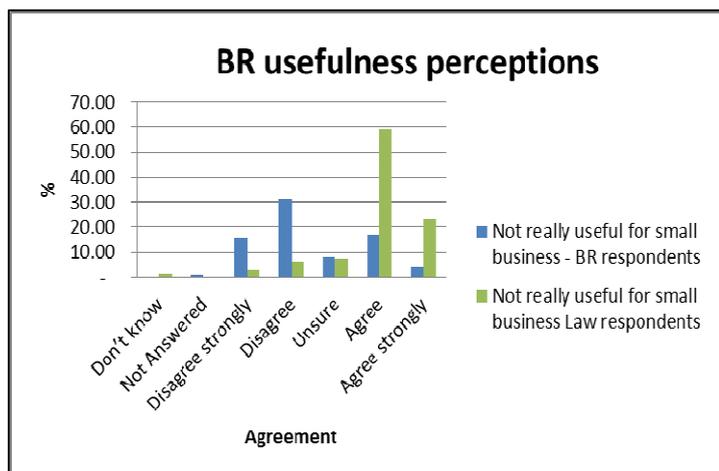
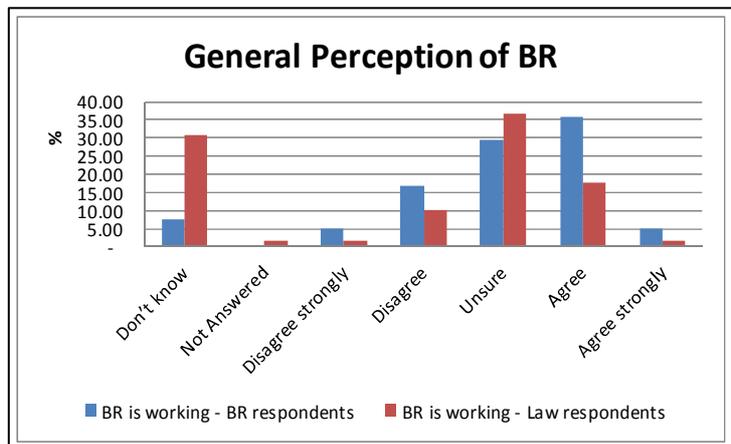
6.1. Success view

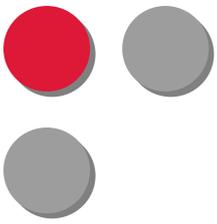
Chapter 3 explained what is constituted as success in BR. Considering all options being reorganisation, BRiL and sales of the business as a going concern as the core strategic goals of BR, the **9.4%** success rate, appears comparatively good.

If one considers the jobs saved (sub-section 4.1.17) and the projections made, there is no argument about the benefit of the BR regime for job protection and preservation.

In this sense (job protection, job saving), BR is successful as far as its influence according to S 7 of the Act.

Additional to job saving, the BR regime has been rated (see diagram) as useful for small businesses by those directly involved in the industry.





6.2. BRP centrality and relationship to other factors

6.2.1. Centrality in the process

The BRP stands central to the process of BR and can be connected to everything that is happening. It could be stated that the BRP is a “disproportionate” influencer and role player in the outcome of the process. BRP related issues and tasks should therefore receive optimal attention.

6.2.2. Accreditation and regulation of the BRP

During the research, accreditation of BRPs was always part of the discussions and still is. However, the exact requirements of such a process are not clear and would require more research. Chapter 7, further addresses it to some extent. Chapter 7 elaborates on potential elements associated with accreditation.

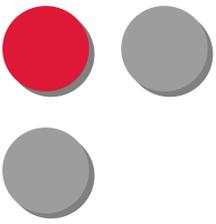
6.2.3. Competencies

Competencies are the key question mark over the office of the BRP as shown by articles in law journals²⁹) as well as business journals. Competencies relate directly to regulation for which no extensive guidelines currently exist. The act is silent in this regard apart from providing a number of exclusions and reference to experience.

6.3. Affordability of Business Rescue to the filing business

Affordability of BR has also been questioned especially in the light of the overall costs associated with the process. This is especially relevant the moment legal proceedings forms part of the rescue as it is ultimately the business under rescue that carries the cost.

²⁹ Richard Bradstreet ‘The Leak in the Chapter 6 Lifeboat: Inadequate Regulation of Business Rescue Practitioners May Adversely Affect Lenders’ Willingness and the Growth of the Economy’ (2010) 22 *SA Merc LJ* 195 at 212.



Section 4.1.6 explored this extensively.

It has been reported that court application as avenue and legal proceedings contribute to making the process inaccessible to labour (employees) and small creditors.

6.4. Reasonable prospect

Throughout this document, at various sections, the importance of reasonable prospect has surfaced continuously.

The importance of reasonable prospect, its role in business rescue is starting to become clearer only now from academic research, BRP techniques and case judgements.

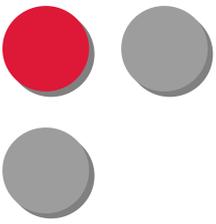
While some tools exist within the industry to determine the factual status of reasonable prospect, BRPs see it as their “intellectual property” and therefore this knowledge is not widely available.

Reasonable prospect determination is required timely and mostly during the early stages of the process when little information is available.

6.5. Conflict in the Industry

- 6.5.1. Conflict³⁰ between the creditors (banks) and BRPs has been identified as early as 2012. The CIPC launched an investigation through workshops held by a facilitator to address these. The results of this research indicate the following as the main reasons for conflict. All these are based perceptions of the different parties.

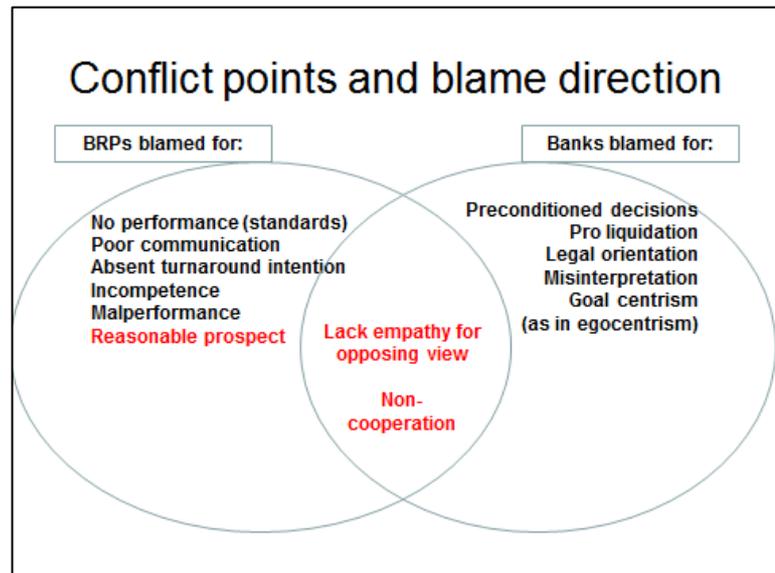
³⁰ M Pretorius “Addressing Principal-Agent Conflict in Business Rescue” in GA Goldman, CF de Meyer & C Kruger (eds) *Contemporary Management in Theory and Practice* (2014) 318, 321



6.5.2. BRPs are blamed for:

The origin of the blaming starts with the BRPs' inability to determine reasonable prospect and therefore wanting to "save" or pursue BRiL when no reasonable prospect exists as judged by the banks.

BRPs who pursue BRiL as their first option are frowned upon by the banks.



6.5.3. Banks are blamed for:

The perception is that banks generally prefer liquidation because they are mostly secured. As their goal is to minimise risk and optimise profit (from interest) they suffer "goal centrism"³¹.

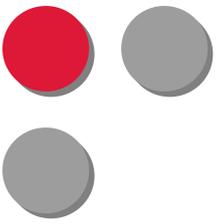
Banks are resource munificent and can pursue the legal route if they disagree with the BRP. Banks do so regularly.

6.5.4. Key insights from the conflict research

The Act removes all rights from the directors who file and makes the creditor the "new" principal.

It is suggested that banks hold "disproportional powers" within the BR relationship.

³¹ Referring to the narrow fixation on the goals of the organisation in M Pretorius "Addressing Principal-Agent Conflict in Business Rescue" in GA Goldman, CF de Meyer & C Kruger (eds) *Contemporary Management in Theory and Practice* (2014) 318, 321

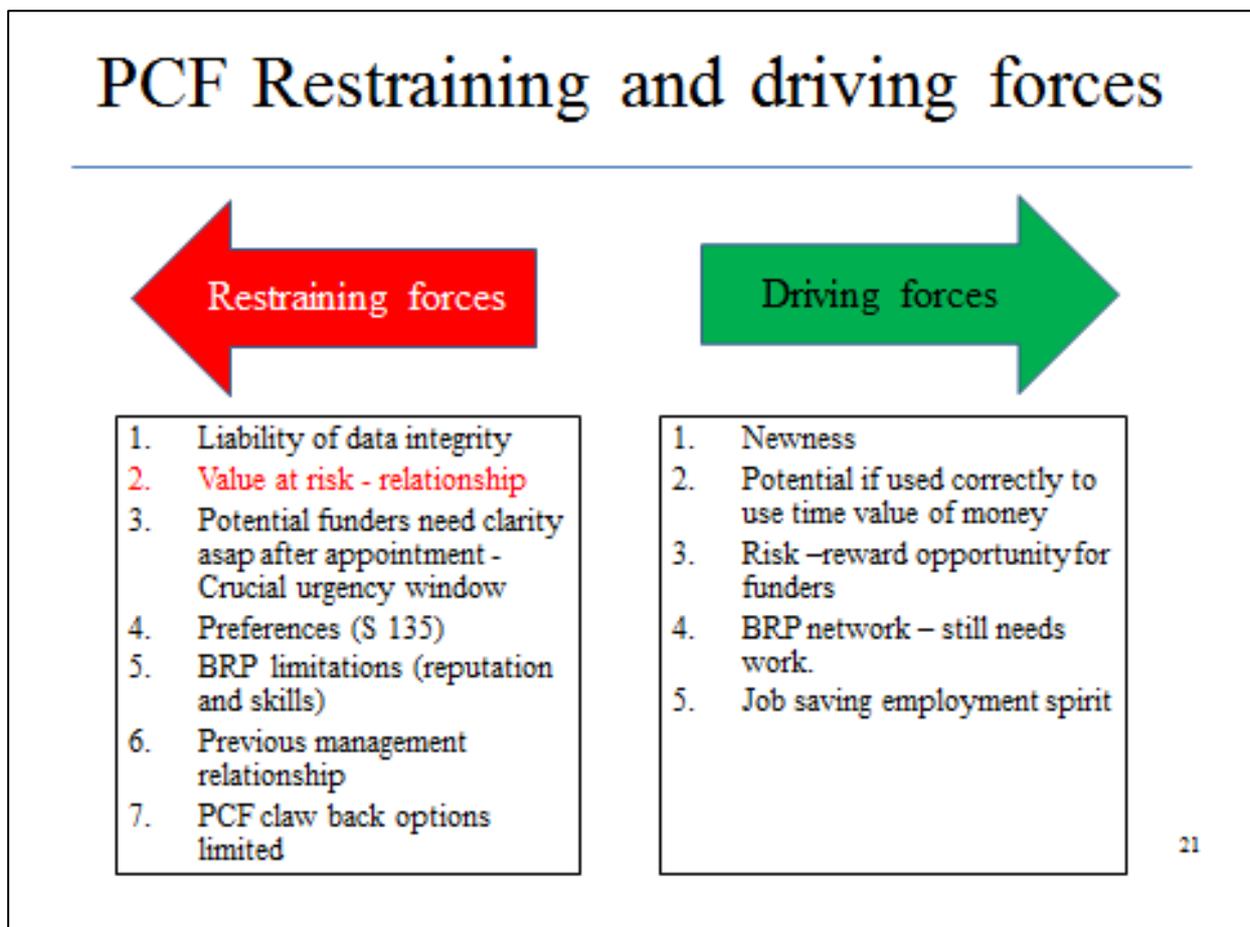


Non-cooperation (related to the collaboration competency of the BRP) underlies the conflict.

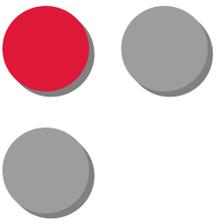
6.6. Post Commencement Finance /Funding (PCF)

PCF has been identified as a key requirement to BR success.

The diagram directs attention to the relevant issues addressed in this report to be considered for future action.



The preference (ranking of PCF in liquidation) has been identified as a bone of contention by BRPs as it is reasoned that it makes it difficult to access PCF funders.

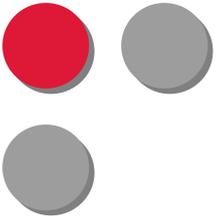


Chapter 7 now report on some recommendations and consideration presented to role players in the industry.

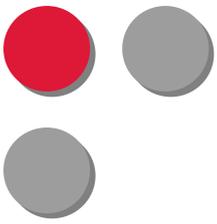
6.7. The Regulator

The Regulator is a “real bone of contention” for BRPs and affected persons alike. Complaints are directed towards:

- Timeous response
- Absence of availability to address queries
- Accuracy and inconsistency of appointment procedures
- Capacity and procedures
- Authority to act on complaints



Business Rescue
Chapter 7
Recommendations



7. Recommendations

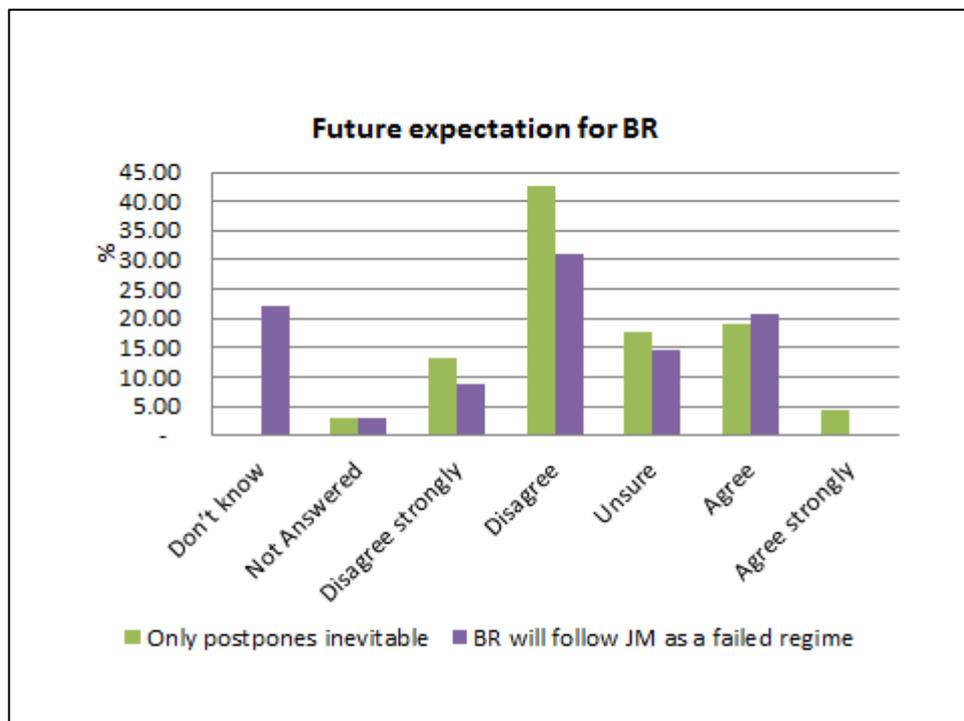
In this section, some recommendations are put forward that could be considered by the Regulator (CIPC) and relevant bodies. These recommendations are based on all the data sources as well as informal discussions with relevant role players in the industry.

Proposed in this section are broad guideline recommendations for which details should be developed as this falls outside the scope of this report. While a proposed accreditation framework exists, it is not part of this report.

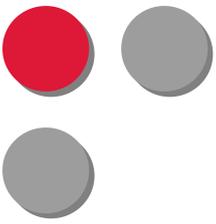
Key issues involve the following:

7.1. General perception of the BR industry is positive

Business rescue appears to be valuable to society and stakeholders in general. Respondents, subjects and interviewees do not think that BR will follow the route of judicial management that is perceived as a failed regime.



Generally the opinion is that BR is useful and should be developed further. In order to do so, the next sections make some proposals in this regard.



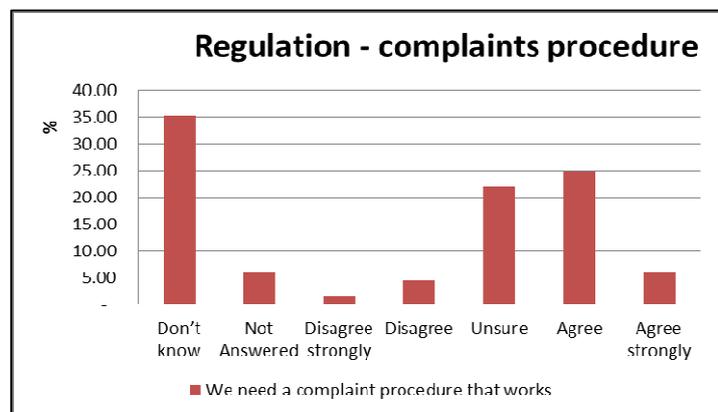
7.2. Regulation

Regulation involves the proper functioning of the industry while ensuring a predictable and equal playing field. Given the current status of the CIPC functions and execution thereof, it is clear that attention must be given to: processes of fast tracking, keeping proper statistics, statistical data with integrity for decision making and developing the processes especially that of the legal action when and if relevant. When there are disputes that require the Regulator involvement, CIPS is always a 3rd respondent in the case.

In the sections that follow, some proposed solutions/actions were put to respondents and their responses are reported and which can direct the thinking within the industry. The respondent represented the category of those who participated in the BR conference called specifically for the purposes of this research.

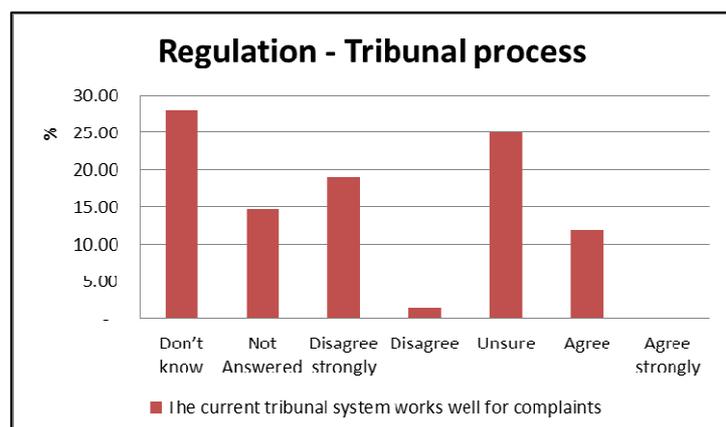
7.2.1. Complaints procedure to be instituted

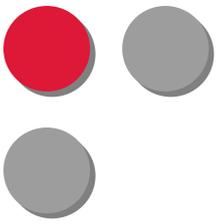
Only 31% of the respondents clearly supported this option. A large number did not know or were unsure. Potentially they were not clear on how this procedure will differ from the current process that is available.



7.2.2. Tribunal option

When asked about the possibility of a tribunal system, there was little support for it as an option to pursue. It is speculated that the reason is the poor performance of the current

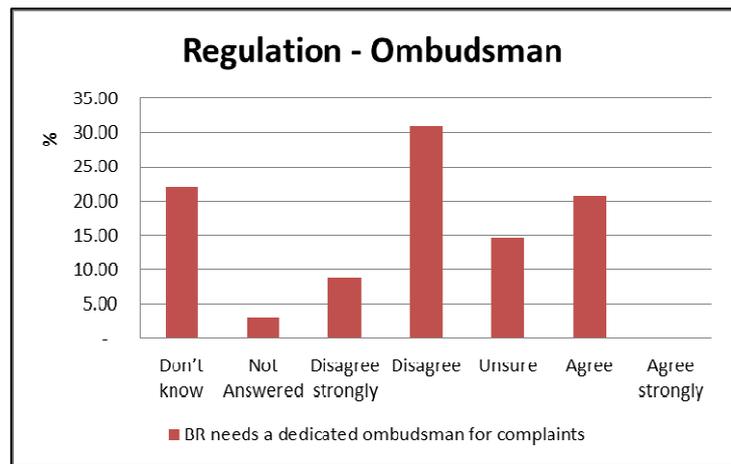




tribunal to date. This process is also new procedure instituted recently (< 1 year) and may be unknown to participants – therefore the high percentage who responded “don’t know”.

7.2.3. Ombudsman

Most respondents were unsure and disagreed about this option as an alternative to address complaints in the industry. Only 21% agreed.

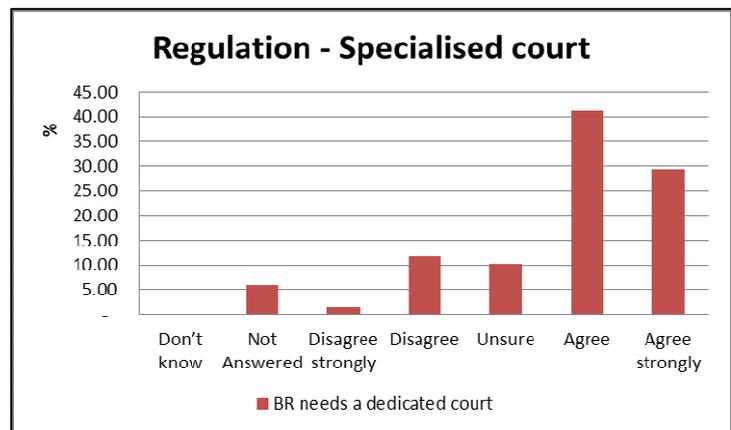


7.2.4. Specialised BR Court

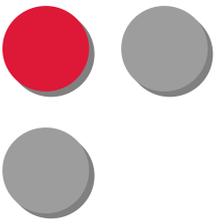
There was a high level of support (70%) for the creation of a specialised court for BR matters.

This is in line with the US who have specialised courts for Chapter 11 cases.

The reasons underlying this support are twofold namely:

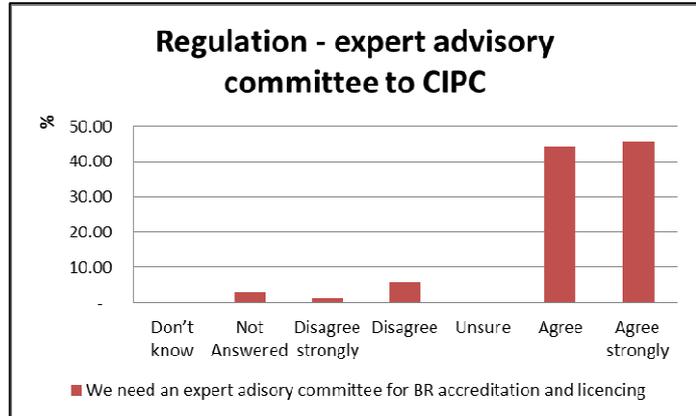


- The effect it may have on reducing time, when legal proceedings are instituted
- Secondly, the anticipated beneficial effect on contradictory judgments as judges will become specialists and enhance response time for judgments.



7.2.5. Expert Advisory Committee to CIPC

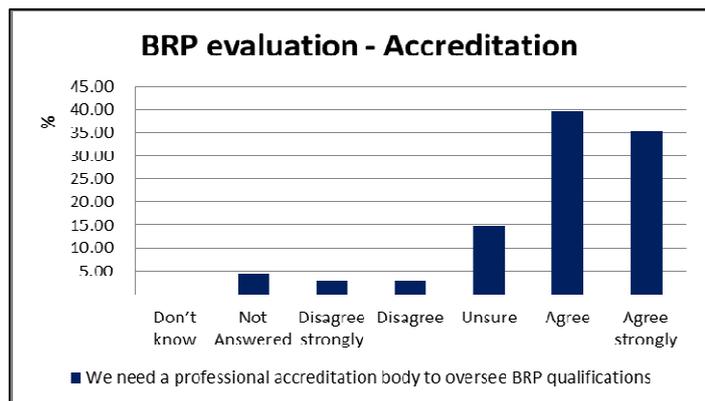
Support for such an advisory committee with experts was nearly 90%. This is indicative of the problems experienced by BRPs mainly, but also directors, creditors and those with complaints about BRPs and licensing. As BR is a highly specialised field (also confirmed in this report), this option is a fairly easy way to ensure support to the Regulator and build internal capacity. It is true that the CIPC as early as 2011 initiated initial research into the potential of creating such a committee. This was “put on hold” due to the organisation being restructured.



The expert advisory committee and the specialised court for BR options were the best supported by respondents. Both options may enhance regulatory matters to some extent.

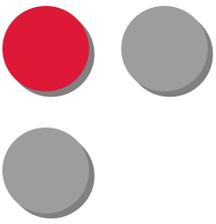
7.3. Accreditation, appointment and licencing of BRPs

Accreditation of BRPs was widely supported in all the research approaches pursued for this study. It is my opinion that the question is not if, but how the CIPC should go ahead with this function.



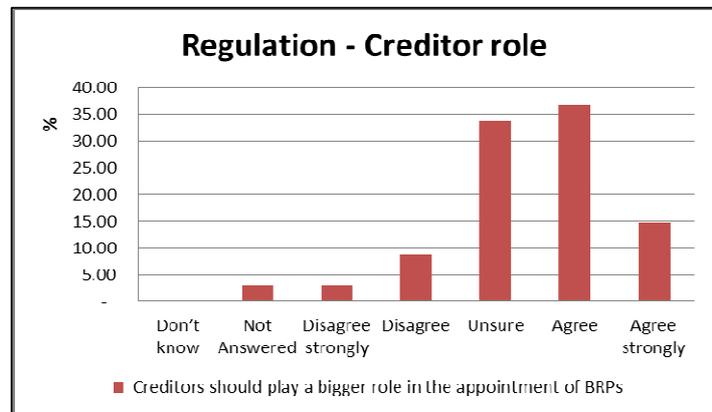
7.3.1. Appointment of BRPs

Appointments, as is currently the practice should be done by the directors (in voluntary filings) or the court appointments as per S131.



However, it has been proposed that provision be made for the creditors to ratify the BRP on appointment rather than to confirm the appointment only at 1st creditor's meeting. The reasoning is that they (banks mainly) have a history with the filing company and could consider/evaluate the

intersection between industry sector issues/experience of relevance and BRP competencies. Such a step may probably require amendment to the Act and should therefore be considered at the appropriate time. Over 50% of the respondents supported a bigger role for the creditors in the appointment. Details of how such a process must work will need further investigation.



This research has reported on the “disproportionate powers” that banks as creditors already display in the business rescue process. To pursue the appointment ratification may appear to even “skew” the agency relationship (power distribution) further. Extensive consultation should therefore be a prerequisite.

7.3.2. Resignation of BRPs

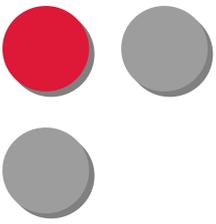
No clear guidelines exist for BRPs to resign from a rescue after appointment. There is a need for such guidelines to address this process.

7.3.3. Licencing of BRPs

BRP licencing on an ad hoc basis as prescribed in the Act is not functioning optimally and require amendments according to respondents and interviewees (See also sub-section 6.7). Some of the ideas put forward include:

7.3.3.1. Differentiation between previously appointed and new appointments

The current “ad hoc licencing system” is accepted as “sensible and beneficial” despite some criticism on the execution process by the Regulator. Respondents



suggest that, in future, there should be a differentiation in the licencing process for existing and new appointments.

7.3.3.2. Previously licenced BRPs

It is proposed that such BRPs be evaluated by peers, post mortem assessment and investigation or by a respectable professional body or even other methods. Once they are “cleared” they then become part of the “pool” and are listed by the professional body as potential BRPs for appointment.

Staying in the pool is also dependent on the assessment and evaluation.

7.3.3.3. First time licences

Prospective BRPs should be allowed to apply to CIPC for vetting. Alternatively to the professional body that takes responsibility for the screening and vetting to access the pool. A fee should be determined. These applications are then vetted on a monthly/quarterly basis by a panel (peer reviewers). This process should be supported by proper / detailed background checks including criminal, credit and good standing with the professional body.

There is much support for professional bodies to be involved with this process.

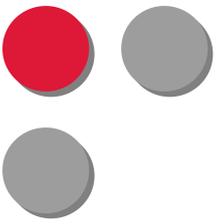
7.3.3.4. BRPs with complaints against them

A process is required for such BRPs to be investigated. Both peer review and/or BR post mortem analysis (see Appendix H) present ways to address this growing issue and which the CIPC as Regulator currently has no capacity to operate.

7.3.4. Who must regulate and licence?

7.3.4.1. Licensing

Licensing must remain the function of the CIPC as Regulator. However accreditation should be addressed urgently to support the process.



7.3.5. Accreditation

The CIPC will maintain absolute decision making of the accreditation but it was suggested that:

- An accreditation body (potentially a sub-committee of the expert advisory committee) must be created which will oversee the selection processes as well as the training of BRPs.
- This body can be supported by the respective professional body that does the initial screening. Such a body meets bi-monthly or quarterly and thereby reduce the requirement for urgent appointments (current process not abandoned).
- Accreditation requires the industry to become involved in a “self-regulation process” with support and oversight of the Regulator.

A detailed proposal / further research about how this process of accreditation is to be executed is proposed as this falls out of the scope of the current brief. Consultation with the relevant bodies is a prerequisite.

7.3.6. Evaluation of BRPs

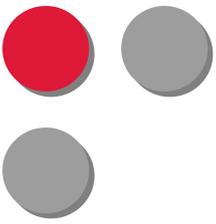
Evaluation of BRPs can be a complex process. Elements of consideration include:

7.3.6.1. Who must evaluate?

The Accreditation Body in cooperation with the professional body may create a system involving members of the academic fraternity, professional body and peers (similar to the Engineering Regulator).

7.3.6.2. What form should evaluation take?

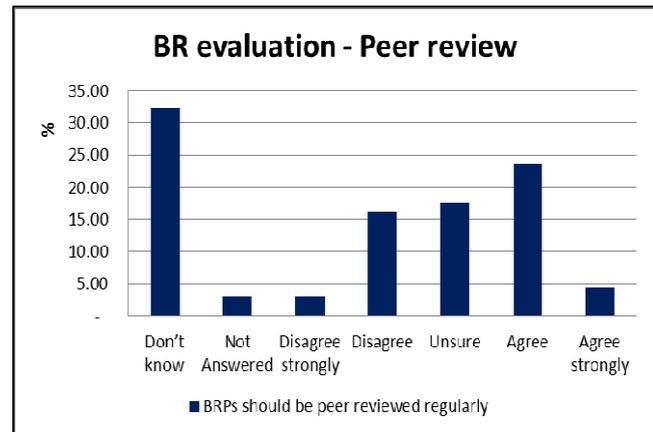
Initial evaluation could be done by the professional body for approval by the Accreditation body and include several methods. There are international guidelines for this process.



Thereafter different methods were proposed by the research. These methods are compatible to other industries but would require some adaptations to the process. These include but are not limited to:

7.3.6.2.1. Peer review

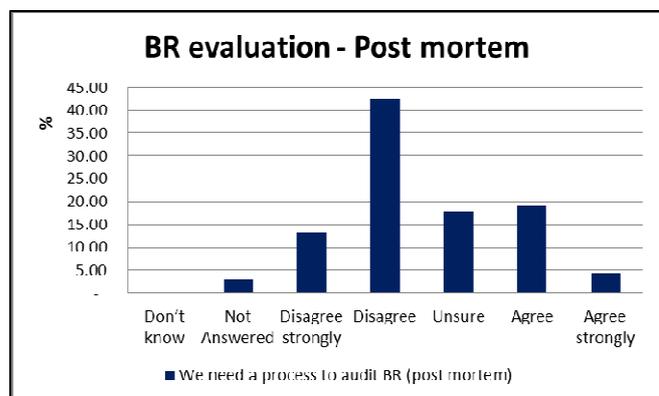
Less than 35% agreed with peer review as method. Reasons may include fear of exposure. Peer review details will be standardised for universal application by a team.



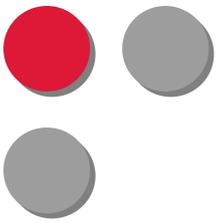
Peer review is extensively used in the engineering industry and reported as highly successful.

7.3.6.2.2. Post mortem assessment of rescues

Post mortem assessment is a systematic process that is not new in other industries. Less than 35% respondents supported this option. A possible reason is probably the accuracy of such a process and the possible exposure of poor rescue interventions. However, this

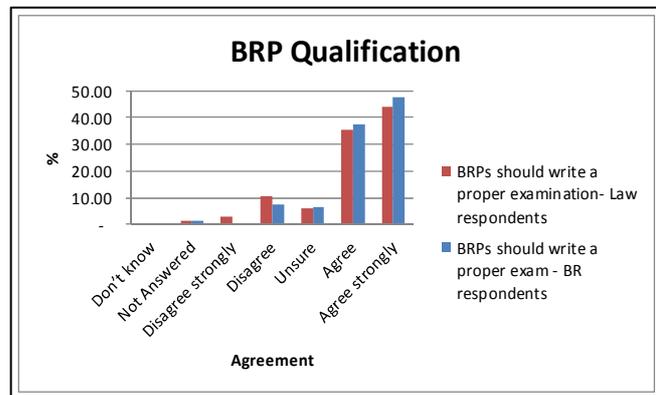


type of review is done on the rescue as a whole of which the BRP is only one of seven elements evaluated. Again the CIPC as early as 2012 has initiated an investigation into such a process. It addresses issues like reasonable prospect, the plan and more.



7.3.6.3. Examination and formal qualifications

There is agreement over all the research approaches that examination and formal qualifications is a pre-requisite for BRP appointments and continuation. During interviews, most BRPs agreed and showed willingness to do so even if they were already licensed.



7.3.7. How can evaluators be remunerated?

Evaluators should be remunerated at a fixed fee per evaluation. One suggestion was to also use the prescribed fees at application to contribute to this function.

Another suggestion was that a fund should be set up for this process but different funding models should be investigated.

7.4. Discrepancies and shortcomings in the Act

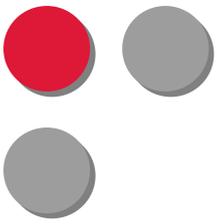
While this report identified that there are several shortcomings in the Act due to various reasons, it only scratched the surface.

There have been researches reported on this aspect. In a recent PhD thesis³² that is currently under examination, more than 25 issues have been determined from a legal perspective. Other legally focused documents³³ also exist addressing this matter.

It is proposed that a commission / committee be formed by the CIPC to address this issue and it can use the referred to PhD as a basis for its departure.

³² Levenstein, E. 2014. PhD submitted to Faculty of Law, UP under the supervision of Prof Andre Borraine.

³³ Gribnitz, K. & Applebaum, R. 2014. Business Rescue and Compromise offers – A practical analysis of the obligations and rights as set out in Chapter 6 of the Companies Act 71 Of 2008 as amended.



7.5. Cooperation/Collaboration

Three levels of cooperation are specifically required namely:

- Licencing of BRPs and professional bodies including accreditation
- BRPs and Banks
- Post commencement funders and BRPs

7.6. Investigation into Alternative Dispute Resolution (ADR)

As indicated in this research, the role, the time constraints and exclusive nature of legal costs to process is significant. It is proposed that ADR should be investigated as an alternative avenue especially for small firms.

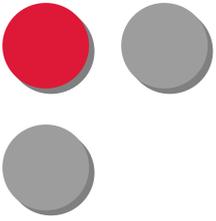
7.7. Fund for BRPs

One proposal was that a fund should be established for BRPs to also be able to access courts in critical cases.

7.8. Education

Education and training of BRPs were central to many of the sections discussed in this report. Stakeholders that should undergo the training involves not only BRPs but also:

- Directors
- Employees
- SARS officials
- Creditors
- Banks



7.9. Amendment to Chapter 6

As described in Section 4.1.14, there are elements of the act that should be reconsidered for various reasons.

It is recommended that a process be started by an expert panel to start addressing this process. The specific issues have been identified by legal academia already and therefore the panel should collaborate with such individuals.

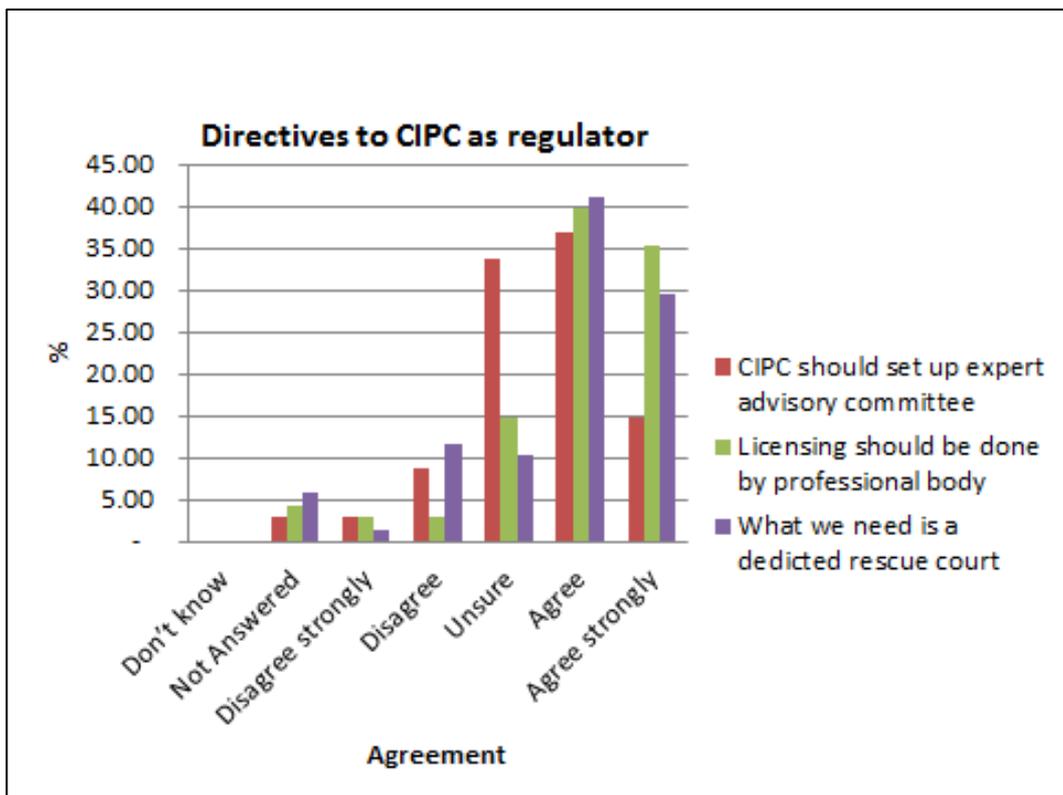
All discrepancies need not necessarily be addressed by amendments but it is also possible to do so with practice notes within the current process.

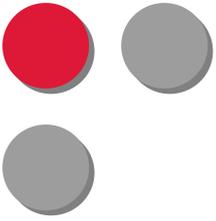
7.10. Media

The success of BR appears to be scrutinised by the media on a regular basis and mostly will focus on the unsuccessful or negative aspects associated with it. Professional bodies should be urged to report on the success of BR as a regime.

7.11. Directives to the Regulator

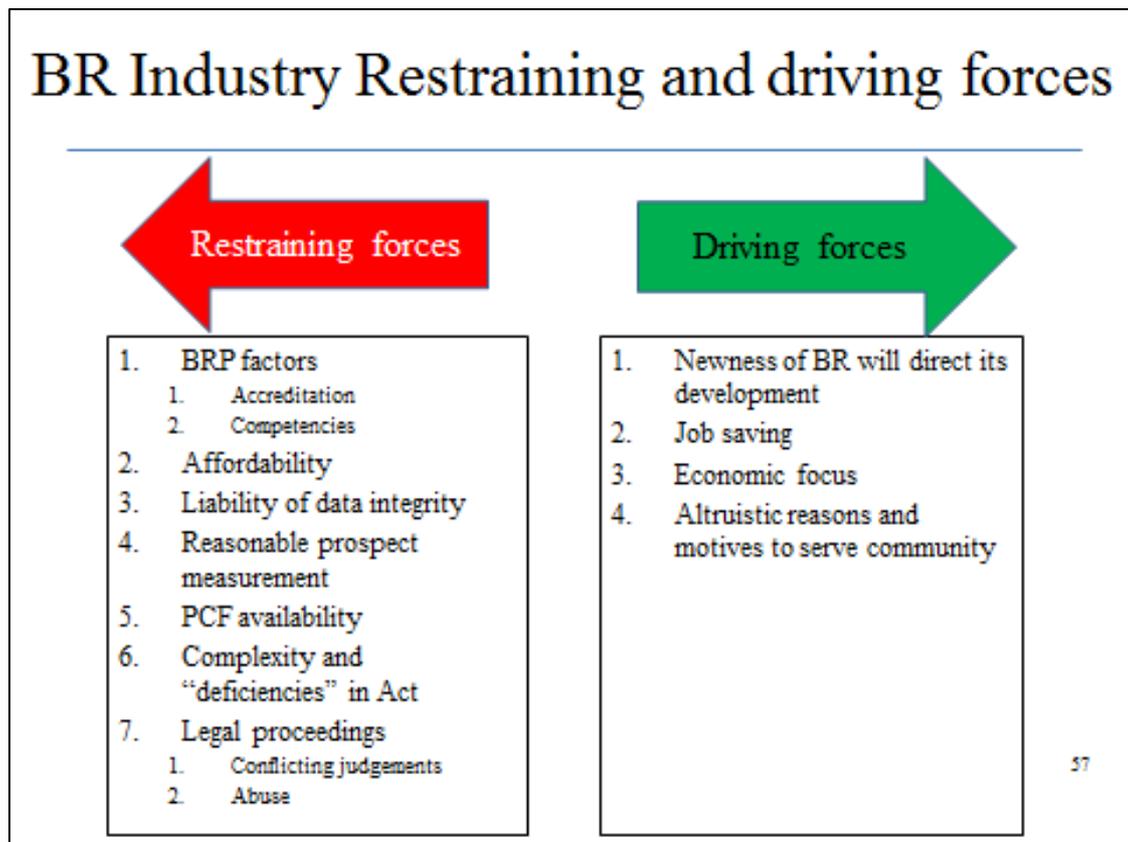
From the research, some directives were proposed to the CIPC to consider the following potential actions. From the diagram, support was found for several of the proposal already discussed in this chapter.



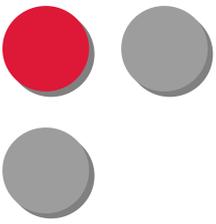


7.12. Summary

The BR industry is subject to both driving and restraining forces as shown in this final diagram. It support the findings of this report mainly as the restraining forces while the driving forces should be considered for further development by the different role players.



Such initiatives could include the exploitation of Driving force 4 (in diagram) where there are individuals who want to give back to society and who are not overly concerned about financial compensation. This could for example lead to the establishment of a separate "pool" of BRPs that will serve small ventures at alternative fees for example. The alternatives are many.



It is especially clear that the BRP is central to the BR process and therefore the accreditation, licencing and evaluation (post mortem analysis) should be a priority for urgent action.

The discrepancies associated with the act cannot be said to contribute to failure of BR but needs to be addressed to reduce complexity associated with the process.

8. Appendices

Appendix A – Phase 1 – Data status report before research commenced

Appendix B – Scenario document for 2014

Appendix C – CIPC Workflow diagram

Appendix D – Rescue data

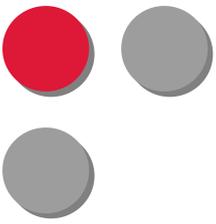
Appendix E – Sample data from banks

Appendix F – Public questionnaire

Appendix G – Questionnaire for BR knowledgeable respondents

Appendix H – Post mortem example

Appendix I – Online questionnaire

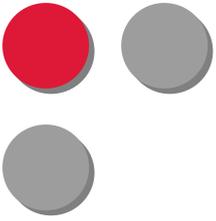


Appendix A

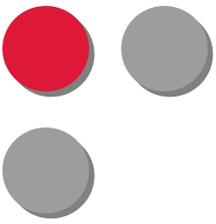
Phase 1 report submitted to and accepted by the committee

Table 1 CIPC Research Project: Data Status of Business Rescue research

Quantitative Report	Data Source	Factual	Guestimate	Opinion	Not Available
How many companies have gone into BR?	Master file	Y			
How many went to BR by resolution of the board?	Master file	Y			
How many went into BR by court order? (who initiated court proceedings?)	Court Register	Y			
How many applications to court have been refused?	Christa – Interview		G		
How many companies have come out of BR successfully?	Questionnaire		G		
How many companies in BR subsequently went into liquidation?	Questionnaire		G		
What are the time dimensions of the entire process, i.e. From initial application and Thereafter?	Questionnaire		G	O	
What are the cost implications, particularly costs incurred to the BRPs?	Interviews				None
Of those companies that went into BR but which failed to come out successfully, were their creditors better off than had they not gone into BR??	Interviews		G	O	
Qualitative Report					
Where BR failed, why did it fail?	Questionnaire			O	
Was there a reluctance to give finance after the company went into BR?	Interviews			O	
Is there evidence that the failure of BR was attributable to a lack of support by the banks, major suppliers, major customers?	Interviews				



How often has there been a failure to approve the BR plan?	Interviews		G		
Has failure been due to poor performance of the BR practitioners?	Workshop			O	
Did experience/qualification of the BR Practitioner have any effect on the success or failure of the BR process?	Workshop			O	
Has failure been due to any defects in the company act?	Workshop			O	
Is the problem that there was a mistake in having put the Co in BR in the first place? (No realistic RP)	Workshop			O	
Feedback on performance of BRPs					
Feedback on jobs saved?	Questionnaire		G	O	
Feedback on CIPC implementation?	Interviews			O	
Feedback from creditors on their experiences	Interviews			O	



Appendix B – Scenario document

Third generation Scenarios for the business rescue industry 2014

Following on the first (2012) and second (2013) generations of the scenarios done for the business rescue industry, the industry is now 3 years old. Here I propose the 2014 iteration that considers new information and insights. The future is still beyond our control and is uncertain. To handle uncertain futures, we predict different scenarios, examine their probabilities and impact and look at the options to seize the potential opportunities offered in each scenario and counter the threats. We may also want to influence decision makers who might influence key drivers underlying the uncertainties.

Since May 2011 we entered a new business rescue regime under Chapter 6 of the Companies Act. To date over 1526 companies filed for rescue in 34 months. These rescues were attempted by 166 Business Rescue Practitioners licensed by CIPC. Due to new uncertainties arising, there is a new question mark over where business rescue as a regime is heading and whether the Act is achieving what its spirit set out to achieve.

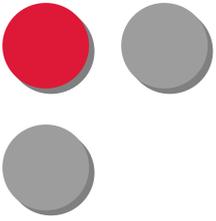
Business rescue role players such as the Regulator (CIPC), current and future general creditors, banks, the courts, academics, professional bodies and employees need more clarity of what can be the expected future. They are now much more willing to interrogate the possible futures of business rescue against a variety of scenarios. In particular, they are prepared to investigate the fundamental direction of the industry should a case be made for doing so.

What are we looking at currently?

INDUSTRY CONCERNS:

Currently there is growing concern about all kinds of malpractices (and other allegations) facing the industry. Bluntly listed those include:

- Process abuse by both shareholders and creditors (with support of their legal advisors and in some cases the BRP's have turned a blind eye) to gain time for asset stripping (amongst others) before eventual liquidation,



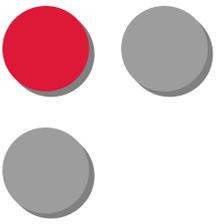
- BRPs are accused of incompetence and lack of practical commercial and business experience
 - BRPs are charging exorbitant fees and not limiting their fees to the prescribed tariff as per the Act and in some cases they are paying consultants to do their work.
 - Banks also blame failure of rescues on incompetent BRPs.
 - Simultaneously banks are blamed for colluding with shareholders to vote against the proposed plans and then "manipulate" the resulting liquidation or buy-outs and thereby preferring themselves over "concurrents". No BRP can really afford to challenge them in court.
 - Removals and forced resignations of BRPs is starting to happen more regularly particularly if the major creditor does not like the way the BR process is turning out!
 - Two types of creditors emerged namely the informed (who attempt manipulation) and the un-informed (who have no clue about their rights, powers and duties) and this is a major concern.
 - BRPs are also faced with existing management who are defensive of their past actions prior to BR and in some cases are even deliberately obstructive/ uncooperative and resent the powers of the BRP
 - The biggest single obstacle to a successful BR is the lack of PCF
- The key uncertainties that we bring from the past are:

- Firstly we don't know what direction the rescue industry reputation is going. Based on the above allegations, it is worrisome and there are three associated uncertainties.
 - Secondly the competence levels of the existing BRP contingent is a key concern also with two associated uncertainties. Previous research shows that even the BRPs acknowledge this is a main contributor to failure.
- Thirdly, support for business rescue from the banks is still unpredictable but seems to steer towards "not supported". Informally, banks tell me "it depends on the BRP". Recent research confirmed this. It is a key determinant for the development of a PCF industry.

Three new uncertainties on the horizon in 2014

1. Influx of liquidators into BR scene as a result of the Liquidator Amendment (proposed amendment to the Policy on the Appointment of Insolvency Practitioners published by Government Gazette No 77 of 7 February 2014) also sometimes referred to as the 4321 directive.
 2. Contradicting court judgments which adds to the level of confusion in the BR industry
 3. A change in bank support for rescue –
- Using the above, there are 2 mainline and 2 outlier scenarios.

Scenario 1 - Everest Quest 20-25%



The first mainline scenario on offer is called 'Everest quest', suggesting that the industry and BRPs suffer heavily from a bad reputation despite some pockets of expertise under BRPs. Banks oppose rescue (reorganisation) in principle and aggressively makes it difficult to choose BR. From the onset they oppose the BR, BRP and the plan, apply strict measures on bank accounts, effectively "freeze" the business operations through the effect on account operations such as factoring etc. Finally banks influence/vote/remove BRP's they feel don't make the grade.

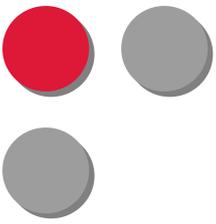
BRP's in this scenario are restricted by no access to bridging finance (post filing) to allow operations to proceed. They are out in the cold (Everest) and it is also the mountain before them. No PCF can be accessed and even the best plans cannot be financed. BRP's lose interest and belief while the industry is perceived as "not working anyway".

Scenario 2 - Masked Liquidators 50%

The second scenario which suddenly appears very likely is called "Masked Liquidator", the driving uncertainty behind it is the so-called "liquidator amendment" for appointment of liquidators by the master. The expected net effect is a large contingent of "old" liquidators that will be out of work and pursue business rescue as alternative career. The "better return" option in business rescue has anyway been dubbed the "glorified liquidation" and is ideal for these individuals to pursue. They have nil BRP competencies to reorganise, immediately aggravating reputation damage. (It is like asking undertakers to take over the intensive care duties to keep the patient alive in intensive care!)

Potentially aggravating this scenario is that banks may now change their apparent stance of opposing rescue in favor of liquidation in response to the liquidator amendment. It is expected that they may now prefer rescue over liquidation and pursue the better return option mainly despite the "quality" of the entering liquidators masked as practitioners. Banks may also try to control appointments

- Banks do not easily support reorganisation as it compromises their security and requires PCF.
- Banks often withdraw any support for reorganising based on perceived incompetence BRPs.
- The Liquidator mindset prevails in a search for better returns which constitutes a success in the view of the major creditor ie the bank (and Chapter 6)
- Different banks may have a different mindset and will act differently.



- Despite the above, Banks have identified the alternative to get involved in informal restructuring earlier through informal processes – unfortunately also suffering from lack of skills

This scenario has the largest probability in my opinion.

Both scenarios 1 and 2 is the result of the negative reputation based on the industry concerns mentioned above. The contradicting and opposing court judgments add to confusion and bad reputation. Good futurists will however, always explore the outer limits of the cone of uncertainty that opens up into the future. I have developed two additional scenarios called 'outliers'. One is the best case and the other a short term scenario.

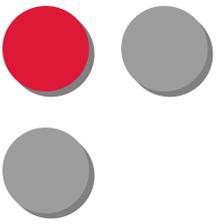
Scenario 3 - Drowning Anglers 15%

The first outlier scenario we offer is called "Drowned angler", suggesting that rescue as a regime will not significantly contribute to saving businesses, jobs or related industries as hoped for. This happens mainly when reorganisation is achieved. BRPs (anglers) drown in the mess they create as a result of large scale incompetence. Only a few competent ones survive and the industry shrinks accordingly (seems to happen already). This scenario largely depends on poor skills leading to incompetence in the tasks to be executed. Seeking a better return for creditors is the easiest option for the incompetent and makes it difficult to be exposed for weak skills.

Scenario 4 - Spiritual reorganizers 10-15%

This is the best case scenario (still an outlier) to hope for and to pursue by roleplayers. Here, BRPs act competently, ethically and save businesses by reorganising them for continued operations. It serves the spirit of the Act and save jobs within reorganised business. In this scenario, we have a growing competent BRP core that successfully drives reorganisations. There are minimum levels of process abuse and filings take place earlier leading to overcoming "rotten egg effects". Based on the improving positive reputation, this success breeds success, courts act quickly and banks are willing to support reorganisation. Possibly a PCF industry develops following the US and UK models. We really want this scenario to happen.

All efforts from the industry should be focused on achieving this scenario and improve the claimed 12% success rate.



The key flags (Indicators) that I try to or would like to monitor are:

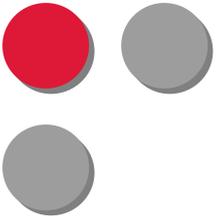
- The ratio of reorganisation: Better return than in Liquidation (Reorg:BrtnL)
- The number of liquidations decided by the first meeting of creditors (it is about the time until liquidation decision)
- The number of rescue appointments declined by the top BRPs.
- The employment "saved".

There are several sources for flags for all scenarios.

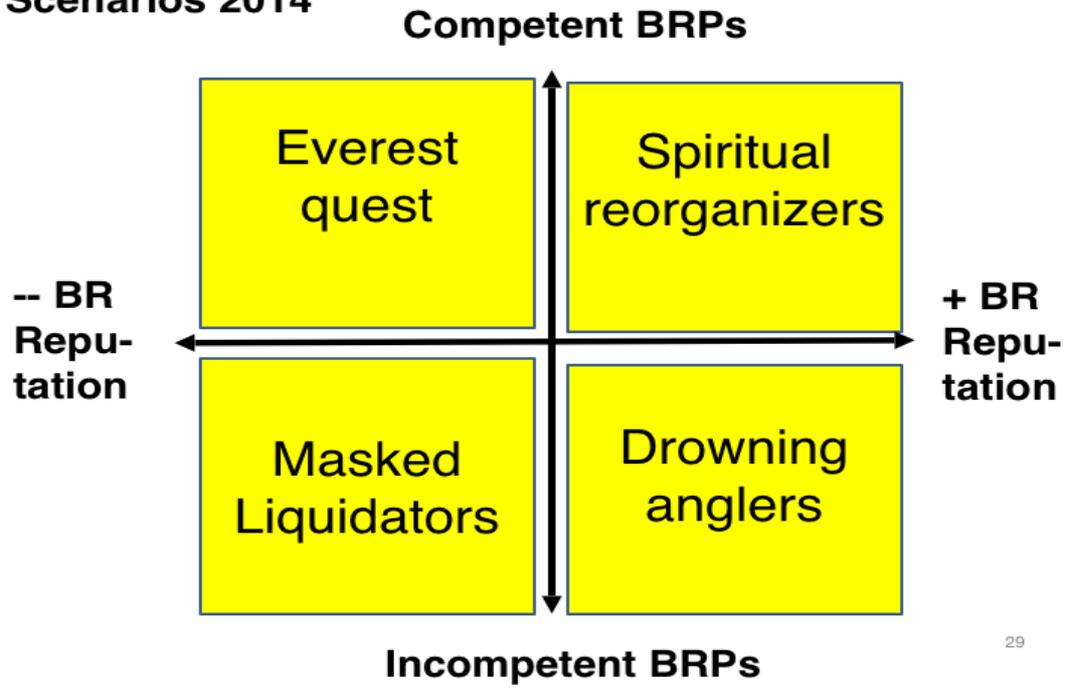
- The first one is the feedback obtained through scientific research (expensive).
- The second is the informal feedback (affordable) from discussions with BRPs and banks.
- Third are complaints (not publicly accessible) lodged with the CIPC about abuse and requests for investigation relevant to competence
- The disciplinary committee of the TMA will investigate allegations of mis-conduct by its members
- . Potentially court judgements will also contribute.
- Contribution from TMA and its members

Barring any black swans, scenarios 1 and 2 cover 70% probability because of the overall poor BRP competence reputation problems. The few good BRPs are not happy with me for this generalisation. Scenarios 2 and 3 covers over 65% because of the general bad reputation of BR. It seems that scenario 2 is the culprit.

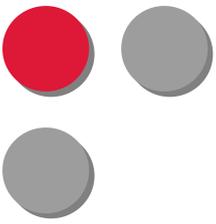
So, let us not bet on a single future. Lets rather keep all four of our possible futures in mind, please inform me if you see the flags go up or down. How we make decisions will become very important. Here is how you can help: give me your comments and insights on things that I might have overlooked. Share with me your stories in support or against.



Scenarios 2014

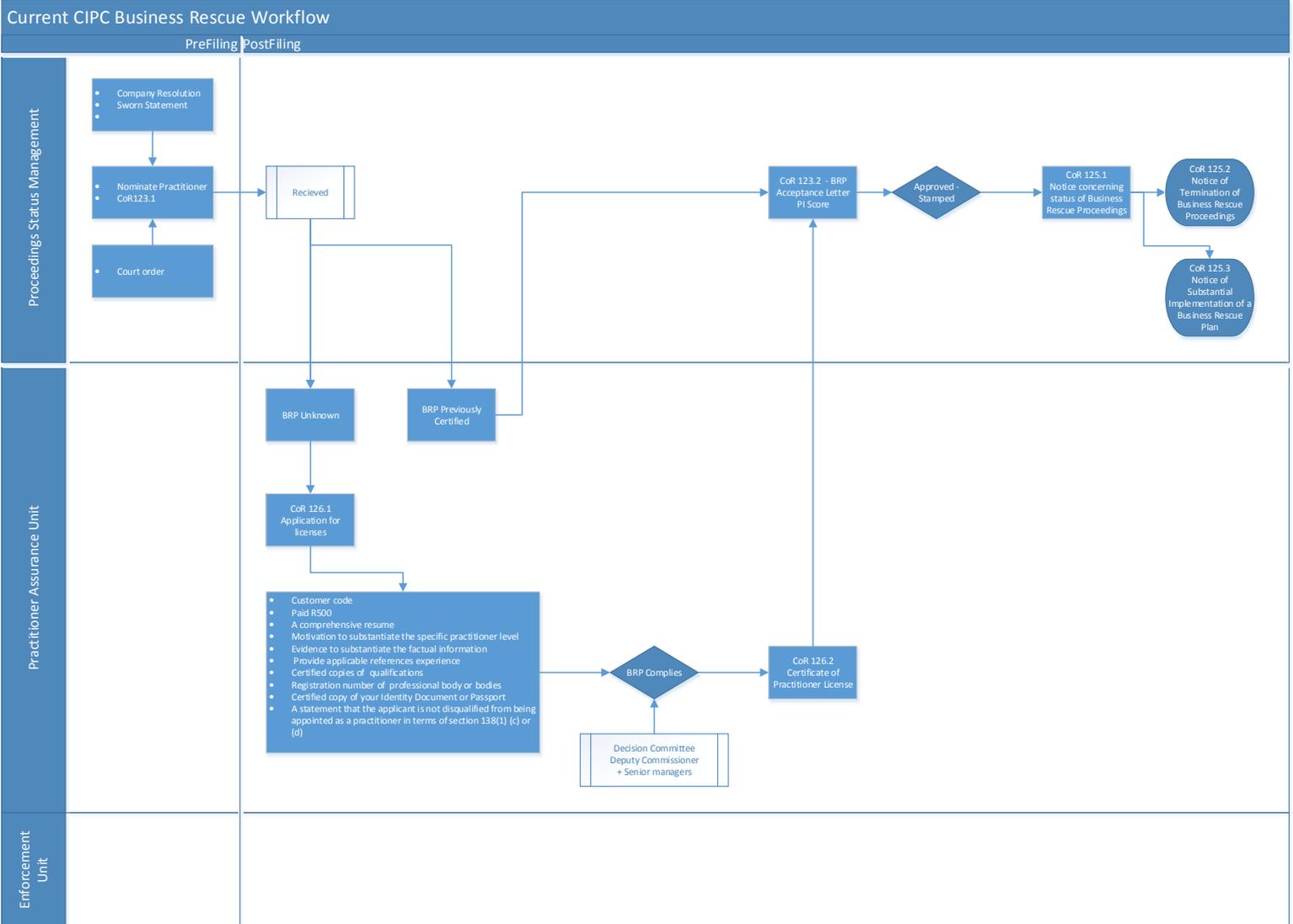


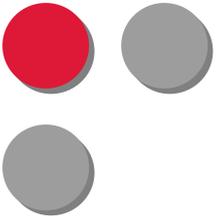
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Appendix C

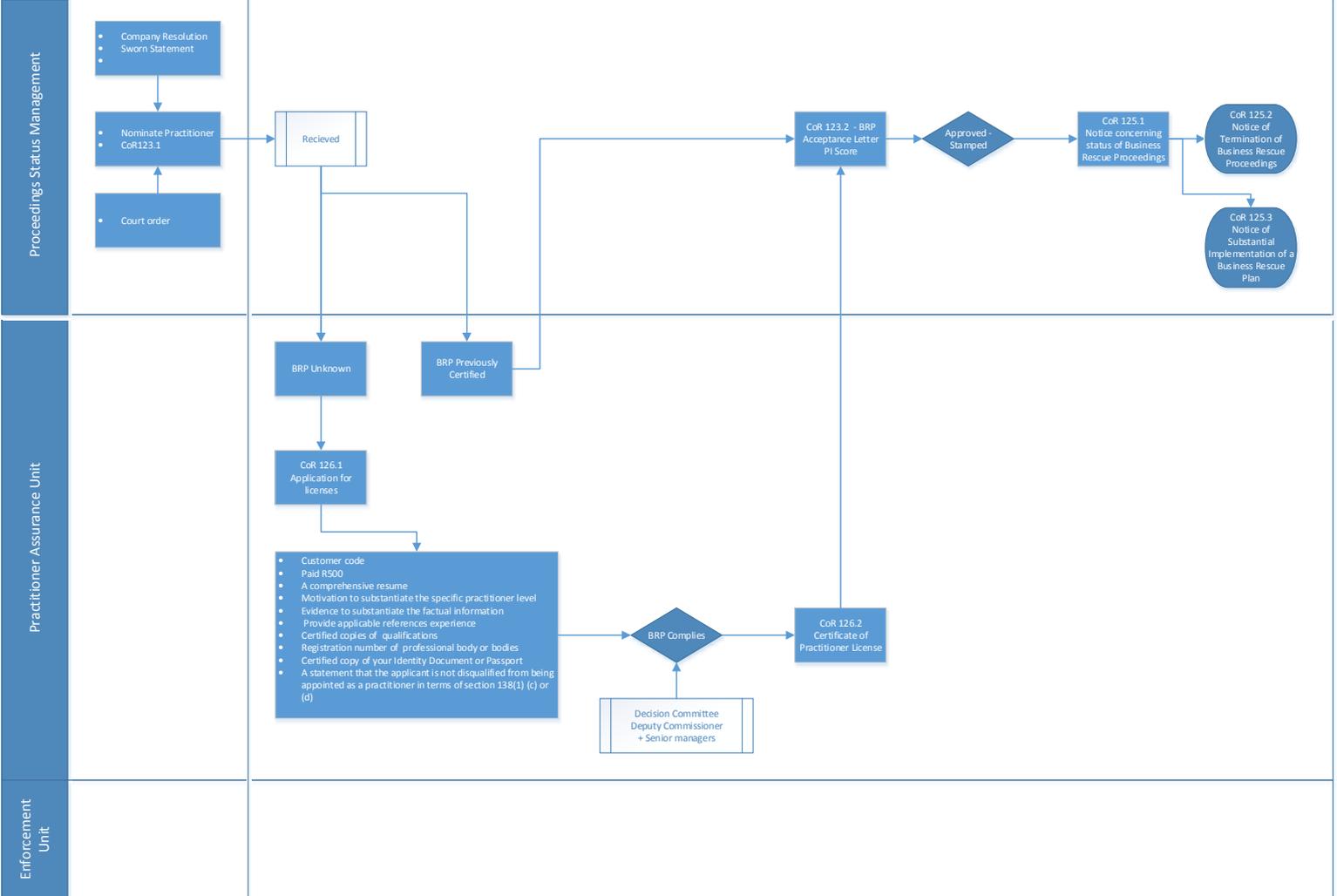
CIPC workflow analysis

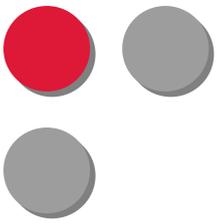




Current CIPC Business Rescue Workflow

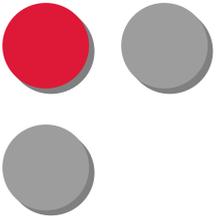
PreFiling | PostFiling



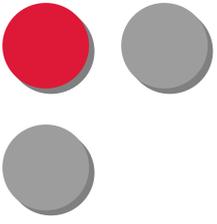


Appendix D – Sample of the Bank subject data – Requested by committee

No	Statements	Consequence
1.	<ul style="list-style-type: none"> Business rescue practitioners do not compile a turnaround strategy for the entity in Business Rescue. The Business rescue practitioner is a debt counselor and therefore uses debt counseling techniques on business rescue matters. The technique is applied on all business rescue projects that the practitioner attends to. The practitioner deliberately takes on smaller entities with few creditors and a bank 	<ul style="list-style-type: none"> SMEs are charged high fees in respect of their turnover. The business does not really get rehabilitated; they just need to stick to a repayment plan. The business rescue plans are not unique to each entity
2.	<ul style="list-style-type: none"> Business rescue practitioners sometimes take up to 6 months to publish a business rescue plan after commencement of Business rescue proceedings Rescue practitioners often ignore the requests from bankers and other creditors for proper progress/status reports Rescue practitioners do not terminate business rescue proceedings or liquidate the company under business rescue 	<ul style="list-style-type: none"> Creditors are in the dark about what is happening to the business and are in no position to proceed with any action unless they bring in an application to remove the practitioner who fails to act in good faith and manage the company until proceedings terminate The practitioner's malperformance is costly and can lead to the company's position deteriorating even further
3.	<ul style="list-style-type: none"> Practitioners fail to adhere to timelines as set out in the act Meetings are scheduled and/or postponed unilaterally Business rescue plans are not published; and if published, they are 'wish washy', and do not contain a business rescue plan per se. Practitioner does not take control of the company (<u>yet</u> charges fees) 	<ul style="list-style-type: none"> Affected parties are prejudiced The business rescue process is used to afford the entity under business rescue unlimited and/or extended moratorium The removal of a practitioner is costly (cost of application/ litigation to remove) in relation to exposure Banks are frustrated Practitioners allowed to operate without being held accountable Relationship between Banks/Practitioners and CIPC is strained Practitioners are 'milking' the process for fees Creditors and other affected parties are at risk
4.	<ul style="list-style-type: none"> Business rescue practitioners treat Business rescue as a debt review Business rescue plans make unsecured creditors wait for 48 months (i.e. monthly installments). The interest rate is reduced to prime (not pricing for risk) and does not take into consideration that those creditors also have accounts with the Bank that have a higher interest rate The business rescue plan does not give clarity whether the company will turn around and as such there are delays for voting about the business plan due to amendments which have to be made No supporting documents are provided (contracts in the plan, valuation reports of assets, cashflows in line with the contracts and the requirements for post-commencement funding) 	<ul style="list-style-type: none"> Businesses find themselves in a worse-off position than before the commencement of business rescue proceedings High possibility that the business rescue plan will not be voted in and thus the practitioner may have to file for liquidation If post-commencement funding is not awarded the business rescue plan will not work as companies requires working capital to fulfill their contracts
5.	<ul style="list-style-type: none"> The majority of companies are too financially 	<ul style="list-style-type: none"> The process is seen as a delaying



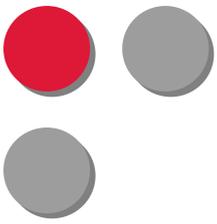
	distresses to be rescued	<p>tactic</p> <ul style="list-style-type: none"> • The reputation of Business Rescue is ruined • Security is not protected
6.	<ul style="list-style-type: none"> • The business Rescue process is being used as an informal liquidation • The plans provided are for the sale of assets and the company no longer trades at the end of Business Rescue 	<ul style="list-style-type: none"> • Bad reputation of Business Rescue • The incorrect Act governs the procedure • Security is not protected such as GNB's stock erosion
7.	<ul style="list-style-type: none"> • Timelines are not adhered to (Notifications, terminations, liquidations) 	<ul style="list-style-type: none"> • Matters are not resolved or finalized • Security is eroded • Delaying finalization is seen as strategy by the Rescue Practitioners to increase fees
8.	<ul style="list-style-type: none"> • The Business Rescue Practitioners take on any matter without assessing whether there are reasonable prospects for the company(ies) to be rescued 	<ul style="list-style-type: none"> • Huge cost implications and frustrations
9.	<ul style="list-style-type: none"> • Rescue practitioners are sometimes appointed for a Holding company with several subsidiaries (some of which do not need rescuing). The are issued with multiple appointments, yet only publish one business rescue plan 	<ul style="list-style-type: none"> • The one plan for the various entities covers more than the one entity in Business rescue. The work done by the rescue practitioner and his team cannot be allocated to each legal entity, making it difficult for fair treatment of creditors (distribution of proceeds)



Appendix E - Survey data sample as requested by Committee

Separate pdf. 21 pages

Raw data computer output



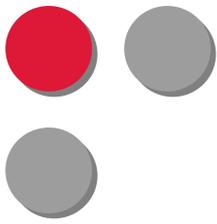
Appendix F – Survey used for Public opinion

Dear delegate,

You are requested to contribute to this anonymous research by sharing your valued opinion. Completing the questionnaire informs us that you consent to participate.

Based on what you know or what the rumour is, show your agreement with these statements please. There are no right or wrong answers. Sometimes there is a “don’t know” option – use only in extreme cases please.

<i>Statement</i>	1 Disagree strongly	2 Dis- agree	3 Unsure	4 Agree	5 Agree strongly	V	
Business rescue is a good thing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	
Business rescue is working Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3	
Most people in business know about rescue as an option to save businesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4	
I have read some parts of Chapter 6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5	
CIPC is doing a good job of administering business rescue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6	
Chapter 6 should be amended urgently Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7	
Rescue practitioners should write a proper examination before being licenced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8	
The opposing judgements on business rescue is a good thing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9	
CIPC should set up an expert advisory committee for business rescue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10	
If business rescue fails, its mostly due to inability to find post commencement finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11	
Business rescue will follow judicial management as a failed regime Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12	
Business rescue contributed to saving jobs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13	
The timelines prescribed in Chapter 6 are appropriate Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14	
Business rescue is not really useful for small businesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15	
Most businesses attempting rescue should not do so in the first place as there is no reasonable prospect to save it anyway Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16	
What we need is a dedicated rescue court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17	
The main allegation of business rescue failure is due to poorly qualified rescue practitioners is true	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18	
Business rescue only postpones the inevitable - namely liquidation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	19	
The unknown factor in business rescue is what “reasonable prospect” means Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20	



To pursue better return for creditors than in liquidation is a fallacy Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	21
I think, the governing of rescue practitioner licensing should be given to a professional accreditation body to oversee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	22
Lack of support for the rescue plan originates mostly from Don't know <input type="checkbox"/>	Suppliers <input type="checkbox"/>	Employees <input type="checkbox"/>	Banks <input type="checkbox"/>	Share holders <input type="checkbox"/>	Customers <input type="checkbox"/>	23

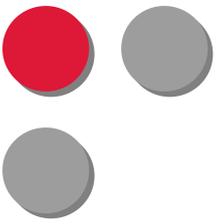
Biographics

Statement						V
I regard myself as knowledgeable in term of business rescue	Disagree strongly <input type="checkbox"/>	Dis-agree <input type="checkbox"/>	Unsure <input type="checkbox"/>	Agree <input type="checkbox"/>	Agree strongly <input type="checkbox"/>	24
I have been involved in at least one rescue	Yes <input type="checkbox"/>	No <input type="checkbox"/>				25
I have been involved in at least one rescue plan	Yes <input type="checkbox"/>	No <input type="checkbox"/>				26
I have been involved in <u>compiling</u> at least one rescue plan	Yes <input type="checkbox"/>	No <input type="checkbox"/>				27
My main education background is	Legal <input type="checkbox"/>	Finance <input type="checkbox"/>	Business <input type="checkbox"/>	Liquida-tion <input type="checkbox"/>	Other <input type="checkbox"/>	28
I have been licenced as a business rescue practitioner	Yes <input type="checkbox"/>	No <input type="checkbox"/>				29
I felt qualified to make these selections/ratings	Yes <input type="checkbox"/>	No <input type="checkbox"/>				30
If you are from business, are you a	Director <input type="checkbox"/>	Entrepre-neur <input type="checkbox"/>	Employee <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	31
I know a business that has gone into business rescue	Yes <input type="checkbox"/>	No <input type="checkbox"/>				32

In your opinion, what, if any, are the issues to be addressed to ensure success in the business rescue industry?

Thank you very much for assisting me. If you are interested, www.brportal.co.za/forum or resources has information about business rescue.

Please submit the completed survey in the collection box or personally to those who call for it.



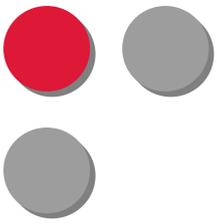
Appendix G – Survey used for Rescue knowledge opinion

Dear delegate,

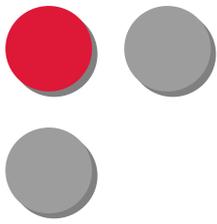
You are requested to contribute to this anonymous research by sharing your valued opinion. Completing the questionnaire informs us that you consent to participate.

Based on what you know/think, show your agreement with these statements please. There are no right or wrong answers. Sometimes there is a “don’t know” option – use only in extreme cases please.

	<i>Statement</i>	1 Disagree strongly	2 Dis- agree	3 Unsur- e	4 Agree	5 Agree strongly	V	
1.	Business rescue is not really useful for small businesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	
2.	Business rescue is working Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3	
3.	Too few directors know about rescue as an option to save businesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4	
4.	Chapter 6 is clear for all to understand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5	
5.	CIPC is doing a good job of administering business rescue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6	
6.	We need a complaints process that works Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7	
7.	Rescue practitioners should write an extensive examination before being licenced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8	
8.	There are too many opposing judgements on business rescue Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9	



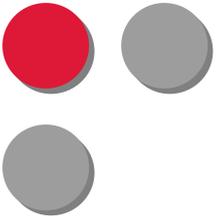
9.	We need an <u>expert advisory committee</u> for business rescue accreditation and licencing	<input type="checkbox"/>	10				
10.	Creditors should play a bigger role in appointment of the BRP	<input type="checkbox"/>	11				
11.	Business rescue needs a dedicated ombudsman for complaints Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12
12.	Business rescue contributed to saving jobs	<input type="checkbox"/>	13				
13.	Practitioners should be peer reviewed regularly Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14
14.	Business rescue is too legally orientated	<input type="checkbox"/>	15				
15.	Most businesses attempting rescue should not do so in the first place as there is generally no reasonable prospect to save it Don't know <input type="checkbox"/>	16					
16.	What we need is a dedicated rescue court	<input type="checkbox"/>	17				
17.	The main reason for business rescue failure is poorly qualified rescue practitioners	<input type="checkbox"/>	18				
18.	We need a process to "audit" business rescues (post mortem analysis)	<input type="checkbox"/>	19				
19.	The unknown factor in business rescue is what "reasonable prospect" means Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20



20.	To pursue better return for creditors than in liquidation is a fallacy Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 1	
21.	We need a professional accreditation body to oversee BRP qualifications	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 2	
22.	The current tribunal system works well for complaints Don't know <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 3	
23.	Lack of support for the rescue plan originates mostly from Don't know <input type="checkbox"/>	Suppliers <input type="checkbox"/>	Employees <input type="checkbox"/>	Banks <input type="checkbox"/>	Shareholders <input type="checkbox"/>	Customers <input type="checkbox"/>	2 4	

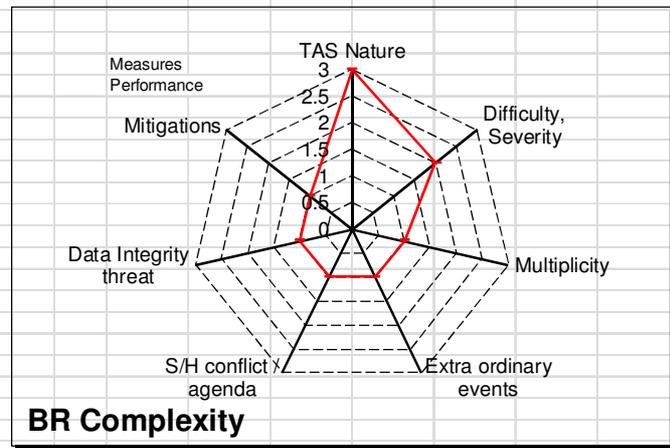
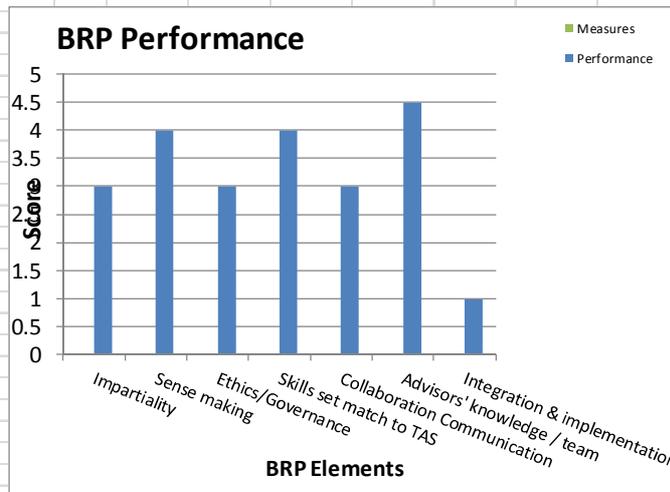
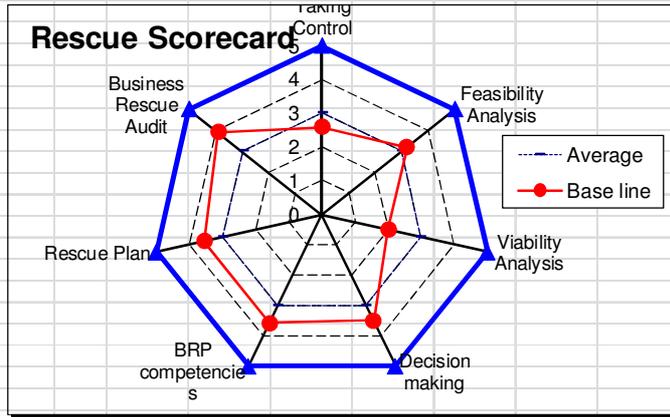
Demographics

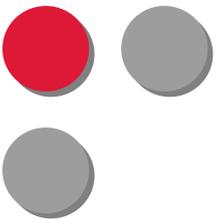
	<i>Statement</i>						V	
24.	I know a business that has gone into business rescue	Yes <input type="checkbox"/>	No <input type="checkbox"/>				2 5	
25.	I have been involved in at least one rescue	Yes <input type="checkbox"/>	No <input type="checkbox"/>				2 6	
26.	I have been involved in at least one rescue plan	Yes <input type="checkbox"/>	No <input type="checkbox"/>				2 7	
27.	I have been involved in <u>compiling</u> at least one rescue plan	Yes <input type="checkbox"/>	No <input type="checkbox"/>				2 8	
28.	My main education background is ...(choose 1)	Legal <input type="checkbox"/>	Finance <input type="checkbox"/>	Business <input type="checkbox"/>	Liquidation <input type="checkbox"/>	Other <input type="checkbox"/>	2 9	
29.	I have been licenced as a business rescue practitioner	Yes <input type="checkbox"/>	No <input type="checkbox"/>				3 0	
30.	I felt qualified to make these selections/ratings	Yes <input type="checkbox"/>	No <input type="checkbox"/>				3 1	
31.	If you are from business, are you a	Director <input type="checkbox"/>	Entrepreneur <input type="checkbox"/>	Employee <input type="checkbox"/>	Other <input type="checkbox"/>	N.a. <input type="checkbox"/>	3 2	



Appendix H- Example of a Rescue post mortem done for CIPC - 2012

Impl	Business	Base line	Average	Other
	Protocols	3.10	3	
	Feasibility	3.20	3	
	Viability A	2.00	3	
	Business c	3.50	3	1 Totally disagree
	BRP comp	2.30	3	2 Disagree
	Plan for vo	3.55	3	3 Neutral
	Taking Cor	3.90	3	4 Agree
				5 Totally agree





Appendix I – Online survey for specific rescues

Separate pdf. 16 pages