

EVALUATING SOURCES AND FORMS OF POST-COMMENCEMENT BUSINESS RESCUE FINANCE IN KWAZULU-NATAL, SOUTH AFRICA

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ABSTRACT

The purpose of this study was to ascertain the sources and forms of post-commencement finance (PCF) available for distressed companies in KwaZulu-Natal (KZN), South Africa (SA). PCF is finance approved for a company in business rescue, which is regulated by section 135 of the South African Companies Act. There has been prior research done on the impact of post-commencement finance but not on the forms and sources of finance for business rescue in KZN. Insights of business rescue practitioners were obtained in KZN to address challenges of forms and sources of PCF available. The study utilised a qualitative research design to explore the sources of funding and forms of PCF. The findings confirm that PCF hasn't been widely utilised for business rescue and respondents concurred there are barriers and challenges in obtaining finance for distressed companies in KwaZulu-Natal. The implication of these results is that firms have limited sources of finance for PCF in KZN and although development financiers are perceived as appropriate funders, procedures are cumbersome and inflexible. This study contributes to the available sources and forms of PCF for companies in distress in KZN.

Keywords: Post-Commencement Finance, Business Rescue, Debtor Factoring, Debt/Equity Financing, Asset-Based Lending.

INTRODUCTION

The new South African Companies Act 71 of 2008 (hereafter referred to as “the Act”) (RSA, 2008), which came into effect in May 2011, contains a new chapter titled “Business rescue and Compromise with Creditors”. Section 128(f) of Chapter 6 of the Act defines “business rescue” as the proceedings to facilitate the rehabilitation of a company that is financially distressed. This process is instituted by either the temporary supervision of the company, and of the management of its affairs, business and property.

A critical factor in determining the success of business rescue is post-commencement finance (PCF). The original contribution to knowledge on business rescue is that there is a significant lack of post-rescue funding which has the highest impact on a failed business rescue (Rajaram, 2016). PCF is finance offered to a company in business rescue, either as secured or unsecured finance. This type of finance falls within the scope of a business rescue, which is a system aimed at temporarily protecting a company in financial distress.

Business rescue is also undertaken internationally to assist financially distressed companies. In the United States of America (USA), the provisions of Chapter 11 of the

Bankruptcy code of 1978 (Kuney, 2002) are applied. In the United Kingdom (UK), business liquidations are governed by Portions I and II of the Insolvency Act of 1986, which is included in the Enterprise Act of 2002. The Enterprise Act is a combination of UK regulations with features of Chapter 11 of the USA's Bankruptcy Code (Goode & Goode, 2011). The Republic of China's Enterprise Bankruptcy Law came into effect on 1 June 2007 which oversees insolvency and regulates bankruptcy reorganisation (Peng, Yamakawa & Lee, 2010).

Within SA, there is a high failure rate of businesses and an alarming unemployment rate (Naicker & Rajaram 2019), KZN is a key contributor to the country's gross domestic product (GDP), with KZN contributing approximately R498.49 billion to the total GDP of SA in 2019. This translates to 16% of the national output, making KZN the second largest contributor to the South African economy (National Treasury, 2019). In 2018, the unemployment rate in KZN was estimated at 23% in the last quarter of 2018. Roughly 36% of the KZN population were still living below the food poverty line in 2018 (KZN Treasury, 2019). This can be attributed to the increase of distressed companies, to the barriers that PCF has in KZN and to the fact that the mechanisms and opportunities in achieving accessible funding are very low at present (Pillay, Rajaram & Ramnanun, 2020).

This study examined the availability of financial prospects and mechanisms of PCF for distressed companies within the province of KZN, South Africa. A qualitative research design was employed to explore the sources of funding and the forms of PCF available to companies in distress. The strategies employed by South African professional business rescue practitioners (BRPs) and other corporate professionals to address the challenges of obtaining PCF, which impact on their decision-making with regard to the rescue plan, were also explored. Six BRPs were interviewed to obtain their views on this phenomenon.

Importance of PCF In a Business Rescue

Rushworth (2010) identified three features of effective business rescue in South Africa. Firstly, there should be a rational prospect of saving the business; secondly, an appropriately skilled business rescue practitioner with adequate capability must be selected (Rajaram & Singh) and thirdly, there should be admission to PCF. In South Africa, PCF ranks after employee costs and professional staff claims that become due during the business rescue procedure. The significant factor that determined whether a financial sector can fund a business rescue was the unavailability of unencumbered assets for funding and that financiers did not have ease in the business rescue plan to establish a practicable business proposal (Rajaram, 2016). Previous research confirms that the barriers to obtaining PCF are limiting factors in rescuing businesses in distress in KZN and the challenges include the time frame within the business rescue plan and that financial institutions are not prepared to support a business rescue without collateral (Pillay, Rajaram & Ramnanun, 2020).

Within South Africa, African Bank Investments Limited (Abil) successfully obtained PCF. Abil instituted business rescue in June 2015 after its subsidiary, Ellerine Furnishers, failed to repay debt to finance institutions (Business Insolvency, 2014). The company secured PCF from insurer Stangen and the business rescue plan succeeded an optimal restructure was achieved (MoneyWeb, 2016). Another company that survived business rescue was South Gold Mining Company. The company's turnaround commenced in 2012, and was successfully completed in 2014 after obtaining finance to restructure its debt and continue operations (Greve, 2014).

These cases emphasise the importance of PCF and a significant finding in previous

research reflected that liquidated firms had rated cash flow as a significant and that access to cash by a distressed company can prevent liquidation (Rajaram, 2016).

Problem Statement and Research Question

Given the findings of various studies which confirm the view that PCF is imperative for success in business rescue, the availability of PCF in a region is considered critical if business rescue is to succeed. The knowledge gap explored in this study is thus whether there is adequate supply of PCF within the province of KwaZulu-Natal, South Africa.

The business rescue protocols introduced by the new South African Companies Act in May 2011 offer a short time frame to assess the effect and efficiency of PCF. Traditional finance opportunities (predominantly credit funding) for distressed companies are limited due to the fact that financiers seek to limit their risk exposure (Pretorius & Du Preez, 2013). Companies in KZN appear to have great difficulty in accessing PCF, calling for an investigation of the factors that limit the generation of PCF. Following from the potential knowledge gap, this study aimed to determine how companies in distress finance their operations in KZN and to identify the forms of post-rescue funding available to distressed companies in KZN.

Research Objectives

The objectives of the research study were to identify the forms of post-rescue funding available distressed companies in KZN and to ascertain the impact of PCF on the success of business rescue efforts of distressed companies in KZN.

LITERATURE REVIEW

Sources of PCF funding in South Africa

Businesses usually require a mixture of wealth and expenditure to fund their commercial activities. Traditionally, funding is obtainable from a host of monetary and other organisations. The various forms of financial backing for distressed firms can be divided into groups as follows (Du Preez, 2013a):

1. Trade creditors
2. Commercial banks
3. Private moneylenders/Finance companies
4. Private equity firms
5. Distressed debt financiers.

A firm that is experiencing financial distress requires funding, particularly during a global financial crisis. Goldblatt (2012) noted that, despite the fact that loans are hard to come by, there is hope for ailing companies. Certain banks that offer finance such as debtor factoring could assist firms that are unable to access traditional investments. Sources of PCF funding in South Africa include the below mentioned.

Trade creditors are categorised as volatile once a company goes into bankruptcy. Creditors withdraw finance faster than financial institutions, as their loan funding is normally unsecured (Wilner, 2000). As trade creditors are unsecured, they tend to immediately refuse an extension of credit to distressed companies (Sibanda & Holden, 2014).

Commercial banks include variable rate loans, with varying interest rates depending on

the market rate or prime rate (Du Preez, 2013a). Commercial banks offer secured loans which require collateral, while unsecured loans do not. Convertible rate loans can be changed from one type of loan to another throughout the life of the loan (Rushworth, 2010).

Private moneylenders/Investment companies are moneylenders extend credit to industries and individuals. They do not require collateral and are not bound by investment rules (Gorton, 2019). Other similar sources of financing include merchant banks, global trade financing corporations, and specialised financial organisations such as insurance businesses and commercial mortgage investors (Carey et al., 1998).

Private equity firms is an alternative form of private financing whereby funds and investors directly invest in companies or engage in buyouts of such companies (Cumming, Deloof et al. 2019). The different forms of financing offered under private equity include venture capital, i.e. investors who provide investment in exchange for equity (Du Preez, 2013b).

Distressed debt financiers are often referred to as 'predator investors (Sibanda & Holden, 2014). These include established investors, cash executives, hedge reserves, and vulture investors, as well as government organisations and the Industrial Development Cooperation (Pretorius, 2013).

Forms of PCF financing in South Africa

Asset-based lending: PCF mechanisms in South Africa include asset-based lending that involves a business loan secured by collateral on assets (Du Preez, 2013b). Asset-based lending is normally based on three fundamental variables, that is the acceptable collateral assets, the level of leverage and the level of trust and confidence in the investment (Von der Becke & Didier, 2019).

Purchase of equity: Companies issue equity normally when cost of this source of funding is low; the purchasing of equity refers to buying a percentage of ownership in the business to raise finance (Mauad, Loureiro et al. 2020). This generally includes creditors who agree to cancel some of the debt in exchange for equity in the company (Du Preez, 2013b).

Shares and debentures: The issue of equity shares and debentures is an option of PCF and the main difference between debentures and other new types of bonds is that the former does not require asset backing (Goldblatt, 2012). Companies opt for issuing debentures to raise funds for long-term financing (Sen & Mehta, 2018).

Debtor factoring: Some banks offer finance such as debtor factoring if the firm is unable to access traditional financing (Goldblatt, 2012). Debtor factoring involves selling the company's value of trade debtors to the bank, whereby the financial institution pays the company upfront and charges a fee for administering recovery (Goldblatt et al., 2012).

Venture capital: The different forms of financing offered under private equity include venture capital, i.e. investors who provide investment in exchange for equity. Venture capital is helpful for distressed companies that are unable to raise funds by selling shares to the public (Hadlock & James, 2002).

METHODOLOGY

The study can be regarded as exploratory and qualitative in nature with both literature and empirical components. The qualitative analysis was based on an interpretative philosophy that sought to reveal the meaningful and symbolic content of the qualitative data. The intention of the study was to obtain insight from expert BRP's. In an effort to obtain expert opinion, the

study population included all leading BRPs in KZN that are accredited professionals in business rescue and PCF. Their experience meant that they were well qualified to comment on the current impact of PCF on business rescue in this province. The sampling frame were established and reputed BRP's in the province who possess substantial knowledge where selected. The sample comprised of 12 BRPs in KZN, to whom the questionnaire was electronically distributed to. The data analysis encompassed a detailed exploratory questionnaire which was administered from six respondents, who are leading business rescue practitioners based in KZN to solicit their experiences of PCF, as well as the sources of financing that are available within the province of KwaZulu-Natal.

In respect of the research objectives, to identify the forms and sources of PCF available to distressed companies, that is common to South Africa and the province of KwaZulu-Natal, this was explored by means of a detailed literature study. An exploratory questionnaire was also issued to BRPs regarding the forms and sources of PCF available to distressed companies in KZN. The participants were asked to respond to the questions in the questionnaire using a Likert scale, with space provided for additional comments. The qualitative data was analysed using thematic analysis by identifying, analysing and reporting on patterns and possible themes that emerged from the BRP's experience and knowledge. The data was also analysed by developing summaries and investigating key relationships using descriptive analysis. This phenomenon facilitated the corroboration of themes that emerged and credible conclusions were drawn by analysis and comparison of respondents' perceptions on issues such as the impact of PCF on the success of business rescue.

RESULTS

The questionnaire was comprised of closed-ended questions with additional space provided for comments. Content analysis was employed and the data presentation in this paper includes summarised responses from the respondents. The respondents' comments substantiated the results of the closed-ended questions. Given the sample size of six, the findings cannot be generalised to the entire population. Furthermore, the reliability coefficient of questions measuring the same construct was not calculated. Descriptive data were used to achieve the study's objectives and answer the research questions. The results of the data analysis were compared with the theories applicable to this study and extant literature on PCF. Saturation is a tool utilised for ensuring that adequate and quality data are collected to support the study (Sekaran, 2013). This has reflected a gold standard within the study as a rich convergent of respondents in KZN was chosen in order to ensure that valuable data were extracted. Data saturation was achieved as most respondents shared the same viewpoint on significant outcomes.

Commonality and unification have been achieved from the outcomes of the study. Despite this, however, the results cannot be generalised but it is noted that the results are an important contributor to the existing business rescue knowledge.

Research Objective 1

WHAT SOURCES OF PCF FINANCE ARE AVAILABLE TO COMPANIES IN DISTRESS IN KZN?

Business rescue is an option for firms in distress. There are adequate sources of funding for companies in distress in KZN.

The majority of the respondents disagreed with this statement, while one remained neutral. The respondents stated that business rescue should not be regarded as a tactic to postpone the inevitable. Rather, it should be employed by financially distressed enterprises that are able to offer all stakeholders a viable solution in the form of business rescue. The respondents added that traditional funding opportunities for distraught companies are

inadequate, since lenders are reluctant to extend their exposure to risk averse.

The two main sources of funding for companies who have filed for business rescue in KZN most commonly range from long-term loans to private investors seeking new options.

The majority of the respondents disagreed with this statement while two remained neutral. Traditional funding such as long-term loans is rare in business rescue as lenders seek to limit their level of risk by reducing their exposure to credit risk. Long-term loans are often contingent on encumbered assets as assurance and this is problematic for a business in distress. Furthermore, the banking industry seems to feel that traditional financing will not offer a satisfactory yield or guaranteed return and that there will be inadequate volumes to justify the growth of such banking products.

PCF in KZN such as loan financing is the most common but often difficult to obtain as financial institutions are frequently trying to minimise risk and not increase it.

The majority of the respondents agreed and one disagreed that loan financing is the most difficult to obtain as financial institutions are not keen on financing companies which have minimal potential for a turnaround. The challenge in obtaining PCF is the strict lending criteria and the fact that a business needs a bankable business plan.

The least preferred method of obtaining finance is to approach new funders to invest in distressed companies, which include private equity. These organisations (particularly private equity) are either not well developed in KZN, or are hesitant to fund a distressed business.

The majority of the respondents agreed that the least preferred method is to approach new funders as they are cautious about investing in a distressed business. This is due to the fact that new funders expect a return and will thus invest in a new and reliable business rather than one in need of rescue. It was also noted that the private equity industry should make its intentions more transparent, especially if such players wish to fund distressed companies with the aim of offering PCF.

Development financiers (e.g. the IDC and Land Bank etc.) are seen both as very promising and suitable parties in KZN to provide financing.

The majority of the respondents disagreed, respectively, with regard to this statement. Development financiers focus on critical traditional sectors such as the steel, mining and chemicals and textiles sectors. The processes involved appear to be cumbersome and too detailed for ailing companies. Furthermore, development financiers set strict criteria. Some of the respondents noted that they had never approached such financiers for rescue funds.

Factoring of debtors is a convenient option for a company in distress. This is a readily available source of financing for distressed companies in KZN.

The majority of the respondents agreed that the factoring of debtors is a convenient form of financing a company in distress and that it is available in KZN. The remaining participant remained neutral on this question. While it can be used as a way to manage working capital, it can be expensive and is conditional for certain criteria. This type of funding is really only available to manufacturing concerns and the like.

Companies in KZN have substantial sources of financing available to assist with financial recovery, allowing business rescue to be implemented sufficiently.

The majority of the respondents disagreed with this statement. Funding is limited in KZN, most business rescues lack adequate funding due to investors' risk aversion. Given that traditional financiers are normally reluctant to offer funds to distressed companies, substantial sources of financing are not available to assist financial recovery in KZN.

Obtaining PCF for companies in business rescue processes poses a challenge in KZN, due to business rescue and post-rescue finance being fairly new concepts that people do not fully understand.

Three of the six respondents agreed with this statement while three remained neutral. Successful sourcing of PCF also depends on the business rescue plan, just as a start-up businesses ability to obtain finance will depend on its business plan. While the primary benefit of business rescue is protection from creditors as envisaged under section 133 of the Act, the biggest challenge lies in obtaining PCF.

Research Objective 2

WHAT FORMS OF FUNDING ARE AVAILABLE TO COMPANIES IN DISTRESS IN KZN?

Traditional financing such as debtor factoring is often used by companies in KZN with poor credit options in order to provide PCF to businesses in distress.

<p>The majority of the respondents were neutral about this statement. While traditional financing such as debtor financing is an easy form of financing, the forms of financing for business rescues vary. Factoring of debtors normally has non-recourse in that the customer credit risk is transferred to the factor. This entails a number of risks, notably non-payment of the total amount.</p>
<p><i>A useful form of financing is equity funding which involves substituting a quota of the ownership of the business for a financial investment in the business.</i></p> <p>Fifty percent of respondents agreed with this statement and the other 50% strongly agreed. The respondents were of the view that equity financing is a sound plan of action to enhance business rescue. While equity financing involves selling a portion of the business, the advantage is that the initial owners are now accountable to another party which will force them to retain effective control. However, financiers are concerned that succeeding rounds of equity funding dilute their ownership share.</p>
<p><i>Personal liability loans (personal assets and insurance) are a weak form of financing for companies requiring PCF in KZN.</i></p> <p>Three of the six respondents agreed with this statement, two disagreed and one remained neutral. The respondents felt that this is a weak form of financing for companies requiring PCF in KZN. Personal liability loans could lead to personal financial disaster. Personal loans will require some form of surety which the distressed company is unlikely to have.</p>
<p><i>Government grants and loans are a potential form of PCF but these are rarely utilised to their full extent as PCF options.</i></p> <p>Three of the six respondents agreed with this statement, one disagreed and two remained neutral. Government grants and loans are a viable source of PCF, but some respondents indicated that their knowledge of such grants is limited. Government funding is tied to BEE, job creation and developing the economy; hence, although this is a viable option, it takes time.</p>
<p><i>Debt financing as a form of PCF involves borrowing funds from creditors. This form is available flexibly in KZN.</i></p> <p>Four respondents agreed with this statement and two disagreed. Debt financing as a form of PCF is a viable and practical option. Most of the respondents agreed that debt financing offers possibilities. Long terms offered by creditors are rare as they become overburdened with debt, which ultimately leads to the creditor's demise. It can be argued that creditors are a better financing option than financial institutions, as the company's ability to pay its debt depends on its financial viability.</p>
<p><i>Non-bank options, such as asset-based lending, which secures finance against an asset, is a fairly common form of financing.</i></p> <p>The majority of the respondents agreed with this statement and one strongly agreed. Asset-based lending is a common form of PCF in business rescue. Due to the challenge of obtaining unsecured financing, a business may elect for asset-based advances. However, businesses that take asset-based advances frequently have cash flow difficulties due to rapid growth.</p>
<p><i>Strategic partners which involve some form of business enterprise (related or unrelated to the company in distress), can provide a form of post-commencement funding in KZN.</i></p> <p>Four of the six respondents agreed with this statement, one strongly agreed and one remained neutral. The majority of the respondents agreed that strategic partners can provide some form of PCF in KZN. Whilst funding from strategic partners could be part of the proposed plan, the company still has to operate in the interim and the potential partner would have to be prepared to put up PCF in the form of working capital in the interim.</p>
<p><i>The form of financing poses many risks when assessing funding options for business rescue. Business rescue practitioners should focus mainly on limiting the risks for the company in rescue rather than the financier.</i></p> <p>The majority of the respondents agreed that the form of financing poses many risks and care must be taken in its choice, plan and execution. The rescue practitioner has an overall duty to establish a sound business rescue plan as well as ensure that the company has an optimal chance to succeed. Nothing in the Act prevents the practitioner from being the financier once appointed.</p>

Findings on the availability and sources of adequate PCF for distressed companies in KZN

All six respondents were men above the age of 45 years. Half of them had an undergraduate degree and the other half a Master's qualification. The most common area of specialisation was professional business and five of the six respondents had been involved in business rescue for more than six years. Moreover, 50% of the respondents had been involved in

PCF for one to three years and the other half had been involved for more than six years. The interviewees were thus mature individuals with a fair amount of experience. Five of the six respondents disagreed that business rescue is an option for firms in distress and that there are adequate sources of funding for companies in distress in KZN, while 50% confirmed that the two main sources of funding for companies who have filed for business rescue in KZN were long-term loans and private investors seeking new options.

The findings also reveal that 83% of the respondents agreed that PCF such as loan financing is the most common in KZN, but that it is difficult to obtain as financial organisations seek to reduce rather than increase credit risk. This points to the inadequacy of funding available for business rescue and PCF in KZN. It is thus recommended that businesses be made aware of the availability of funds for business rescue and PCF through various platforms such as technology, media, workshops and seminars. The findings also show that 66.7% of the participants agreed that the least preferred method to obtain finance is to persuade innovative financiers to invest in distressed companies, including private equity finance. These businesses (predominantly private equity), which are not well-developed in KZN, are reluctant to fund distressed companies. Furthermore, 66.7% of the participants disagreed that development investors (e.g. the IDC and Land Bank etc.) are appropriate parties to deliver funding in KZN. This is consistent with other findings that highlight the lack of funding available to businesses that require rescue.

It was found that 83.3% of the participants agreed that the factoring of debtors is a convenient option for a company in distress. This is a readily available source of financing for distressed companies in KZN. Hence factoring of debtors is a viable solution for business rescue. However, 83.3% of the sample disagreed that companies in KZN have substantial sources of financing to assist with financial recovery and business rescue.

Findings on The Forms of PCF Finance Available for Companies in Distress

Debtor factoring was regarded as an unfavourable funding option and 67% of the respondents remained neutral about the question of whether it is frequently used. It was noted that this form of financing is expensive and that the short time frame set for the rescue does not make it the most practical option. In terms of equity funding, half of the respondents agreed and half strongly agreed that it is an important form of financing that places the least burden on the business as partners invest in their own resources.

Personal liability loans were found to be an inadequate form of financing, with 50% of the respondents agreeing that such investors are risk averse. Investors do not wish to invest in a company that is ailing and personal loans normally require surety which is usually unavailable. Again, half of the respondents described government grants as a viable form of funding, but noted that the process is lengthy and cumbersome. Furthermore, 67% of the respondents agreed that debt financing is a possibility for PCF. This could come from creditors who would be more likely to understand the needs of the distressed company.

All the respondents agreed that asset-based lending is a good form of PCF as the company normally maintains assets that can be used as collateral. However, the shortcoming is that investors require securities that can be easily convertible to cash, and asset-based lending exposes a company to revaluation and impairment concerns which frequently hinder easy cash conversion. Finally, 83% of the respondents agreed that, whether or not they own a share of the company, strategic partners can provide PCF and that this form of financing is a feasible option. Such partners would have a vested interest in the distressed company and hence want it to

succeed. In terms of risk, 67% of respondents agreed that this form of financing poses inherent risks.

DISCUSSION

Business rescue is crucial to the growth of the South African economy. One of this study's key findings is the lack of funding available for business rescue and PCF. The business community needs to be made aware of the availability of funds and how to access them. Furthermore, the bottlenecks that impede access to such funding need to be addressed. Consultants from various financial institutions need to be trained to assist the business community to apply for PCF.

While the study found that PCF plays a crucial role in business rescue, it also concludes that factoring of debtors is an important option that requires further investigation. Other forms of funding for a business in distress include the following:

1. Equity funding
2. Government grants and loans
3. Debt financing
4. Asset-based lending
5. Strategic partners.

The literature concurs that inadequate post-rescue finance results in unsuccessful business rescue (Du Preez, 2013b; Pretorius, 2008). This validates the apprehension of the Companies and Intellectual Property Commission regarding a prescribed credit segment to supply finance to businesses in rescue. The study found that a lack of access, convenience and knowledge of PCF hampers business rescue in KZN.

The South African government is also called on to be more actively involved in business rescue. Chapter 6 of the Companies Act of 2008 requires substantial revision. The amendment of the Act should also include professionals from different and diverse backgrounds to ensure all elements of the subject matter are considered; these should include legal, financial and entrepreneurial professionals.

Many forms of financing require security in the form of an asset "to the extent unencumbered". The ranking of claims in the business rescue process does not rank the investor first in terms of payment after the business rescue process. At present, the ranking is the business rescue practitioner for remuneration and benefits, employees for any remuneration which became due and payable after business rescue proceedings and then secured and unsecured lenders or other creditors for any loan or supplies made after business rescue proceedings. The Act could also be amended to enable companies to be given adequate time to negotiate out-of-court settlements and set out the approach for a pre-negotiated plan. It could include the various sources of financing that could be used as a form of post-bankruptcy backing. The issue of securing PCF with asset encumbering could also be revised to assist companies to obtain finance from investors who are not risk averse.

Within the finance sector, there could also be a pool of investors who group funds together specifically for distressed companies to utilise. This can be accomplished either privately or by financial institutions for lucrative investors to maintain such funds. Distressed companies can access these funds through an application process either voluntarily or once the company has filed for business rescue.

CONCLUSION

This paper had two main objectives as key points. The first dealt with what available sources of funding are obtainable for companies in distress in KZN and the second with what form of financing is accessible for these companies to utilise. The study found that one of the reasons for the lack of PCF in South Africa is that the legislation is still new, and that it is not fully understood or properly implemented. It is thus recommended that various steps be taken in KZN to attract more funding for business rescue. This could include approaching the Chambers of Commerce and Industry in KZN to create a financial pool or to approach the government and motivate for more funds to be available for business rescue. Finally, half of the respondents agreed that obtaining PCF for companies in business rescue processes poses a challenge in KZN, due to business rescue and post-rescue finance being a fairly new concept that people do not fully understand.

LIMITATIONS AND FUTURE RESEARCH

The study's limitations include a paucity of literature, given that commercial rescue regulation is a comparatively new inclusion in commercial law and thus that there is a paucity of research on this subject. The evaluation was therefore descriptive. Furthermore, the business rescue statute only came into effect in May 2011. Additionally, there is a lack of theoretical studies on this phenomenon (Pretorius, 2014). It is for this reason that this study involved an empirical investigation. The next limitation is the low response rate to the questionnaire as only 50% of the BRPs that were part of the sample responded to the questionnaire. As mentioned above, the results thus cannot be generalised. A further limitation is that the questionnaires were completed by practitioners based on their personal experience of PCF and cannot be generalised to the entire population of BRPs. The limitation for the sample frame for interviews as the sample was 12 BRPs in KZN. The selection of a different group of BRPs may yield different findings. Finally, as the sample may not be representative of the population, non-probability sampling could result in an outcome that is not illustrative of the population. Nonetheless, adequate saturation was achieved for the outcomes to be generalised. The study process of saturation was located principally at the level of data collection and from respondents' mutual viewpoints which appeared empirically confident that each of the categories were saturated.

In terms of recommendation, the research topic is a new one in the theoretical and empirical literature, thus explaining the exploratory research design that focused on constructing theory, rather than testing a specific one. Future studies could include descriptive ones that utilise either qualitative or quantitative methods to investigate the impact of PCF on real-life business rescue case studies (successful or not) since May 2011. Further studies could also be conducted to validate the findings of the current research.

ANNEXURE

Please allocate marks to each question as follows:

1. Do not agree
2. Do not agree subject to exceptions
3. Agree subject to exceptions
4. Strongly agree

OBJECTIVE 1					
WHAT ARE THE SOURCES OF FUNDING AVAILABLE FOR COMPANIES IN DISTRESS?					
(Insert a tick (☐) in the appropriate space)					
1.	Business Rescue is an option for firms in distress, there are adequate sources of funding available for companies in distress in KZN. Substantiate your answer below:				
2.	The two main sources of funding for companies who have filed for business rescue in KZN most commonly range from long-term loans to private investors seeking new options. Substantiate your answer below:				
3.	Post-commencement finance in KZN such as loan financing is the most common but often difficult to obtain as financial institutions are frequently trying to minimise risk and not increase it. Substantiate your answer below:				
4.	The least preferred method of obtaining finance is to approach new funders to invest in distressed companies, which include private equity. These organisations (particularly private equity) are either not well developed in KZN, or are hesitant to fund a distressed business. Substantiate your answer.				
5.	Development financiers (e.g. the IDC and Land Bank etc.) are seen as both very promising and suitable parties in KZN to provide financing. Substantiate your answer.				
6.	Factoring of debtors is a convenient option for a company in distress. This is a readily available source of financing for distressed companies in KZN. Substantiate your answer.				
7.	Companies in KZN have substantial sources of financing available to assist with financial recovery, allowing business rescue to be implemented sufficiently. Substantiate your answer.				
8.	Obtaining post-commencement finance for companies in business rescue processes poses a challenge in KZN, due to business rescue and post-rescue finance being a fairly new concept that people do not fully understand. Substantiate your answer.				
	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE
1					
2					
3					
4					
5					
6					
7					
8					

OBJECTIVE 2					
WHAT ARE THE FORMS OF FUNDING AVAILABLE FOR COMPANIES IN DISTRESS?					
(Insert a tick (☐) in the appropriate space)					
1.	Traditional financing such as debtor factoring is often used by companies in KZN with poor credit options in order to provide post-commencement finance to businesses in distress. Substantiate your answer below:				
2.	A useful form of financing is equity financing which means exchanging a portion of the ownership of the business for a financial investment in the business. Substantiate your answer below:				
3.	Personal liability loans (personal assets and insurance) are a weak form of financing for companies requiring post commencement finance in KZN. Substantiate your answer below:				
4.	Government grants and loans are a potential form of post-commencement finance but these are rarely utilised to their full extent as post-commencement finance options. Substantiate your answer.				
5.	Debt financing as a form of post-commencement finance involves borrowing funds from creditors. This form is available flexibly in KZN. Substantiate your answer.				
6.	Non-bank options, such as asset-based lending, which secures finance against an asset, is a fairly common form of financing. Substantiate your answer.				
7.	Strategic partners which involve some form of business enterprise (related or unrelated to the company in distress), can provide a form of post-commencement funding in KZN. Substantiate your answer.				
8.	The form of financing poses many risks when assessing funding options for business rescue. Business rescue practitioners should focus mainly on limiting the risks for the company in rescue rather than the financier. Substantiate your answer.				
	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE

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