

Direct and indirect impacts of business rescue on employment

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ABSTRACT

Purpose of the study: South Africa's economic turmoil has resulted in a number of companies opting for business rescue, which is considered a better alternative than liquidation. Business rescue aims to resuscitate ailing companies and save them from liquidation. However, as companies enter into business rescue, little is known about what happens to the employees of these firms during the rescue proceedings. The purpose of this study was to investigate and get a better understanding of direct and indirect employment effects during business rescue. The study explored the direct and indirect employment effects during business rescue. Despite being associated with some negatives, such as retrenchments or loss of jobs, business rescue is claimed to play a vital role in saving jobs that would have been lost through liquidation. Under business rescue, remuneration continues, which positively affects economic activity and purchasing power parity. The study adds to a better understanding by exploring the interconnectedness of employment effects with the business rescue regime.

Design/methodology/approach: Eighteen participants were approached and interviewed using semi-structured interviews; thus, the study was qualitative in nature. The study explored and addressed the research problem through licenced business rescue practitioners operating in Gauteng, trade unions that have a fair representation of employees who have been affected by business rescue, and creditors who have had an opportunity to lend post-commencement financing to troubled entities.

Findings: The results show that business rescue impacts employees and their families as well as business suppliers, customers and shareholders. Some of the affected employees are breadwinners, and thus, any loss of job for them affects the people they are supporting. Suppliers, customers and shareholders are also affected by business rescue through loss of trading.

Recommendations/value: The regulators, legislator, managers and practitioners must detect financial distress early to reduce the negative effects associated with business rescue. When a business goes into rescue, stakeholders must approve the process earlier to have a better chance of rescuing the business.

Managerial implications: This research contributes to the management body of knowledge by exploring the interconnectedness of employment effects with the business rescue regime. While information on the importance and success of the business rescue process has been reported in the literature, there is much less on the impact of business rescue on the employees it saves from the liquidation.

Keywords

Business rescue proceedings; Business rescue practitioner; Companies Act; Direct employment effects; Indirect employment effects; Employees; Stakeholder theory.

JEL Classification: L29

1. INTRODUCTION

In a firm's most dire moments, management is very likely to consider reorganisation to implement any last attempts to snatch it from the jaws of liquidation. At this point *les jeux sont faits* (the die is cast) and the firm holds little sway over its fate (Rosslyn-Smith & Pretorius, 2018). The main function of business rescue is to resuscitate a financially distressed company and provide it with an opportunity to turn it around and become a sustainable and going concern entity (Rosslyn-Smith & Pretorius, 2015). South Africa has had its fair share of companies failing financially, and in the construction industry a number of companies had to apply for business rescue, such as Basil Read, Liviero Group (Pty) Ltd and Group Five Construction.

Chapter 6 of the Companies Act, No. 71 of 2008, introduces business rescue to the South African business environment, and the need for a successful regime is beyond doubt (Conradie & Lamprecht, 2018). Business rescue remains proportionately untouched in terms of academic literature and several aspects require substantial investigation (Rosslyn-Smith & Pretorius, 2015). As far as could be determined, little formal information is available on the employment effects experienced during business rescue proceedings. The current literature on business rescue mainly focuses on the implementation and success of business rescue proceedings at the cost of employees' welfare. There is not enough information on what exactly happens to the employees during business rescue proceedings. The employees referred to in the current study range from executive directors to the lowest level staff member employed by the company. Although different stakeholders are addressed within turnaround literature (Conradie & Lamprecht, 2015; Lusinga &

Fairhurst, 2020; Pretorius, 2018), there is still room for examining stakeholders and how they have an impact on business processes (Trahms *et al.*, 2013).

During environmental jolts, such as the global COVID-19 pandemic, ventures may find themselves in distress. This sudden shift may bring about a change in stakeholder relationships as far as decision-making is concerned (Pretorius, 2018). Businesses do not operate in isolation and are intertwined to different stakeholders; thus, there is a need for businesses to inform stakeholders about their processes, both good and bad (Smudde & Courtright, 2011). In South Africa, the fourth quarter of 2021 recorded an unemployment rate of 35,3 percent, which shows that the number of unemployed persons increased by 278 000 to 7,9 million in the fourth quarter of 2021 (Statistics South Africa, 2022). Understanding the significance of business survival in countering unemployment is important. Additionally, understanding the different effects that employees face when businesses face decline is equally imperative. The paper is anchored on the stakeholder theory, which argues that during a turnaround process, the business must consider the interests of all stakeholders (Trahms *et al.*, 2013).

The purpose of this study was to investigate and get a better understanding of the direct and indirect employment effects during business rescue. The study contributes to the academic field to reduce the current gap of limited literature in the field of business rescue. The study investigates and brings a better understanding of the current employment effects linked to successful and failed business rescue proceedings. Lastly, the study answers whether employees are active participants in business rescue proceedings.

The following research questions guided this research: Firstly, what are the direct employment effects during business rescue proceedings? Secondly, what are the indirect employment effects during business rescue proceedings? Thirdly, what are the employment effects in the reorganisation of successfully reorganised firms? Fourthly, what are the employment effects in the reorganisation of a 'better return than in liquidation' (BRiL) scenario? Fifthly, what are the employment effects in failed business rescue (thus ending in liquidation) firms? Lastly, to what extent are employees' active participants in the business rescue proceedings?

2. LITERATURE REVIEW

The literature review in the next section provides a detailed description of business rescue proceedings in South Africa and an in-depth analysis of how the new regime has catered for the

employees affected by companies that have filed for business rescue. Stakeholder theory, which was used as the basis of the research, is unpacked. Furthermore, a comparative analysis between business rescue and liquidation is unpacked, and an explanation is given on why business rescue is a better option than liquidation.

2.1 An overview of the South African business rescue procedure

The provision of business rescue in Chapter 6 of the Companies Act was implemented in May 2011 to assist financially distressed companies. In the event that the rescue is successfully implemented, the regime is likely to have a noticeable effect on the South African business world and a direct impact on various stakeholders, including employees (Conradie & Lamprecht, 2015). Business rescue provides some security and protection of jobs from retrenchment (Loubser, 2005).

2.1.1 Purpose of the business rescue procedure

Business rescue was introduced to revive ailing companies from liquidation and give them an opportunity to operate as going concerns. The primary purpose of business rescue is to restructure how the company is run to increase the chances of the company operating as a going concern, or if not possible, at least provide a better return to its investors than liquidation (Pretorius & Rosslyn-Smith, 2014).

2.1.2 Section 7: Purpose of the Act

Business rescue does not happen in isolation. It is founded on the principles of Section 7 of the Companies Act and on the South African Labour Relations Act, No 66 of 1995. Section 7 postulates that the purpose of the Companies Act is to promote the development of the South African economy. Section 7(k) affirms that the purpose of the Act is “to provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders”.

By successfully rescuing financially distressed ventures, business rescue can help lower the unemployment rate in South Africa, which in turn will have a positive impact on the gross domestic product (GDP) of the country. Having a positive GDP may further attract foreign direct investment, and thus, the importance of business rescue goes beyond saving jobs.

2.2 Stakeholder theory

2.2.1 Origins

Stakeholder theory has long been linked to strategy. The term initially meant to challenge the notion that stockholders are the only group to whom management need to react (Parmar *et al.*, 2010). An early definition proposed stakeholders as individuals or groups that can affect or be affected by the achievement of organisational objectives (Freeman, 1984). From the onset, stakeholder theory assumed that values are part of doing business (Freeman *et al.*, 2004). The theory hinges on how different groups or individuals have an effect on the business (Smudde & Courtright, 2011). Moreover, stakeholder theory focuses on how management of businesses pays attention to the interests of all relevant stakeholders (Smudde & Courtright, 2011).

2.2.2 Importance of stakeholder theory in turnaround management

The importance of stakeholders when a business is in distress cannot be ignored as they play a significant role in the recovery of the business. Stakeholder theory assesses the relationship between stakeholders and the business and how this relationship can improve or turnaround the business from the looming danger of liquidation (Lusinga & Fairhurst, 2020). Chapter 6 of the Companies Act mainly focuses on those who are affected by business rescue. Unfortunately, stakeholders are not defined and they are only mentioned once in the purpose of the Act, whose aim is to ensure that the interests of all stakeholders are balanced during the business rescue process.

Turnaround management literature has limited information on stakeholders; thus, this area of research may benefit decision makers by applying stakeholder theory and presenting how the interest of employees as key stakeholders are sorted during business decline and how this process affects the turnaround outcome (Trahms *et al.*, 2013). Knowing and understanding the importance of employees may be particularly useful to key decision makers (Pretorius, 2018). Stakeholders are significant in a business rescue event as they have the final vote to approve or deny the proposed business rescue plan.

2.2.3 Key stakeholders in a business rescue process

When a business is still functional, key stakeholders include directors, management, shareholders, owners, employees, customers, secured and unsecured creditors, and contractors.

A firm that is in distress have additional stakeholders, such as a turnaround practitioner or a business rescue practitioner (BRP), potential buyers, post-commencement financiers, the regulator, and the court (Pretorius, 2018). For the interest of the current paper, the following key stakeholders are unpacked: creditors (banks), employees and trade unions, and BRPs.

When a business is in distress, key stakeholders like banks, as secured creditors, normally opt for liquidation to protect themselves from any further damage. Banks, however, have an indirect influence over the decisions made by the BRP and can easily influence other stakeholders to their desired outcome (Pretorius, 2018). Lusinga and Fairhurst (2020) ranked secured creditors like banks as the most influential stakeholders as they are able to vote, sway the decisions of other voters and support the continuous operation of the business.

When a business is financially distressed and opting for a business rescue procedure, it appoints a BRP, who is licenced by the Regulator Companies and Intellectual Property Commission (Pretorius, 2015). Statistics obtained from the Companies and Intellectual Property Commission (2019) show that as of 10 January 2019, there were 434 licenced BRPs in South Africa. As provided in Section 140 of the Companies Act, upon assuming office, the BRP takes over the managerial tasks of the business. It is important to highlight some of the duties of BRPs as they are directly involved with the employees of the firm (Mpofu *et al.*, 2018). BRPs take up management control of the business, investigates the affairs of the business, prepare the rescue plan, and if approved, implements the plan. However, these tasks are complicated and not properly laid down in the Act (Pretorius, 2013). Business rescue is fast becoming a spoiled industry in South Africa with some BRPs enriching themselves at the expense of the ailing business and inexperienced creditors (Prior, 2014). It is imperative that the appointed BRP works hand in hand with the management of the business and the employees of the company to bring the company back to life. A good working relationship between the BRP and management is critical to the business (Naidoo *et al.*, 2018).

The role of employees as key stakeholders in the business rescue process is unpacked section 2.4. For businesses to operate as going concerns, it is necessary to not only focus on making providence of goods and services but also to consider the interests of stakeholders (Smudde & Courtright, 2011). There is a possibility that stakeholders may contribute to the success of the business. From previous research it is evident that different stakeholders are prominent in the revival of a distressed company and that when all stakeholders are engaged during the

turnaround process, the chances of reviving an ailing business are much higher (Lusinga & Fairhurst, 2020).

2.3 Business rescue proceedings

2.3.1 Business rescue plan

Upon commencing duties, the BRPs' main duty is to formulate a business rescue plan. The plan, which must be approved by the creditors, needs to be accepted and effected on time to achieve a successful turnaround (Naidoo *et al.*, 2018). The business rescue plan is designed to address shareholders, creditors and employees and the trade unions that represent employees. The plan, however, offers little information and insight into the role and future of the employees. It is important to understand that employees as key stakeholders are part of a successful turnaround (Rosslyn-Smith & Pretorius, 2015).

2.3.2 Termination of business rescue proceedings

Section (132) of the Companies Act stipulates that if business rescue proceedings have not ended within three months (or such longer time as the court may allow), the practitioner must prepare a monthly progress report. Business rescue proceedings are terminated by a court order setting the proceedings aside; that is, in the event that the business rescue commenced by court order, a court order may be issued to convert the rescue into liquidation proceedings where there is no prospect of rescue. A notice of termination may also be filed with the commission when the plan has been rejected or if the entity is no longer distressed.

Business rescue can also be set aside by any affected party through applying to court to have the resolution set aside on the grounds that there is no reasonable prospect that the company will be rescued or that the company has failed to comply with the procedural requirements set out in section (129) of the Companies Act. In the event that the termination of rescue is effected, employees will be affected most as their jobs will no longer be guaranteed. The success of the business rescue procedure is of vital importance to the employees and the economy at large.

2.4 Employees as “affected persons” in business rescue

Section (213) of the Labour Relations Act provides that an employee is “anyone, other than an independent contractor who works for another person or who assists in conducting the business of an employer”. When companies liquidate, employees are left at the mercy of no one as they

are the last group to know of the company's financial challenges. At the worst, employees know of the state of the company upon arrival and are welcomed by locked gates (Loubser, 2005). Employees play an important role in resuscitating ailing ventures, and there is a general consensus that successful turnarounds are important as it saves jobs (Lusinga & Fairhurst, 2020). Thus, employees are ranked as the second most influential stakeholders during a business rescue.

2.4.1 Employee participation rights

It is difficult to discuss the participation rights of employees during business rescue proceedings without giving a special mention to the Constitution of the Republic of South Africa, Act 108 of 1996, which enshrines several workers' rights as basic human rights (Silangwe, 2016). Chapter 6 of the Companies Act acknowledges the interests of shareholders, creditors, and employees. Much emphasis is placed on the protection of employees not only by recognising them as creditors if there are monies owed to them before commencement of business rescue but also by granting them participation rights in the procedure simply by being employees (Joubert & Loubser, 2016). Employees have at their disposal the right to object to rescue proceedings in terms of section 130(a)(i) of the Companies Act if they believe that the venture is not in any way financially distressed or that it cannot be rescued. The specific rights of employees include, among others, as specified in Chapter 6 of the Companies Act, being given the right of a notice for each court proceeding, decision meeting or any related event concerning the procedure. Employees also have the right to form a committee of employee representatives to be consulted by the BRP during the development of the plan and to be granted ample time to review the plan. They also have the right to vote for or against the plan and to make an application to court for an order to commence the rescue proceedings (Silangwe, 2016).

According to Silangwe (2016), financial distress in companies can be attributed to overemployment, which leads to a high wage bill and salary costs. Thus, it is vital that the business rescue provisions provide for retrenchments in a company where it is evident that such is the cause. In some instances, there is no need to retrench workers as the increased turnover caused by business rescue proceedings may cause employees to resign voluntarily, thereby limiting the stress that is associated with retrenching employees (De Abreu, 2018). Section 144 of the Companies Act substantially deals with the rights of employees during business rescue proceedings with the underlying philosophy of saving jobs and preventing the unfortunate results

that are associated with a company in distress. This was evident in the case of *Lidino Trading 580 cc vs Cross Point Trading (Pty)Ltd in Re: Mabe v Cross Point Trading 215 (Pty)Ltd* where the court ruled that the interests of employees feature notably as the object of business rescue proceedings (Nyoni, 2018).

Employees also enjoy the right to extensive information, which is hailed as the best form of employee participation since it empowers employees. In the matter *Solar Spectrum Trading 83 (Pty) Ltd vs AFGRI Operations Limited and Solar Spectrum Trading 83 (Pty)Ltd*, the employees of the company that was rooting for liquidation successfully applied for the company to be placed under business rescue. The court ruled in favour of the employees and granted that there was a reasonable prospect of saving the company and at the same time saving jobs (Joubert, 2011).

When a company is facing financial challenges, employees who are dissatisfied have the authority to apply to the court for the company to be placed under business rescue even if it is not the best solution to the challenges faced (Naidoo *et al.*, 2018). Conradie and Lamprecht (2018) revealed that the company as a legal entity is not of paramount importance but that the focus should mainly be on the business and its going concern value coupled with its ability to retain its employees and trading assets. The rights of employees during business rescue proceedings emanate from three sources in Chapter 6 of the Companies Act, namely the incorporation of employees in the definition of “affected persons” who have quite a lot of powers and rights, being recognised as creditors where the company is their debtor, and simply based on the fact that they are employees of the financially distressed company. Any employment retrenchments observed in the business rescue plan is subject to the Labour Relations Act (Joubert & Loubser, 2016).

According to Zwane (2015), section 23 of the Constitution makes provision for the importance of protecting the rights of employees. The provision laid significant protection on employees’ rights in the event that a firm is insolvent before the enactment of the Company Act of 2008. Business rescue procedure is a result of the constant push for fair labour practices. With this in mind, it is argued that Chapter 6 of the Companies Act does not explicitly reflect the protection of the employees’ interests if a firm is under business rescue proceedings (Conradie & Lamprecht, 2015).

During a business rescue event, the current employees continue to be employed on the same conditions as stipulated on their employment contracts. However, this provision is not cast in

stone as the Companies Act also grant provisions for changes that transpire during the ordinary course of attrition and where a common agreement has been reached by both parties (Zwane, 2015). It is further argued that employees possess many benefits that they may tend to abuse in the long run. A further argument highlights the disproportion that exists between the employees and other creditors' interests during business rescue proceedings (Swart, 2014).

The rights of employees in Chapter 6 of the Companies Act are extensive in that they may end up having negative effects on the success of business rescue. Notably, the core objective of business rescue is to preserve the business from liquidation, and some of the rights afforded to employees in Chapter 6 may end up causing more harm than good to the business. Furthermore, employees are elevated to "super creditors" as per section 131 (4)(a)(ii) of the Companies Act (Faul, 2015). A single employee is also afforded a very powerful right, which is the right to apply for business rescue commencement and which may cause temptation to abuse this right because the employee could have been aggravated by other issues against the company (Loubser, 2010).

It is, however, of interest that the South African business rescue regime offers employees an opportunity to be regarded as creditors while this right is reserved exclusively to creditors in both the United Kingdom and United States (Bradstreet *et al.*, 2015). It is important to always bear in mind that in a scenario where a company is doing everything in its power to satisfy its suppliers and creditors and at the same time stick to the strict labour laws, it may end up exposing the company to business rescue failure as the payroll obligations will choke its cash flow. It is therefore imperative that there is a balance between maintaining the rights of employees during business rescue proceedings and keeping the success of the business rescue procedure in mind. If these rights are not well preserved, unnecessary retrenchments of employees can take place (Joubert, 2018).

2.4.2 Impact of business rescue on employment

A key objective of business rescue is to prevent liquidations from swallowing companies. This hopefully leads to job preservation, which protects employees and their families from the disastrous multiplier effects of unemployment, which includes its negative impact on 'Black tax' (Beswick, 2017).

Business rescue statistics show some very unfavourable results, especially for employees. When a company files for business rescue, employees lose their sense of job security and stability, and

thus, they end up looking for alternative employment, which negatively impacts the business. Although it is argued that the morale of employees can be low even before the commencement of business rescue proceedings due to late payment of salaries, the impact of business rescue cannot be ignored (De Abreu, 2018). A lower employee moral negatively affects productivity as employees are disengaged from the business. Since employees do not see any future in the company, absenteeism tends to increase as they look for alternative employment. Employees involved with workplace safety may become more concerned with the security of their jobs and their future at the troubled company. The resulting decrease in safety levels may result in workplace injuries. Theft may also increase due to job uncertainties. All these factors affect the business negatively while it is trying to survive (De Abreu, 2018).

During business rescue proceedings, there is an increase in employee turnover rate, notably among key employees, further hindering the successful turnaround of the business. The increased turnover rate may cause a delay, if not a failure, in a successful turnaround as these key employees leave the company with institutional knowledge that takes time and money to replace (De Abreu, 2018). Scores of jobs can be saved during business rescue. This is evident from success stories of companies like Top Tv (On-Digital Media), Pearl Valley Golf Estates, Advance Technologies Engineering (aeronautical), Meltz Success (retail) and Ellerines, which all went under business rescue and exited successfully. Despite the fact that some of the companies or its divisions were acquired by third parties, better returns than in liquidation were attained and scores of jobs were saved, which would have been lost if the companies had filed for liquidation (Levenstein, 2018).

2.4.3 Trade unions

The Labour Relations Act defines a trade union as “an association of employees whose principal purpose is to regulate relations between employees and employers, including any employer’s organisations”. In South Africa, trade unions are included in business rescue proceedings as affected persons who have the right to apply for an order commencing rescue proceedings. This has been viewed as excessive, especially because other countries like the UK and USA do not have this exclusive right (Loubser, 2010). The Labour Relations Act provides that employees who are represented by a trade union may not act as individuals but must do so through their trade union.

The challenges faced by employees during business rescue can be attributed to the bad relationship that often appears between BRPs and respective trade unions. Generally, trade unions do not understand business rescue, and thus, excessive demands are sometimes made by these unions at the expense of saving the business (De Abreu, 2018). It is feared that the powers given to employees and trade unions during the business rescue process may have been excessive as they may lead to a deliberate abuse of such powers, causing unending salary negotiations (Bradstreet, 2011). Nevertheless, an unfounded application will be turned down by the courts, but unfortunately the damage would have been done to the company's reputation, its credit rating and the business at large. It is therefore necessary to balance the powers between trade unions, employees and the company by having a section that provides for a court to be able to issue an order for payment of damages to the company against an applicant for business rescue who are believed to have acted in *mala fides* (Loubser, 2010).

2.4.4 Business rescue versus liquidation

Liquidation's main focus is to obtain any amount of money left in the dying business to pay off its liabilities, but business rescue allows for the restructuring of the distressed business so that it can continue operating as a going concern. Business rescue aims to provide a favourable result to creditors, and therefore, it is preferable to liquidation. In principle, liquidations are destructive as they result in the 'death' of a business that was previously boosting the economy and providing employment to the society it serves. Thus, there has been a paradigm shift from the practice of liquidation to one that is believed to yield better results (Bradstreet, 2017).

If successfully implemented, business rescue saves jobs. In a country like South Africa where the unemployment rate keeps soaring, it is critical that jobs are saved by any means necessary. Although it remains a fact that companies start retrenching employees at the first signs of trouble, the ability to save some jobs and not shut down the company still needs to be applauded and recognised. Liquidation offers automatic and immediate suspension of all forms of employment and 45 days after the date of the final liquidator; all employment is terminated. In contrast, business rescue proceedings provide for employees to be employed on the same terms and conditions as before and further grants employees' rights to the proceedings (Loubser, 2013).

3. METHODOLOGY

3.1 Research design

This study aimed to achieve a deeper understanding of the direct and indirect effects of business rescue on employment and the extent to which employees are active participants during business rescue proceedings. The time horizon of the study was cross sectional as all participants were interviewed once. The data for the study was collected primarily through semi-structured interviews with participants who were well versed with business rescue proceedings in Gauteng Province.

3.2 Sampling

The study explored and addressed the research problem through licenced BRPs operating in Gauteng, trade unions that have a fair representation of employees who have been affected by business rescue, and creditors who have had an opportunity to lend post-commencement financing to troubled entities.

Since the aim of most qualitative studies is discovering meaning and uncovering realities rather than generating a measurement of whether a person within the target population has experienced the phenomena, the sampling method employed for this study was purposive sampling (Polit & Beck, 2012). Homogenous sampling was used to sample BRPs, trade unions and creditors based on the experience the participants have had dealing with business rescue. The selection process for individual participants included homogenous and snowball sampling, which are both greatly used by qualitative researchers (University of Pretoria, 2019). To form part of the proposed study, individuals from the above identified organisations needed to possess the necessary knowledge of what business rescue entails, with a special emphasis on the relationship between business rescue proceedings and employees. The study had a sample size of 11 BRPs, three trade unions, and four creditors, all operating in Gauteng. After interview number 14, 96 percent of the codes were generated and the last four interviews did not yield any new significant data, indicating that data saturation had been reached.

3.3 Data collection

Data for the current study was collected through one-on-one semi-structured interviews with the sampled participants. The study used semi-structured interviews as they allow for the exploration

of new ideas as they emerge during the interview (Saunders *et al.*, 2007). Eighteen participants were interviewed face to face in their offices, restaurants, or on campus. A pilot study was conducted with an experienced BRP, two creditors and a trade union representative. Positive feedback was received, and no major changes were made to the discussion guide. The final data was collected between August and September 2019. All interviews were recorded using a recording device.

3.4 Data analysis

Thematic analysis was used to identify, analyse and report the findings generated during data collection. The researcher familiarised herself with the data by listening to the audio recordings and transcribing them verbatim. Atlasi-ti software was used to further analyse the data and generate codes. Themes and subthemes were identified from the codes, and a code list was generated. Codes and themes were repeatedly revised, amended and finally aligned with the research questions.

3.5 Trustworthiness

Trustworthiness was achieved by using the following criteria to demonstrate the quality and rigour of the study: credibility, dependability, conformability and transferability (Polit & Beck, 2012). Credibility was ensured by using semi-structured interviews to collect data. A discussion guide was used that was verified by an experienced supervisor, and this also enhanced the credibility of the research findings. The use of probing questions ensured that participants' meanings were understood.

The use of person triangulation, which involves collecting data from different types of people, enhanced the dependability of the study (Polit & Beck, 2012). To ensure that conformability was observed, the researcher did a pilot study on each unit of analysis, which was reviewed by an experienced researcher prior to data collection. Questions asked in the discussion guide were open-ended and did not reflect any form of coercion. Lastly, the recordings from the interviews were transcribed verbatim to ensure information accuracy. To conform to transferability, the researcher ensured that data saturation was achieved, thereby having less opportunity of excluding data. Including verbatim quotes from study participants contributed to the authenticity of the study.

3.6 Ethical considerations

The Research Ethics Committee of the Faculty of Economic and Management Sciences at the University of Pretoria approved the study in August 2019. To conform to the ethical principles of informed consent, participants were asked to read through and sign the informed consent form prior to commencing the interviews. The form explained the purpose of the study and accentuated that participation in the study was voluntary and they could withdraw at any time. Assurances of anonymity and confidentiality were provided, and this requirement was met by using pseudonyms for the names of the individuals in the final presentation of the data.

4. FINDINGS AND DISCUSSION

The study identified six main themes related to the study's research questions (see Table 1). These themes and their related subthemes are discussed in this section, accompanied by descriptive quotations from participants and linkages to relevant literature.

Table 1: A summary of research questions and themes

Research questions	RQ1: What are the direct employment effects in business rescue proceedings?	RQ2: What are the indirect employment effects in business rescue proceedings?	RQ3: What are the employment effects in the reorganisation of successfully reorganised firms?	RQ4: What are the employment effects in the reorganisation of a BRiL scenario?	RQ5: What are the employment effects in failed business rescue firms?	RQ6: To what extent are employees' active participants in business rescue?
Themes	Theme 1: Direct employment effects	Theme 2: Indirect employment effects	Theme 3: Successfully reorganised firms employment effects	Theme 4: Reorganised BRiL employment effects	Theme 5: Failed business rescue employment effects	Theme 6: Employee participation
Subthemes	Retrenchment effects Psychological imbalance Change in employment conditions Remuneration effects Change in behaviour	Multiplier effects Social impact Community challenges	Job preservation Improved morale	Remuneration effect dependent Future uncertainty	Low morale Loss of jobs	None identified
Knock-on effects: Influx in emigration–Low GDP–Less income Reduced tax collection–Impact on schools						

Source: Own compilation

4.1 Direct employment effects

4.1.1 Retrenchment effects

The study found that retrenchment poses a major direct employment effect in business rescue. When BRPs start business rescue proceedings, it is imperative that they reduce the number of employees to save the business, and in doing so, preserve some jobs. This can be supported by the following quote:

And sometimes retrenchment as unfortunate and as unpleasant as it is, is necessary for a business to remain healthy, to remain viable. (BRP 8 male)

Participants indicated that all levels of employment may be affected by retrenchment as sometimes the top, middle or lower levels are removed. However, retrenchment is not only about cutting costs but also about ensuring that the business remains sustainable, which normally necessitates a reduction in the workforce. This is supported by the following quotes:

It's not just about cutting costs, it's about rightsizing and having the right number of people doing the job. (BRP 6 male)

All because when we go into rescue, sometimes we remove the top management, we remove some of the middle management, we remove some of the lower level of the company. (BRP5 male)

Participants highlighted that when business rescue starts, instead of waiting for retrenchments to be effected, some skilled employees change jobs as they do not want to be associated with failure. This is consistent with the findings of De Abreu (2018:83) on the indirect costs of business rescue, and is supported by the following quote:

Another effect is your good people leave immediately because they can find other jobs. (TU1 male)

4.1.2 Psychological imbalance

In terms of how business rescue affects employees of the company, the study identified a number of emotions that affect employees, such as anger, confusion and anxiety. Participants indicated that when business rescue proceedings commence, a direct effect of psychological imbalance is evident in most employees. This imbalance is caused by employees only realising that the

business is in trouble when a practitioner walks in. The perceptions surrounding these psychological imbalances are represented by the following quotes:

I think the first effect is that there is a bit of confusion from the employees' perspectives because they don't seem to understand what is going on, and the problem is that employees only find out when a BRP walks in. (BRP 1 male)

It comes with a lot of stress and anxiety because as much as you can say that we have job security thing, it's perceived either way because it's not a guarantee. (TU3 male)

4.1.3 Change in employment conditions

The study found that employees that escape retrenchment can be affected by changes in their employment conditions. Participants highlighted that in some instances working hours and shifts are reduced to cut costs. Although jobs are lost during business rescue proceedings, participants also indicated that a number of jobs are retained that would have been lost during liquidation. This is supported by the following quotes:

It must be a change in job or change in role. There probably will be fewer employees because inevitably there will be some downsizing. (BRP 8 male)

Maybe change of roles on what you used to do you no longer do that. You just put people in different roles and change of reporting structures. (BRP 2 female)

4.1.4 Remuneration effects

The findings from the study indicate that business rescue proceedings provide for the continuation of salary payments to employees who are still employed; this would not have happened if the company had gone into liquidation. Participants were of the view that although in some instances salaries were reduced or delayed, in business rescue there was hope that salaries would be paid. Furthermore, business rescue ensures all employees receive their retrenchment packages when retrenchment is used as part of cost cutting. This is supported by the following quotes:

What is very good about BR [business rescue] is that the labour laws are adhered to ... you have to give a proper retrenchment and you have to pay whatever is due to employees. (BRP 6 male)

I have had to cut salaries; I have had not to pay them because usually directors and top management are earning fat salaries. (BRP 9 female)

4.1.5 Change in behaviour

The study findings indicate that the commencement of business rescue leads to behaviour changes among employees. For example, some employees from top management become over-friendly with BRPs, which raises suspicion. In contrast, unity and commitment are also evident as many employees appear willing to work together to save the business. However, in some instances there is a culture of chaos caused by the confusion of not understanding the business rescue process. These changes are supported by the following quotes:

Generally, everyone fights. They want to ignore that there is a problem. They want to ignore that the company is going to close down. (BRP 4 male)

Well it depends. The friendlier are the people, the more they are hiding from you. I have learned from experience. (BRP 5 male)

Other participants indicated that in some instances, especially when a rescue has been initiated by creditors, directors are hostile towards the rescue process and unwilling to share information with the practitioner. This is supported by the following comment:

You find a lot of time that there is friction between the peers or between the directors and the business rescue practitioner because you disagree on things going forward. (BRP 10 male)

4.2 Indirect employment effects

4.2.1 Multiplier effects

The study found that indirect employment effects in business rescue often result in a multiplier effect where not only the employees of the venture under business rescue are affected but also other stakeholders. These stakeholders include suppliers, customers and shareholders of the affected company. The study found that suppliers are often unhappy when the business they supply goes into business rescue as they may end up financially distressed, especially if they are a major supplier. The type of business affects the effect of business rescue on customer relations. It is evident that customers are lost due to loss of trust, especially in companies that engage in

long-term contracts. Regarding shareholders, participants offered mixed feelings as some were of the view that when a company is under business rescue, shareholders lose or dilute their shares to raise post-commencement financing. These effects are supported by the following quotes:

We have been in a situation where you know businesses were built around one entity because it used to be a giant, now when that giant collapses it affects everyone. Let's look at Basil Read what happened. All the suppliers that supplied there have also gone under because they could not recover from that. (BRP 1 male)

Shareholders, they lose their money. They are the last people in the pecking order. They are absolutely last, so they tend not to get anything even out of successful BR [business rescue]. (BRP 8 male)

4.2.2 Social impact

The study found that employees often find themselves in huge debt or resort to loan sharks to cover the gap caused by the non-payment of salaries. Other employees become alcoholics, causing family tensions in the process. Spouses, children and extended family are all affected because paying fees or providing for basic needs becomes a challenge. Some employees resort to using their savings to support their families because of the non-payments of salaries. Other participants were of the opinion that affected lower-level employees find it difficult to be marketable because of lack of qualifications, and thus, may end up resorting to crime. This is supported by the following quotes:

We have experienced people get into huge debt because during that time they start to borrow. You have got loan sharks. You have got people lose cars and houses. (TU1 male)

Just watch on the TV, you see what is happening in our country, but job losses has a factor on all this and increased crime which comes as a result of poverty and people that are desperate. (B4 male)

4.2.3 Community challenges

The study found that when businesses go into business rescue, some corporate social investment projects are terminated. Often as business rescue is initiated temporary and casual employment is stopped. This impacts the people who reside in the community in which the business operate.

Ghost towns are created because of the decline in economic activity. This is most evident in mining towns. Customers also end up travelling long distances to buy products that were once easily accessible, further straining their pockets. This is supported by the following quotes:

Most of the mining towns, if you look at them today, they are dead. They are ghost towns because these mines have shut down. Once the mine has shut down there is no activity.

(BRP1 male)

So when Highveld steel BR [business rescue] was unsuccessful, 600 SMEs lost their futures. Witbank as a town has changed totally because of unsuccessful BR of Highveld steel. (BRP8 male)

4.3 Successfully reorganised firms' employment effects

4.3.1 Job preservation

The study findings reveal that when a company successfully reorganises, the number of jobs that are preserved compared to liquidation are considerable, and this should be regarded as a success. It is inevitable that some job losses will be recorded; however, they will not be as massive as if liquidation had transpired. This is supported by the following quote:

Well, it depends how it restructures. OK, inevitably with a restructure there will be some job losses. There usually is, and I think if the business is successfully restructured, you do save jobs and can save jobs. (BRP6 male)

Participants also revealed that in some instances the salaries for the saved jobs are reduced and employment contracts are revised to cut costs and keep the business going. The following quotes support this:

Maybe change of roles on what you used to do. You no longer do that, you just put people in different roles and changes of reporting structures. (BRP 2 female)

So the effect of it is in rescue, successful rescues lead to job saving. Jobs that would never have been saved, and it's much easier to save a job than create a job. (BRP 5 male)

4.3.2 Improved morale

Consistent with the findings of De Abreu (2018:81), the study findings reveal that employee morale may improve when the business they once thought was closing is successfully

restructured as a going concern. The continuation of remuneration and the knowledge that they still have a job that caters for their needs boosts employees' morale. Improved morale leads to increased productivity. This is supported by the following quotes:

Hugely better because you are taking them from uncertainty to certainty. There is some certainty in rescue that I still got a job and that is a fundamental thing you know, hope. (BRP 5 male)

What I found is that my personal experience they are so happy to see me, and they develop trust very quickly. (BRP 11 male)

4.4 Reorganised BRiL employment effects

4.4.1 Remuneration effects dependent

In a successfully reorganised BRiL scenario, participants offered mixed feelings about the level of security and uncertainty associated with a company being sold. Where the level of security is concerned, participants were generally optimistic that the selling of the company would save jobs and ensure the continuation of salaries. This is supported by the following quotes:

Then what we did in XXX company is that we did this deal with YYY and ZZZ. We gave them the stores, we assigned the leases to them, and we did that with one condition that the jobs were offered to the people. (BRP 6 male)

BRiL with a turnaround saves every day. Every single minute of the day is better than liquidation. (BRP 5 male)

4.4.2 Future uncertainty

Some participants, however, were of the opinion that a BRiL scenario still provides some form of uncertainty for employees who are sceptical about whether the new employer will provide them with the same conditions as before. However, some employees do not really care where the company finds itself as long as they are still employed; thus, they do not care whether the company is sold or restructured. This is supported by the following quote:

I do not think they care, to be honest. They only need one thing, am I coming to work tomorrow or am I getting paid? (BRP 7 male)

4.5 Failed business employment effects

4.5.1 Low morale

When an attempted business rescue process fails, the study findings reveal that the morale of the employees is very low. Some employees become suicidal as the challenges associated with unemployment dawn on them. A failed rescue attempt causes deep depression in employees who once hoped for a revived business. These findings are supported by the following quotes:

If it's a failed attempt, what we have realised is that the employees feel like failure. They find it difficult to pick themselves up. (TU 2 female)

So when it is failed attempt, we have now seen with other processes where we experience some people committing suicide because it's just that you feel depressed. (TU1 male)

4.5.2 Loss of jobs

The study findings further reveal that a failed rescue attempt process leads to loss of skilled employees and overall job losses. A failed rescue attempt leads to liquidation, and when a business is liquidated, the loss of jobs is inevitable. This is consistent with the findings of De Abreu (2018:83). Participants, however, revealed that although the jobs are lost, the employees receive their full pension fund, unlike if liquidation were initiated first. This is supported by the following quotes:

Yaah, because if it's a failed BR [business rescue], it means that they are going to lose jobs ..., the company stops operating and ultimately employees will lose their jobs. (BRP1 male)

In business rescue, normally those that lose their jobs they can at least get partial payment, and for a year or two they can get their outstanding payment. (TU1 male)

4.6 Employee participation

Participants offered mixed feelings on the level of participation of employees during business rescue proceedings. Most BRPs and creditors interviewed held strong opinions that employee representatives or trade unions are not active participants. Trade unions or employee representatives seldom attend meetings called by the BRPs. However, it is alluded that this is a consequence of a lack of knowledge of those meetings by the lower-level employees and some

trade unions. Some participants were of the opinion that the communication breakdown between practitioners, top management and lower-level employees detrimentally affects the participation of employees.

There is concern regarding the participation of trade unions. BRPs and creditors reported that trade unions only make noise and create chaos when big entities are under business rescue to get media attention but that their participation in employee meetings are minimal. Participants revealed that trade unions do not spend time on businesses with a few employees as they prefer bigger entities with many employees. This is supported by the following quotes:

I think the participation of employees in the process, there is room for them to participate, they are allowed to participate, but you seldom see employees at the meetings. (B1 male)

They are always there to make noise and be on TV. That is about it. There is nothing else of it. (BRP 7 male)

I don't think employees understand it. It's meaningless to them. It's irrelevant, and they don't care whether it's BRiL, reorganisation, sell or acquisition. If their jobs are preserved, they are OK. (BRP 8 male)

Contrary to the above findings, all trade union representatives interviewed claimed that they are active participants in business rescue proceedings and that they attend meetings. However, the trade union participants argued that most BRPs prefer to keep employees in the dark until the rescue process has failed. This is supported by the following quotes:

Yes, we do, we do participate. (TU 2 female)

It depends on the union. If they have got an active trade union which is informed and understands the process, then the employees will be active participants. (TU 1 male)

We are just told that there are some offers that I received, then they are considering but with no details ... it was the whole thing of saying that I can't give up details at such a sensitive stage. (TU 3 male)

These findings are consistent with the findings of De Abreu (2018:83) on the sour relationship that often appears between BRPs and trade unions.

4.7 Further effects

The study findings further revealed that business rescue often has negative effects, especially on the South African economy. In the event that jobs are lost when trying to save a business, the country risks losing skilled employees who migrate to other countries. A high unemployment rate leads to a lower GDP for the country. SARS' tax collection is also reduced as people no longer earning salaries no longer contribute, and thus, general government spending is strained. Former employees who have children of school-going age will no longer be able to afford their children's tuition fees, which can ultimately affect the schools' sustainability. These further effects are supported by the following quotes:

The thing is, if there are very skilled people like engineers, your good engineers in a construction company, even manufacturing, the guys will have the IP. If they leave, they quickly move to other countries. (BRP 3 male)

Obviously, possible loss of employment, if one person lose a job about 10 or 15 people are affected at the background. Sometimes we won't see those direct impacts, but for the fact that somebody lost a job this person was looking after 10 or 15 people, those people will also be impacted. The government makes money out of getting tax, so once people lose jobs, then there is less money that the government is collecting. (B3 female)

5. CONCLUSION

5.1 Summary of findings

The intent of this study was to get a better understanding of the direct and indirect employment effects of business rescue. The study found that business rescue leads to some employees being retrenched to cut costs. However, the number of jobs saved during business rescue compared to liquidation should be appraised. Additionally, psychological effects caused by the business rescue process can lead to a change in employees' behaviour. Employment conditions may change during business rescue as a result of trying to save as many jobs as possible. This can further lead to salary cuts and reduced working hours. The study revealed that business rescue impacts employees and their families as well as business suppliers, customers and shareholders. Some of the affected employees are breadwinners, and thus, any loss of job for them affect the people

they are supporting. Suppliers, customers and shareholders are also affected by business rescue through loss of trading.

The study demonstrated that when business rescue is successfully implemented, jobs are saved. Although the number can be marginal, it is better than liquidation. Successful business rescue also boosts the morale of employees, which leads to increased productivity. The findings revealed that in a reorganised BRiL scenario, there is mixed feelings when certain divisions are sold to another entity and employees are often willing to move to the new buyer. Other participants highlighted the uncertainty that employees have when they are transferred to a new employer because they fear the unknown. Employees often do not understand the rescue proceedings and associated changes, which can lead to frictions between employees and BRPs. The study revealed that a failed business rescue has dire consequences on employees and can even lead to some committing suicide. A failed business rescue attempt leads to massive job losses and ongoing pain for the employees; however, employees may find some comfort in knowing that their pension funds will be paid in full, unlike in liquidation.

The findings of the study revealed mixed feelings from the participants about employee participation in business rescue proceedings. Some participants stated that trade unions and employee representatives are not active and seldom attend employee meetings. However, the trade union representatives interviewed claimed that they are active. The challenge trade unions face is that they are not informed of important decisions made during the rescue process.

It was found that business rescue has some negative effects on the South African economy because skilled employees migrating to other countries and loss of jobs lead to reduced revenue collection by the government.

5.2 Theoretical implications

The study's theoretical implications add to literature by exploring the interconnectedness of employment effects with the business rescue regime. While information on the importance and success of the business rescue process has been reported in the literature, there is much less on the impact of business rescue on the employees it saves from the liquidation. The study findings contribute to the business rescue regime by providing insight into how the employees as stakeholders in business rescue are affected by the process and the knock-on effects business rescue has on the South African economy. The findings provide knowledge about the level of

participation that employees have during business rescue proceedings compared to what is stipulated in Chapter 6 of the Companies Act.

5.3 Managerial recommendations

It is necessary to detect financial distress early to reduce the negative effects associated with business rescue. In the event that a business goes into rescue, stakeholders need to approve the process earlier to have a better chance of rescuing the business. Proper funding mechanisms are needed to ensure the rescue is a success. The government must establish a form of funding that can assist businesses under rescue.

A proper pre-assessment of the business is necessary before a BRP takes up a case. A proper pre-assessment reduces the possibility of an attempted but failed business rescue process where employees are exposed to ongoing uncertainty and discomfort. BRPs must keep communication channels open among all stakeholders, especially employees. It is imperative that employees are not kept in the dark. In order to reduce the indirect effects of loss of jobs, the government must set up skills training programmes, especially for lower-level employees. In the event that those employees are retrenched, skills training will enhance their future employability or will put them in a position to establish small businesses to sustain their families.

5.4 Limitations and further research

The three different samples used in the study were not proportional. The number of BRPs superseded that of creditors and trade unions, and owing to the small sample size of trade union representatives, their views may not be specific and generalisable. Furthermore, the trade union opinions were contrary to those of the BRPs, and thus, a proper comparison and analysis were not reached. It would be beneficial for future research to consider interviewing more trade union representatives. The study also did not analyse the effects of business rescue from the employees' perspective. It would be valuable for future research to investigate the experiences and views of the people who are at the helm of the whole process.

The creditors who were interviewed said it is difficult to know which emotions employees experience during the business rescue process as they do not engage with employees on a daily basis. Most participants found it hard to identify the indirect effects associated with business rescue. Further research that focuses on the indirect employment effects of business rescue will add value by creating a better understanding of whether the process is serving the purpose of the

Companies Act by creating and using companies in a manner that enhances the economic welfare of South Africa.

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