



## Ascertaining the Impact of Post-Commencement Finance on Business Rescue in Kwazulu-Natal, South Africa

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### Abstract

Corporate rescue in South Africa has been bedevilled by many challenges. The new South African Companies Act 71 of 2008 (hereafter referred to as "the Act"), which came into effect in May 2011 contains a new chapter titled "Business rescue and Compromise with Creditors". Post commencement finance (PCF) is finance or credit approved for a company in business rescue, which is regulated by section 135 of the South African Companies Act. The Act provides for companies to secure PCF as turnaround investment to secure its financial well-being. However, it is difficult for a distressed business to access PCF as it is challenging to operate on a cash basis when they face the likelihood of insolvency or forced sale of their assets to remain sustainable. This was evident during the recent global financial crises when obstacles to accessing PCF were identified as the chief deterrent for businesses that require rescue or reorganization (Pretorius and Du Preez, 2013). A review was performed to assess what the impact was, of a distress company obtaining PCF in KZN. Empirical research includes a qualitative research design engaged to explore the impact of PCF on the success of business rescue efforts for distressed companies in KZN. Insights and understandings were drawn from the participation of business rescue practitioners in Kwa Zulu Natal. This included addressing the challenges of obtaining PCF and what finance is available. The findings from the literature review confirm that the barriers to obtaining PCF are the most 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.

**Keywords:** Post commencement finance; Business rescue; Corporate rescue; Collateral; Distressed companies; Agency theory; Pecking order theory; Trade off theory; Deficit.

**JEL Classification:** M14; M21; M40; Q56.



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### 1. Introduction

Business Rescue within the South African Companies Act (hereafter referred to as "the Act") is defined as a business is factually insolvent if its liabilities exceed its assets, even though it is still able to pay its debts. Generally, start-up companies are considered to be factually insolvent. Thus, factual insolvency is not, in itself, motivation for a business to be retained into liquidation (Rushworth, 2010). 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 is instituted by either the temporary supervision of the company, and of the management of its affairs, business and property, by implementing a temporary moratorium on the rights of claimants against the company or in respect of property in its possession or lastly by the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.

Efforts to save a financially desperate company are based on the hope that the rescue procedure will better enable it to satisfy its creditors' claims, as opposed to immediate dissolution of the company (RSA, 2008). The process begins with an affected person (shareholders, creditors, a registered trade union or employees not represented by a registered trade union) applying to the court for business rescue proceedings to commence (RSA, 2008). Business rescue includes PCF which is discussed below.

A critical factor in determining the success of business rescue is post-commencement finance (PCF) (Pretorius and Du Preez, 2013). The original contribution to knowledge on business rescue is that there is a significant lack of

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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.

The province of KZN is the second most populated province in South Africa, with Gauteng being the first. KZN is estimated to have recorded a seasonally adjusted increase in GDP of 0.6 per cent in 2016. The provincial economic outlook was at a subdued route in 2016, with growth at 1.1 per cent and 1.5 per cent in 2017 and 2018 respectively. These growth rates are, however, below the targeted 5 per cent required to achieve job creation. The challenges include poverty due to job losses, unemployment, inequality and other socioeconomic challenges facing the province. Only 57% of the labor force is employed earning above minimum wage and KZN is confronted with the challenge of the current account deficit emanating from the weaker international demand for domestically produced goods and the strengthening of the exchange rate of the rand which more than offset the benefit arising from higher international commodity prices. (Socio-Economic Review and Outlook 2017/2018).

According to the CIPC, the main objective of the legislated business rescue process is to avoid liquidations and job losses by providing companies with protection against creditors who want to file for liquidation (Rajaram, 2016). This study examines the impact of PCF on distressed companies within the province of KwaZulu-Natal (KZN), South Africa. A qualitative research design was employed to ascertain what the impact was, of a company’s success if PCF was obtained. This included 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, are also explored. Six BRPs were interviewed to obtain their views on this phenomenon. Content was descriptive in nature and a qualitative analysis was lent to analyse the data.

### 1.1. The Concept of PCF and the Turnaround Stages of a Company’s Life Cycle

Section 135 of the Act defines PCF as funds advanced to a business subsequent to the start of business rescue (RSA, 2008). In order to encourage financial institutions to support a business rescue, section 129 of the Act provides that any reserves advanced to businesses such as post commencement investment, will have priority over further resources rented to the business, plus those in the resource’s category, in the event of bankruptcy.

Where a business practitioner that is unable to save the company, insolvency payment procedures will follow immediately. PCF can be used to pay the practitioner, or as working capital or any other means of maximize the possibility of success.

Companies go through various stages in their lifecycle and model was drawn up by (Pretorius, 2008) presents the different stages a company undergoes during its transition. The four states of financial health and their most important attributes (they are not expected to occur linearly) are as follows (Pretorius, 2008):

- Performing relatively well which does not necessarily signal improvement. The firm has ample assets, is not showing signs of distress and can function normally, barring unforeseen circumstances.
- Operating in a deficit is marked by dwindling assets, and frail core operations. Notwithstanding decent demand for its products, the gross operating margin is challenged, production drops and the firm is unable to gain market share due to incapability to effectively respond to demand. The business is thus cash-strapped.
- Severe under-performance: Firms in this category have copious assets but declining trade, due to uncompetitive price structures.
- Distress: When no contingency plans are in place to counter a company going into distress, a decline converts into a crisis. The firm suffers from scarce resources and insufficient cash due to a lack of sales.

However, no formal association has been established between the lifespan of a company and its likelihood of being in need of business rescue due to deteriorating performance (Corporate Renewal Solutions, 2011b).

Accounting theory is based on conventions and approaches that inform accounting principles and methods that govern financial reporting. Theories of accounting that impact business rescue are:

Table-1.

Agency theory	Agency theory proposes that a firm can be observed as a link of agreements (loosely defined) amongst resource owners. An agency association comes about when principals appoint agents, to accomplish a task and thus delegate decision-making to the latter. This usually incurs additional costs (Scott, 2015).
Trade-off theory of capital structure	The trade-off theory of capital structure posits that a business decides how much debt finance and equity finance to utilise by harmonizing the costs and benefits. The classical form of the theory measured the equilibrium amongst the dead-weight expenses of bankruptcy and the tax saving benefits of debt. Agency costs are often taken into account in this calculation (Scott, 2015).
Pecking order theory	The pecking order theory refers to companies that prioritize their sources of financing (from internal financing to equity) according to the principle of least effort, or least struggle, choosing to increase equity as a funding means of last resort. This relates to the principle that internal reserves are utilised first, and when that is exhausted, debt is supplied. Once it is not practical to issue additional debt, equity is issued (Scott, 2015).

Source: The above table was reconstructed from information provided in Financial accounting theory (Vol. 2, No. 0, p. 0) by Scott (2015).

Business rescue falls within the agency theory as it describes the affiliation between principals and agents in business. This theory underpins the relationship between business practitioners and the companies they assist.

## 2. Problem Statement Research Objectives and Method

As it is specified within the findings of various studies which confirm the opinion that PCF is vital for success in business rescue. The impact of PCF in a province is acknowledged as a critical factor and whether business rescue is to succeed. The knowledge gap analysed in this study is hence whether PCF has an impact on business rescue within the province of Kwa Zulu Natal, South Africa.

The business rescue protocols introduced by the new South African Companies Act in May 2011 offer a small time frame to evaluate the outcome and competence of PCF. The data obtained was analysed by developing summaries and investigating key relationships using descriptive analysis. The respondents' perceptions on issues such as the impact of PCF on the success of business rescue were collated and analysed to formulate credible conclusions. The qualitative analysis was based on an interpretative philosophy that sought to reveal the meaningful and symbolic content of the qualitative data.

Internationally, PCF plays an integral role in business rescue, however within KZN an in-depth analysis of how PCF could transform the business sector will assist in ensuring the survival and growth of businesses and resuscitation of companies in distress. Companies in KZN seem to have excessive difficulty in obtaining PCF, calling for an investigation on what the impact of PCF would be on distressed companies. Ensuing from the potential knowledge gap, this study aimed to determine what effect PCF was, for a company in distress in KZN.

The research questions was formulated as follows:

- What is the impact of PCF on business rescue in KZN?

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 study population was leading BRPs in KZN that are professionals in business rescue and PCF. The respondents' perceptions on issues such as the mechanisms and sources of funding available for the success of business rescue were collated and analysed to formulate credible conclusions.

In respect of the research question, a detailed review was undertaken, in understanding the perceptions of BRP's in KZN. In addition to the literature review, a detailed exploratory questionnaire was administered to six business rescue practitioners based in KZN to solicit their experiences of PCF, and what was their experience of the impact of PCF on business rescue within the province of Kwa Zulu Natal.

### 2.1. The Need for Turnaround Finance and Typical Problems Associated with PCF

Pretorius and Du Preez (2013), note, that, while legislation is essential to regulate companies in financial distress, South African regulatory mechanisms have not achieved their objectives. Companies have not been able to access sufficient PCF, resulting in failed business rescue plans. The low overall success rate of business rescues, there have been several publicized, high profile business rescues that have failed. These failures include 1 Time Holdings, which commenced the business rescue process in August 2012 as a result of financial distress (Rajaram, 2016).

Pretorius and Du Preez (2013), add that since the new Companies Act only came into effect in May 2011, it is premature to assess its effect. Traditional financing mechanisms (predominantly credit capital) for distraught industries are restricted in South Africa because creditors are risk averse. Under normal circumstances, additional reserves are advanced against unsecured assets or indemnity, which are often not available to a company in financial distress. While the new guidelines on PCF offer fresh options, stakeholders expect a healthy return on their investment. However, the private equity retailers in South Africa are negligible (Pretorius and Du Preez, 2013).

## 3. Empirical Results Data Presentation and Analysis

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 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 and Bougie, 2010). 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 –WHAT IS THE IMPACT OF PCF ON BUSINESS RESCUE IN KZN?**

*There are numerous barriers to obtaining PCF in KZN and this is the most common limiting factor in rescuing businesses in distress in KZN.*

All the respondents felt that PCF is a limiting factor in business rescue in KZN. It was noted that financing a business in distress is inherently a high risk venture as most financiers are averse to risk. Funders are entitled to proper security for their lending. However, funders require too much security for a small loan. Investors want to invest in perfect businesses and are not prepared to take risks. They favour minimal risk for optimal investment. It was eminent that PCF is the sine qua non for the success of any business rescue success and that an organization's cash flow dictates whether or not it will survive; this is the essence of business rescue. The barriers to PCF make it challenging to obtain finance for distressed companies.

*The adequacy of PCF is fairly easy to obtain and this assists for effective resuscitation of companies in distress*

Four of the respondents disagreed with this statement and two agreed. PCF is not easy to obtain due to various factors such as risk averse investors and a lack of funding such as loan financing due to the fact that institutions seek to minimise rather than increase risk, and require unencumbered assets as surety. This funding was seen as unknown and that BRPs need to be informed of where it is available as there is a very short time frame available to resuscitate a business. The fact that the majority of the respondents were not of the view that there is adequate PCF, clearly reflects the lack of funding available to distressed companies. PCF competes with traditional borrowers that seek funding for start-ups, development projects, and growth. Given that distressed companies have a record of failure, they are the least favoured investment. If one can determine the amount of PCF required, it becomes a cash flow exercise. If the amount required is available, there is a good chance that business rescue will succeed. This suggests the need for accurate forecasts.

*The availability of PCF for companies in distress has provided an effective mechanism for business rescue in KZN*

Three respondents disagreed and three agreed with this statement. It was recognised that an effective and capable business rescue specialist would be capable of turning the business around if PCF were to be available from the inception of business rescue. The forms of financing from financing institutions as well as the management and process of the rescue play an integral part in the success or failure of the business rescue. Some options for funding was for government institutions like the IDC that should be more proactive. If PCF is available business rescue can work. The subsequent cash flow exercise will determine its efficacy. This statement confirms that if funding is available, the business rescue will be viable.

*Companies that have utilised PCF have reported an improved performance and sustainability*

Five of the six respondents agreed with this statement and one disagreed. It was observed that if management implements the business rescue plan, this would lead to improved performance. PCF is essential in the business rescue process. Only then can a company continue to exist as envisaged under section 128 (1) (b) (iii) of the Act.

*There is scope for improvement in Chapter Six of the Companies Act of 2008, in that it lacks sufficient provision for the development of PCF forms and sources that can benefit companies in business rescue.*

Three respondents agreed and three strongly agreed with this statement. It was in mutual agreement that companies in business rescue would benefit if forms and sources of PCF were to be developed. Chapter 6 needs to be amended and improved to help BRPs to execute their obligations, not only in respect of PCF but to dispense with technicalities that result in the entity being placed in liquidation with dire consequences for the economy. It was viewed that Chapter 6 of the Act is seriously flawed and that judgments are frequently handed down by the courts as a result of this badly drafted Act. Another view that a moratorium should be placed on the actions of financial institutions in particular; however, the Act cannot usurp existing legislation. These statements suggest that there is scope for improvement in Chapter Six of the Companies Act of 2008.

*The failure of majority of business rescue in KZN is due to lack of obtaining sufficient PCF only*

Three of the six respondents agreed with this statement; two remained neutral and one disagreed. It was acclaimed that a lack of management skills is also a significant reason for failure. Knowledge of funding mechanisms is imperative and management should be aware of what makes an investment attractive as well as the best funding options. Most BRPs have complained that PCF is unavailable; hence the business cannot pay its operational costs or obtain goods to trade, resulting in insolvency. Statistics on the rate of business rescue successes (15% at the last count) speak for themselves and this is largely due to the lack of PCF. It can thus be concluded that it is very difficult for a business to secure funding when it is under business rescue as lenders fear that they may not obtain returns on their investment

*The opportunities and mechanisms for PCF that are offered by various stakeholders are sufficient for effective business rescue in KZN.*

Four of the six respondents disagreed with this statement, one agreed and one remained neutral. This points to a lack of opportunities and mechanisms for PCF for effective business rescue in KZN. There is room for development and the time frames set in the Act should be reviewed. The only “quick” sources of PCF are shareholder funding and sale or pledging unencumbered assets. Other sources such as equity finance can form part of the proposed plan but in the interim the company has to trade.

*The pre-requisites for successful PCF to be raised during an effective business rescue limit the success of an effective business rescue.*

Five respondents agreed with this statement, while one remained neutral. It was recognised that the turnaround usually requires finance that is difficult for a business in distress to obtain. When a business is under rescue, this fact is well known, making it difficult to satisfy the prerequisites for successful PCF. BRP stressed that they will not accept a business rescue appointment unless PCF is made available. The participants thus agreed that, that if PCF is not obtainable, the rescue is a challenge.

*Lenders of PCF in KZN offer fairly easy streamlining processes for access to finance for companies in distress.*

Three of the six respondents disagreed with this statement, while two strongly disagreed and one remained neutral. This suggests that it is difficult and complex for a company in distress to secure PCF. Without exception, PCF lenders’ conditions are extremely punitive. A company in distress is effectively a “sitting duck” that can be taken advantage of. None of the BRP cited having experienced an easy streamlined process to access finance for business rescue.

*Financiers whom are disinterested in offering PCF do not fully understand options available for an equitable return on investment.*

Four of the six respondents disagreed with the statement, one agreed and one remained neutral. Financiers are aware and wary of the risk involved in offering PCF. BRP specified that they do not want to take on such excessive risk. BRP also concurred and added that financiers conduct their own due diligence before granting a loan to the business. It is uncommon to find attorneys and accountants who understand the business rescue process, and they are the people that generally advise financiers. While things are improving, most people are still largely ignorant of the business rescue process. The respondents felt that, even though financiers do understand the concept of an equitable return, they are reluctant to invest in an ailing business.

*The emerging international landscape for mechanisms and use of PCF is forming a solid base for local financiers in KZN to become more aware of the value of business rescue.*

One of the respondents agreed and disagreed, respectively with this statement, while the other four remained neutral.

The fact that the majority of the respondents remained neutral with regard to this question suggests that they are unaware of the emerging international landscape for the mechanisms and use of PCF to create a solid base for business rescue. BRP’s stated that these are early days and no foreign investor would risk their funds if the South African economy does not show signs of growth. Chapter 6 of the Act was largely derived from the Canadian equivalent. The USA’s Chapter 11 is not of much assistance and the UK does not have a specific mechanism for business rescue.

*The convenience of PCF ranks first to contributing to a successful business rescue for firms in KZN. All other factors are ranked secondary in nature.*

Three of the respondents disagreed with this statement and three agreed. This suggests that, apart from PCF, other factors contribute to successful business rescue. It was recognized that management skills are crucial and some BRP’s ranked the legal moratorium first. Others cited the practitioner’s skills and capabilities as well as the legal framework

### **3.1. 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.

The findings also reveal that 67% of the respondents agreed that the barriers to obtaining PCF are the most limiting factors in rescuing businesses in distress in KZN. They noted that investors are risk averse and are thus hesitant to invest in distressed companies. All six BRPs emphasized the significance of PCF in successful business rescue, but 67% disagreed that it is fairly easy to obtain. The respondents reiterated that the challenges include the time frame and that financial institutions are not prepared to support business rescue without collateral. The respondents were evenly split on whether or not the availability of PCF has provided an effective mechanism for businesses in distress in KZN. They also cited other factors such as management experience as well as the rescue plan that play a vital role in the rescue.

The findings reveal that 83% of respondents agreed that companies that have had access to and used PCF have shown improved performance and managed to remain sustainable. Such businesses need to ensure that funds received are optimally utilized. All the respondents agree that there is room for improvement of chapter 6 of the Act as businesses could benefit from legislation that offers guidance on the forms and sources of financing. This can be used as well as provisions on a moratorium on financial institutions demanding payment from distressed companies. Half the respondents agreed that the failure of business rescues in KZN is due to a lack of PCF. Financial establishments are unwilling to consider providing PCF as they regard distressed companies as a sinking ship. It was found that 67% of respondents disagreed that there are sufficient mechanisms and opportunities for PCF. They noted that such mechanisms are underdeveloped in KZN and that financial institutions are disinclined to get involved in business rescue due to apprehension about the feasibility of a distraught business and the abilities of the business rescue specialist. 83% of respondents agreed that failure to raise PCF limits effective business rescue. Furthermore, 67% of the respondents disagreed that lenders of PCF offer easy streamlined processes to access funding. Investors set challenging conditions for distressed companies. Many practitioners experience find it difficult to access PCF. However, 67% of the respondents also disagreed that financiers who are not interested in offering PCF don't fully understand the opportunities for an equitable return. Instead, respondent 2 stated that they do understand, but do not want to take the excessive risk involved.

Two-thirds of the respondents remained neutral on the question of whether there is an emerging landscape for PCF mechanisms in KZN. They stated that local financiers and stakeholders are not very familiar with chapter six of the Act and that and it not easy to interpret. The respondents were evenly split on whether or not PCF ranks first in contributing to successful business rescue. Those that agreed stated that finance is foremost, while others stated that, factors such as management's role are more significant.

## 4. Discussion and Conclusion

This article consisted of one main objective, which centered around what the impact of PCF is on business rescue in KZN.

The study found that the impact of PCF appeared to be minimal in KZN at present based on the findings of the research 4, respondents concurred that PCF has many barriers in KZN and that the mechanisms and opportunities in achieving accessible funding for a company in distress is very low at present. This is also based on their experiences and success rates achieved. 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, 50% of 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.

The study found that a well-constructed business rescue proposal will address obstacles and challenges to funding business rescues. Given that a lack of PCF is the central cause of business rescue failure, it is imperative that the finance requirements of a distressed company are properly documented and effectively assessed before appealing for business rescue. In the event that the business fails to access sufficient funding for a business rescue, the board could opt for insolvency. From an investor's perspective, lack of forecasting, management and supervision of a business rescue will invariably point to failure.

### 4.1. Recommendations Identified

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. The awareness does not necessarily need to be directed towards corporate business rescue only, it can also encompass an element of socio-economic salvation. As the success of a business rescue is inevitably saving jobs, creating economic wealth and resuscitating companies for a country's sustainable economic future.

The literature concurs that inadequate post-rescue finance results in unsuccessful business rescue (Du Preez, 2012; Pretorius, 2008). This validates the CIPC's apprehension 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.

BRP's acknowledged the commercial prospects for post business rescue backing in South Africa. Their understanding of the USA's Chapter 11 private finance market informed views that there is a gap in the South African business market that financial institutions could take advantage of.

These prospects primarily relate to delivery of PCF to corporations in business rescue that have exceptional potential for financial recuperation. The respondent stated that the financial sector should not assume that it is being exploited by business rescue legislature, leading to lack of PCF for companies that require it.

The South African legislation needs to be reviewed to address the ranking of claims. Unless this issue is addressed non-traditional financiers (e.g. distressed lenders or private equity firms) will have little incentive to grant funds to businesses in rescue, as the risks are too great and the returns too small.

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 work-outs 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 effected 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.

## 5. 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 and Rosslyn Smith, 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.

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**Annexure A**

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: Impact of Post Commencement Finance on Business Rescue**

1. There are numerous barriers to obtaining post commencement finance in KZN and this is the most common limiting factor in rescuing businesses in distress in KZN. Substantiate your answer

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

2. The adequacy of post commencement finance is fairly easy to obtain and this assists for effective resuscitation of companies in distress. Substantiate your answer

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

3. The availability of post commencement Finance for companies in distress has provided an effective mechanism for business rescue in KZN. Substantiate your answer

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

4. Companies that have utilised post commencement finance have reported an improved performance and sustainability. Substantiate your answer

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

5. There is scope for improvement in Chapter Six of the Companies Act of 2008, in that it lacks sufficient provision for the development of Post Commencement Finance forms and sources that can benefit companies in business rescue. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

6. The failure of majority of business rescue in KZN are due to lack of obtaining sufficient post commencement finance only. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

7. The opportunities and mechanisms for Post commencement finance that are offered by various stakeholders are sufficient for effective business rescue in KZN. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

8. The pre-requisites for successful post commencement finance to be raised during an effective business rescue limit the success of an effective business rescue. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

9. Lenders of post commencement finance in KZN offer fairly easy streamlining processes for access to finance for companies in distress. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

10. Financiers whom are disinterested in offering post commencement finance do not fully understand options available for an equitable return on investment. (Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

11. The emerging international landscape for mechanisms and use of post commencement finance is forming a solid base for local financiers in KZN to become more aware of the value of business rescue. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>

12. The convenience of post commencement finance ranks first to contributing to a successful business rescue for firms in KZN. All other factors are ranked secondary in nature. Substantiate your answer.

<b>STRONGLY DISAGREE</b>	<b>DISAGREE</b>	<b>NEUTRAL</b>	<b>AGREE</b>	<b>STRONGLY AGREE</b>