



AN EVALUATION OF BUSINESS RESCUE ON EMPLOYMENT PROTECTION IN  
SOUTH AFRICA. A CASE STUDY OF BIG FIVE MINE IN MPUMALANGA

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By Aletta C. Nel

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## Approval of the Thesis

### AN EVALUATION OF BUSINESS RESCUE ON EMPLOYMENT PROTECTION IN SOUTH AFRICA. A CASE STUDY OF BIG FIVE MINE IN MPUMALANGA

This Thesis by Aletta C. Nel has been approved by the committee members below, who recommend it be accepted by the faculty of Unicaf University in Zambia in partial fulfillment of requirements for the degree of

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## **Abstract**

### **AN EVALUATION OF BUSINESS RESCUE ON EMPLOYMENT PROTECTION IN SOUTH AFRICA. A CASE STUDY OF BIG FIVE MINE IN MPUMALANGA**

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South Africa's escalating unemployment crisis has sparked concern among government officials and foreign investors, prompting the introduction of company rescue regulations in 2011. These regulations offer a crucial lifeline to financially distressed companies, presenting a viable alternative to liquidation. Unlike the finality of liquidation, business rescue initiatives aim to rescue a struggling enterprise and safeguard employment, providing a beacon of hope in dire economic circumstances.

This qualitative case study critically evaluates the influence of the business rescue laws on employment security at the Big Five Mine in Mpumalanga, South Africa. The study design follows the "research onion" paradigm by Saunders et al. (2007) and is cross-sectional, rooted in stakeholder management philosophy. 31 Participants were selected via purposive sampling. 25 In-person semi-structured interviews and two focus group sessions were carried out.

The purpose of this study was to critically evaluate the influence of business rescue laws on the employment protection of the Big Five mine in Mpumalanga, South Africa.

The objectives were to assess the South African business rescue laws against international corporate laws, identify critical factors leading to Chapter 6 implementation, and evaluate the impact on employee protection.

Thematic analysis revealed that the outcome of business rescue has far-reaching consequences, including employee marginalisation and a lack of access to information. Securing employment is crucial to the economy, as high levels of unemployment negatively impact the nation's ability to ensure financial stability and attract international finance. The conclusions emphasised the need for inclusive approaches prioritising employment protection. The findings also suggest that effective stakeholder management is crucial for achieving successful business rescue outcomes, which has implications for practice and future research.

Recommendations include enhanced communications for all stakeholders, industry-specific training for business rescue practitioners, and the development of comprehensive strategies to protect mineworkers' employment security during financial turmoil. Managers should be aware of financial difficulties and take appropriate action to prevent loss of income and employment.

## **Declaration**

I declare that this thesis has been composed solely by myself and has not been submitted in any previous application for a degree in whole or in part. Unless stated otherwise by reference or acknowledgment, the work presented is entirely my own.

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## **AI Acknowledgement**

### **Use of AI:**

I acknowledge using Grammarly(<https://www.grammarly.com>) to proofread chapters 1 to 5 of my thesis. This action was completed in June 2024.

The prompts used included Checking for grammatical errors and suggesting improvements for the text below, using English (UK).

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My late parents, you always had great expectations for me. This dissertation is dedicated to Ma Susan and Pa Willem.

**List of Abbreviations**

<b>CCMA</b>	The Commission for Conciliation, Mediation, and Arbitration
<b>CIPC</b>	Companies and Intellectual Property Commission
<b>COVID 19</b>	Coronavirus of 2019
<b>GDP</b>	Gross Domestic Product
<b>GIBS</b>	Gordon Institute of Business Science
<b>IPA</b>	Interpretative phenomenological analysis
<b>RQ</b>	Research Question
<b>SHMT</b>	Stakeholder Management Theory
<b>STATS SA</b>	Department: Statistics South Africa.
<b>UNCITRAL</b>	The United Nations Commission on International Trade Law.



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## **CHAPTER 1: INTRODUCTION**

### **Background to the study**

Chapter One provides an overview of the study. When South Africa became a democracy in 1994, the new government, led by Nelson Mandela, faced many challenges. The new government acknowledged the legacy of Apartheid laws. High unemployment, corruption, the deterioration of the infrastructure, and poor education due to the “Bantu Education System” of the previous government needed urgent and continuous attention. The National Planning Commission of 2011 recommended a close liaison between business entities and government regulatory bodies to create an economy beneficial to all its citizens. (Zarenda, 2013). The global economy suffered a crisis in 2007, with effects lasting well into 2012. The aftermath of this global recession left many companies unable to continue operations. The South African economy was not immune to these adverse effects. Large-scale liquidations left more than one million South African people unemployed in one financial year.

Unemployment and declining consumer wealth contributed to the collapse of the South African economy. The country experienced a recession for the first time in 17 years (Steytler & Powell, 2010). Considering this bleak business landscape, the Government needed to reconsider its current financial policies. The government approached international experts to assist with planning this new legislation. The result of this cooperation with international legal experts led to the introduction of Business Rescue Laws in South Africa in 2011. The latest Business Rescue legislation aimed to help struggling companies survive the recession (Bezuidenhout, 2012). Although the expressed

purpose of the law was to save companies, the legislator was mindful that rescuing a company would contribute to protecting jobs.

Since the implementation of this law nine years ago, several studies have taken place (Bezuidenhout, 2012; Joubert et al., 2011; Loubser, 2013; Conradie & Lamprecht, 2015; Matenda et al., 2023), but more research on all aspects of this new law is needed (Levenstein, 2015). See Appendix F for a list of South African studies in the field of business rescue laws. Business Rescue laws were implemented in 2011, and at the time of the current study (2022), the available knowledge on the subject was still scarce. All aspects of this law offer scope for exploration (Pretorius & Rosslyn-Smith, 2014). This case study is anchored in the need to explore available knowledge and generate new data to add to the scarce available knowledge on Business Rescue, as unsuccessful rescues could add to the already high number of unemployed people in South Africa. The effects of unemployment on an economy are far-reaching, and the negative consequences affect an entire national budget. This study questions whether employees' jobs are protected during the Business Rescue procedure. Available literature does not offer enough information on the employees' position during business rescue proceedings (Jombe & Pretorius, 2022).

The employee is one of the most important stakeholders of a company (Reed, 1999). Employees determine an organisation's effectiveness and play a significant role in its success or failure. (Pasban & Nojehdeh, 2016). Management should consider the value of employees and be motivated to invest in their training and upliftment because employees improve the competitive advantage companies need to survive in adverse economic

conditions. The researcher concluded that it is important to consider how this regulation is applied and interpreted in relation to employees. Based on current research, employees will most likely lose their jobs if a company is placed under corporate rescue (Conradie & Lamprecht, 2018). The rights of employees are protected by South African labour laws, which supersede all other laws in the nation (Dept of Trade and Industry, 2004). In the business rescue process, employee rights are also prioritised over the rights of other creditors; however, the focus is still on rescuing the company, which frequently means that the business rescue practitioner is unable to ensure that every employee has a job for the foreseeable future (Lusinga & Fairhurst, 2020). Scholars have focused on many facets of the business rescue process, including the legal implications for creditors and the role that business rescue practitioners play (Pretorius, 2013). Exploring the research gap identified in Chapter Two, the present study considered the employee's perspective during this process. Chapter 1 introduces the problem statement, research aims, and objectives.

This study investigated the job security of mineworkers working at Big Five Mine in Mpumalanga, South Africa when the mine entered Business Rescue. A mining accident led to individuals being trapped underground, prompting the mine to seek corporate rescue. Rescue teams could not access another group of individuals who were underground in a separate location because of the same incident. The mine is located in a desolate region of the country. It is difficult to reach by car. Yet, rescue operations were successful for the majority of the miners who were trapped underneath. Unfortunately, because of the severity of the disaster, individuals who could not be rescued immediately are presumed deceased. The tragedy would eventually have a profound effect on everything, including

the mine's economic operations. The government suspended all operations until the official accident investigation was completed (Karolia-Hussain & Fourie, 2021). Despite several miners receiving offers to work for different companies within the mining group, the financial pressure of unpaid wages ultimately led to their termination. Not all of the impacted miners were able to find work thanks to the company rescue plan that the practitioners implemented. Prior to its temporary closure, the mine was highly successful, providing support for other mining operations within the same mining group. Available surveys indicated that the mine possesses adequate natural resources to guarantee successful revenue for at least another 26 years. The directors of the mine applied for Business Rescue at the point where all revenue was lost (Levenstein, 2015). They remained convinced that the mine's assets outweighed its liabilities and that it could still be run profitably. Nevertheless, they met the qualifications to file for a business rescue operation because they could not envision themselves paying off their obligations in the ensuing six months (Jijana, et al., 2015). Even after the mine was placed under Business Rescue for several years, this condition has not been remedied. International ownership is based on shares in the mine. Local institutions are not the largest stockholders (CIPC, 2020). A comparable corporate restructuring framework is in place in the nation where the majority of the shares are held (Anderson, 2008).

Although this accident happened many years ago, from the date of the current study, the mine is still not operational, the business rescue proceedings are still not completed, and more than a thousand people remain unemployed and impoverished (CIPC, 2020). The country of majority shareholding has frustrated a few attempts to secure new investments

in the Big Five Mine. The mine workers perceived the business rescue procedure as flawed and blamed their continued unemployment and subsequent misery on the procedure. The outstanding amounts owed to the miners remain unpaid. The local town is wholly dependent on the mine for its economic survival (Johnston, et al., 2020). Since the mine collapse, the town has become desolate, as so many businesses depend on the miners for trade. The miners ended up working for a period with no remuneration (Mndebele, 2021). They received letters from the business rescue practitioner explaining that the mine could not raise the money for salaries, and they were only officially retrenched a few months after the accident.

The preliminary research seems to suggest that, despite the Business Rescue Laws' particular protections for employees, not all role-players apply the legislation consistently, leaving workers less protected than the law intends (Jombe & Pretorius, 2022). At the time of completing the present study, the business rescue procedure at the mine was still regarded as ongoing, even though no resolution has been found so many years into the procedure. The process has been frustrated by mainly two stakeholders engaging in an endless round of litigation regarding the legalities of the process. Other stakeholders have called meetings to try to resolve the situation, and employees, as stakeholders, were left unemployed as there was no way to speed up court proceedings (CIPC, 2020). Practitioners cannot continue with the rescue plan, as the litigation will directly impact the outcome of the proceedings. However, they will not proceed to liquidation as long as there is still a chance to operate the business profitably (Coertser, 2012). The law requires monthly

reports from practitioners for as long as the ongoing business rescue operation continues. (Pretorius, 2013).

The process at Big Five Mine followed all the legal requirements for a successful rescue (Cassim, et al., 2018). Business rescue practitioners adhered to all the provisions in the law and supplied stakeholders with an updated letter of progress every month but could not conclude the process due to a lack of post-commencement finance (Conradie & Lamprecht, 2018). Initially, employees were excluded from this communication, but after considerable interventions, they started receiving the same communication monthly. Business Rescue legislation does not name an absolute time after which this procedure should be concluded or replaced by alternative arrangements, and in the case of Big Five Mine, litigation from different stakeholders meant that pending court cases prevented the conclusion of the process (Pretorius & Du Preez, 2013). In 2020, all court sittings in South Africa were suspended for more than nine months due to the restrictions on contact necessitated by the global outbreak of the COVID-19 pandemic (Pacheo, et al., 2020). The suspension of all court activities further delayed the conclusion of the process. The mine has the potential to employ more than 1,000 people. Still, the mine is a neglected property, with assets deteriorating as the years go by, and there is no discernible action (Bertelsmann, 2016). The miners remain unemployed and impoverished. Their unemployment benefits ran out years ago, and they depend on welfare and NGOs for survival (Devereux, 2020).

South Africa's official unemployment figures run as high as 34.4% (South African Government, 2020). A situation where the law seemingly allows unemployment demands answers (Maluleka, 2020). President Ramaphosa pledged to lower unemployment levels

(Cameron, 2017). Unemployment warrants international attention because of the negative effects on the South African economy that are connected to the global economy (Almeida & Santos, 2020). Business students are attracted to the economic implications of this legislation, as it seemingly contributes to the growth of unemployment. The financial result of unemployment warrants a closer inspection of the business rescue laws (Bezuidenhout, 2012). To understand the impact of this legislation on the economy, it became necessary to explore the reasons for implementing this new law (Dept of Trade and Industry, 2004). The current study investigates the definition of job security, the rationale behind enacting this legislation, and the historical context and global evolution of rescue laws. The letter of this law was scrutinised for inconsistencies in order to provide potential solutions.

### **Introducing Business Rescue law**

2008 saw the introduction of the business rescue laws in the Companies Act No. 71 Proclamation of 2008 (Levenstein, 2018). Implementing this law forms part of the government's response to the dire need to improve the South African Economic landscape (Steytler & Powell, 2010). This law was imperfect, and The Department of Trade and Industry proposed extensive amendments in 2018 (Hofmeyer, 2018).

The changes were urged by scholars producing studies similar to the current one, investigating all aspects of the law (Levenstein, 2015). See Appendix F for a list of South African studies. The South African business rescue regime shares similar traits with those in Australia and the United Kingdom (Blazic, 2010) and is based on the principle of Chapter 11 of the United States of America. See Appendix C for a table comparing the characteristics of the South African legislation with those of the United Kingdom and

Australia. The Act shares goals with both the Enterprise Act of 2002 in the United Kingdom and Chapter 11 of the United States Bankruptcy Code, and it has many of the same features. This law's stated goal is to rescue struggling businesses (Levenstein, 2018). As a result, South African businesses began to favour the business rescue process. Based on the principles of Chapter 11 of the Constitution of the United States of America, the corporate rescue framework in South Africa is comparable with those found in Australia and the United Kingdom (Blazic, 2010). A table that contrasts the features of South African law with those of the United Kingdom and Australia may be found in Appendix C. The Act has many of the same characteristics as Chapter 11 of the United States of America's Bankruptcy Code and shares aspirations with the United Kingdom's Enterprise Act of 2002. To save their failing businesses, South African corporations were therefore advised to turn to business rescue. (Matenda et al., 2023). The execution of this procedure halts any legal actions that would result in liquidation. A company can only be saved by a turnaround specialist while it is still in operation. The Board of Directors should also anticipate that if the financial difficulties are resolved, the business could continue to be run profitably (Loubser, 2007). The practitioner of their choice should be appointed by the company's management or board of directors when they file for business rescue (Conradie & Lamprecht, 2015).

The business is officially placed in the care of the business rescue practitioner when the court approves the application (Bezuidenhout, 2012). The legislation to rescue a company under threat of liquidation was a vital step in preventing job losses, which are inevitable when a company is closed (Loubser, 2007). However, saving jobs is not an



expressed purpose of this law (Botha, 2015). The legislation implies that a business rescue practitioner should try to protect employees, but their first duty is to ensure the survival of an ailing company; therefore, the difficult decision to implement cost-cutting exercises often results in employees being the first casualties of a restricted budget (Bradstreet, 2010). The business rescue practitioner should not see the company's payroll as an easy target when cutting costs but should consider several remedies before terminating employment (Jombe & Pretorius, 2022). Where a company cannot afford to pay employees, offering employees a reduced salary could be a first consideration (Bradstreet, 2010). Despite their best efforts, business rescue practitioners may eventually retrench employees. "Unsecured creditors" are laid-off workers who did not obtain their full compensation package (Mc Kay, 2019). They can now participate in the corporate recovery process as creditors after changing their position from "employee" to "creditors."

South African Labour Laws offer clear guidelines for retrenching any employee (Lewis, 2019). Labour laws take precedence over the Business Rescue procedure and make it difficult to sustain the rescue process (Rajaram et al., 2018). Retrenchment becomes difficult during business rescue proceedings, although the business rescue practitioner often proposes a large-scale reduction of workers to avoid further financial losses to the company already in monetary distress (Matenda, et al., 2023). When workers are retrenched, all outstanding monies from the "rescued" company will only be paid once the Business Rescue process is completed and after preferred creditors and the business rescue practitioner fees have been disbursed (Saunders, 2009). The Business Rescue practitioner that oversees the Big Five Mining Rescue plan refers to the employees as "preferred

unsecured creditors” (Botha, 2015). His explanation for this term is that the phrase conveys the importance of the employees' status, which has remained unchanged for the last couple of years. Employees received no payments and could not be paid unless a post-commencement financier could be found and the business rescue plan successfully implemented.

In South Africa, post-commencement financing is hard to come by. Since the law does not establish a "super-priority" rank for the repayment of the company's debt, financial institutions are hesitant to participate in post-commencement financing (Levenstein, 2018). Big Five Mine workers were still unpaid, and the Business Rescue Proposal's final offer to all creditors stated that each creditor would receive five cents for every ZAR owed. The offer meant that the workers would only receive a small portion of the money owed to them, as they would have been treated similarly to other unsecured creditors. The mine may be reopened, and mining operations may resume since the former workers are more concerned about finding their missing coworkers. The preceding statement supports the conclusion that all stakeholders favour rescuing a company in a financial crisis. The ultimate objective of support, notwithstanding potential differences in motivation, is to bring a company back to a profitable state that generates revenue and employment.

Restoring a taxpayer to gainful employment has significant positive social and economic effects on the economy and the federal government. Working fulfills one of humanity's basic needs—that of restoring one's dignity and providing stability for one's family—according to Maslow's Hierarchy of Needs (Pichere & Cadiat, 2015).

## **Research Aims**

The main purpose of this study is to critically evaluate the business rescue process's influence on South African mineworkers' employment security at Big Five Mine.

## **Problem Statement**

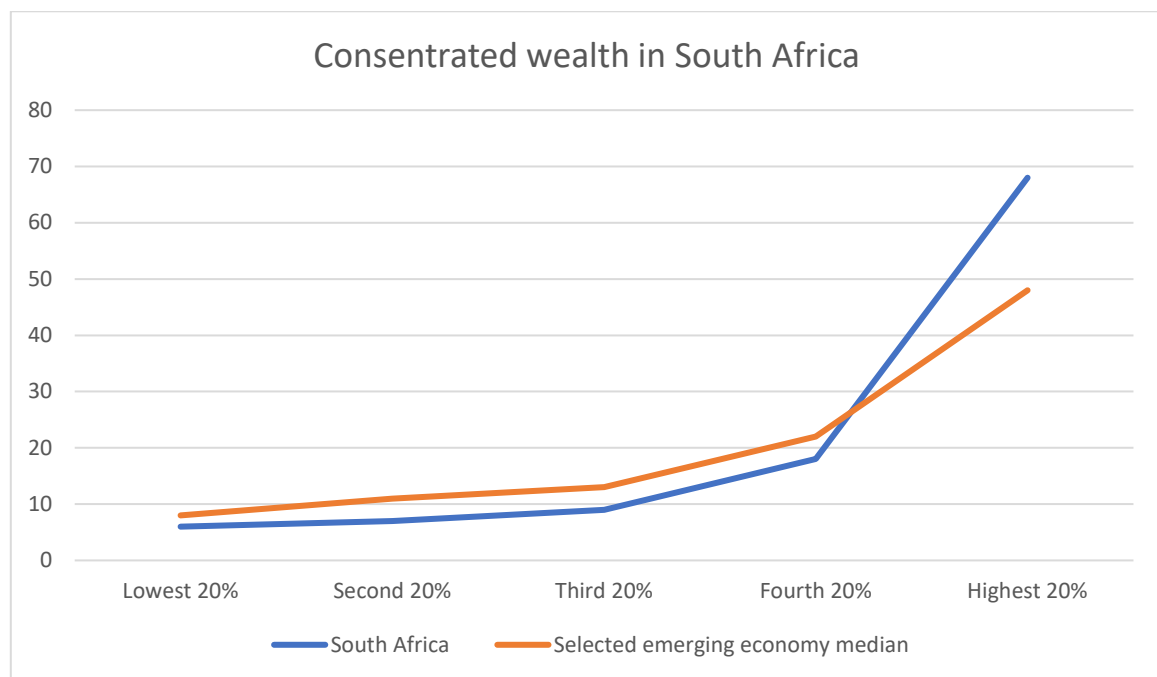
The problem is that the inconsistent application of the business rescue laws at Big Five Mine in Mpumalanga might exacerbate South Africa's high unemployment rate. Unemployment rates affect the economy's macro, meso, and micro levels. Business students are interested in the issue of unemployment due to its detrimental effect on the national economy. Published resources on business rescue are scarce, and little is known about the employees' perspective during the process. The 2015 United Nations Sustainable Development Summit strongly emphasized the problems in developing countries that obstruct economic advancement. One of the members' main concerns was unemployment in developing nations. In South Africa, the unemployment rate is significant and continues to rise. According to the World Bank Report from 2022, over 62% of South Africans live in poverty (Wagstaff et al., 2018). Unemployment affects more than just the unemployed person, as many breadwinners in South Africa support over fifteen others (Pretorius, 2015). The goal of Business Rescue was to lower unemployment by rescuing firms. This procedure did not yield good results. In 2015, there was an average of 90% rescue failures (Conradie & Lamprecht, 2015). The Business Rescue Law's Chapter 6 was designed to support the South African government's macroeconomic objectives, including job growth and reduced unemployment (CIPC, 2015).

Merely 1% of the populace in South Africa earns more than 2.5 million ZAR annually. From 56% in 2010 to 60% in 2020, the proportion of persons living below the upper-middle income poverty level increased (Wagstaff et al., 2018). In a nation where job creation is challenging, breaking the cycle of poverty from generation to generation is

impossible. According to Statistics South Africa, 2021, and the World Bank, 2008, 50% of South Africans earn less than ZAR2,500. Examining how this law affects unemployment highlights the disastrous consequences of joblessness on the economy. South Africa is a developing nation that depends heavily on foreign investment (King IV Report, 2016). Legislation supporting employment protection should be considered if there is a discernible effort to manage high unemployment rates. Unmanageable unemployment rates have a negative impact on a nation's ability to prosper economically.

**Figure 1**

*Wealth distribution in South Africa*



Source: Adapted from *World Bank Poverty and Equity Database*, Wagstaff et al. 2018. p.3.

A growing body of research acknowledges the impact of national governing approaches on the economy (Anderson, 2012). A nation's corporate governance systems

are influenced by how well its national governance mechanisms work (Botha, 2015). Big Five Mine was unable to properly ensure job security for the more than a thousand mining company employees, even after entering business rescue. The issue of setting priorities for goals during a business rescue is highlighted by their appeal for government involvement in the process. Employees want to see their employment preserved, but the business rescue expert must consider any cost-cutting measures that might protect the company from future financial difficulties (Pretorius, 2013).

Business rescue rules expressly give struggling firms a period during which all claims against them are delayed until the business rescue plan is authorized to arrange for organized repayments to creditors (Levenstein, 2018). This provision allows the practitioner to look for new investors. During this time, it can become clear that the company cannot afford to pay every employee, in which case some might not get paid at all. At this point in the process, workers become the company's creditors and have the right to file a claim against it due to their unpaid income (Coertser, 2012). South Africa has the most advanced employee protection laws in the world (Loubser, 2010). Employee privileges are addressed explicitly under Section 136 of the Companies Act 71 of 2008. (The Government of South Africa, 2020). Paradoxically, inconsistent law enforcement might be the reason behind one of the highest unemployment rates globally. In the current study a critical theory approach with SHMT as its foundation was employed. Since employee viewpoint knowledge is critical to the process, the present study offers advice to achieve a higher success rate for this procedure. The goal of "business rescue" should be to preserve more jobs by rescuing more jobs (Rajaram, 2016). In-person interviews with

key players in the business rescue process provided insightful information (Xaba, 2018). In the event of brief financial difficulties, we recommend "business rescue" as an alternative to "liquidation," as the latter implies a winding up of the business. Rightfully preserved, a company will continue to stimulate the economy and create jobs in a country where unemployment is extremely high.

### **Research Questions**

*RQ1:*

How does the Business Rescue Law's application align with International Corporate Rescue Laws?

*RQ2:*

What effect did the implementation of Chapter 6 of the Companies Act 71 of 2008 have on the protection of employment in South Africa?

*RQ3:*

How does the business rescue process influence employee protection at the Big Five mine in Mpumalanga?

*RQ4:*

What recommendations could be made for future legal reform to protect employee interest under the Business Rescue Process?

Based on previous research and by reviewing the methodologies and theoretical frameworks used by previous studies, it has been concluded that additional research into

the employee's role as a stakeholder during the Business Rescue Procedure could add to the body of knowledge already in existence, as shown in Appendix F. Obtaining the employee's point of view could make a Business Rescue more likely to be effective. Lusinga and Fairhurst (2020) defined stakeholders as company owners, employees, creditors, creditors, and entrepreneurs. The study focused on assessing the job security of mineworkers at Big Five Mine throughout the corporate rescue process due to limited available information. (Jombe & Pretorius, 2022). The interviews with former employees of the Big Five Mine produced unique and rich material to analyse an employee's perspective and stance during this legal process. Based on previous research and by reviewing the methodologies and theoretical frameworks used by previous studies, it has been concluded that additional research into the employee's role as a stakeholder during the business rescue procedure adds to the body of knowledge already in existence. See existing research titles in Appendix F. Obtaining the employee's point of view also adds to the effective implementation of Business Rescue laws. Lusinga and Fairhurst (2020) defined stakeholders as company owners, employees, creditors, creditors, and entrepreneurs.

A thematic analysis of secondary data, including published works, peer-reviewed journal articles, and past research projects finished by PhD students, was undertaken to answer the first question. International law serves as the cornerstone of South African law. Therefore, it is essential to review similar legislation worldwide. Existing literature provided knowledge on the legislation and the reason for implementation into South African legislation.

A thorough review of the literature was conducted to address the second research question and understand how this law impacts employment protection in South Africa. The review focused on the South African legal system, specifically examining the rules related to business rescue and labour legislation. The research concluded that labour laws significantly influence employees' status in South Africa more than other laws.

The effectiveness of this law's application in protecting workers during this procedure was examined in the third research question. The legal expectation and the actual result were compared. The purpose of the semi-structured interviews was to learn the perspectives of the Big Five Mine staff members regarding the corporate legislation as well as their firsthand understanding of the Business Rescue method. There were seven questions in the interview guide, each with a prompt. Employee interviews revealed their perspectives on job security and the Big Five Mine's understanding of the law, focusing on their individual situations and the impact on the local economy. Based on the research findings, proposals for future legal reform are offered in the report's last chapter to safeguard employees' interests during the Business Rescue process.

### **The Research objectives**

The major aim of this study was to evaluate the influence of business rescue operations on the mine workers of the Big Five mine in Mpumalanga, South Africa, with the goal of recommending changes to policies and execution.

Therefore, four research objectives are identified. They were to assess the alignment of South African business rescue laws with international corporate rescue laws by analysing existing research and literature.



The second objective was to identify the key factors that led to the implementation of Chapter 6 of the Companies Act 71 of 2008 through a review of existing literature. Thirdly, (the main objective of this study) was to evaluate the impact of the business rescue process on employee protection at Big Five Mine in Mpumalanga, with a specific focus on mineworkers. The last objective aimed to develop recommended guidelines for future implementation and potential amendments to business rescue laws based on the findings of this study.

These objectives provided a clear direction for the research and were achieved through a combination of a literature review, case study analysis, thematic analysis of data collected at Big Five Mine, and available documentation on the procedure at Big Five Mine.

### **The Nature of the study**

The study employed a qualitative case study design to explore the influence of business rescue on employment security. The research utilised a cross-sectional approach, combining literature review, document analysis, and face-to-face interviews to collect data. The researcher applied thematic analysis to identify patterns and themes in the data, providing an in-depth understanding of the phenomenon under investigation.

This study was based on the Theory of Stakeholder Management by Freeman and Mcvea (2018). A critical approach was utilised. Bhaskar (1978) recommended that research using normative concepts should provide recommendations for enhancing the existing situation. The aim is to create best practice guidelines for future implementation and potential amendments to laws. The government is identified as policymakers and business rescue practitioners as implementers of the law who can bring about change, as outlined in the critical theory guidelines.

### **Purpose and Significance of the Study**

The purpose of this qualitative case study was to critically evaluate the variables that influenced the employment security of mineworkers at the Big Five Mine in Mpumalanga, South Africa, during the business rescue process. This research contributes

significantly to the existing body of knowledge by enhancing our understanding of the business rescue procedures and their alignment with the objectives of the Companies Act, 71 of 2008, Chapter 6, which aims to promote South Africa's economic well-being (Companies Act 71 of 2008, 2009).

Given the importance of employees as a company's most valuable asset (Goncalves, 2020), this study aimed to provide a unique perspective on the employee's role during business rescue and identify ways to improve the process to benefit all stakeholders. Against the backdrop of South Africa's economic challenges, including a low credit score and job losses due to the COVID-19 pandemic, this study's findings offer valuable insight for directors, management, and policymakers, highlighting the importance of early detection of financial stress and timely interventions. The research also underscores the crucial role of the stakeholder management theory in ensuring equitable treatment of all stakeholders, particularly employees. Notably, this study fills a significant knowledge gap, as no similar studies were found at the onset of this evaluation (See Appendix F). The distinctive contribution of this research lies in its examination of the business rescue procedure from the perspective of mine workers at Big Five Mine, providing actionable recommendations to address the shortcomings of current legislation. The study enhanced the researcher's knowledge and insight into the treatment of employees during the business rescue process.

By examining the output provided by employees, this research revealed that management decisions at Big Five Mine did not involve employee input, highlighting the need for more inclusive approaches to business rescue. The study's findings support the significance of understanding the variables that influence the implementation of the Companies Act, Chapter 6, and provide an accessible reference for future studies (Companies Act 71 of 2008, 2009). Ultimately this research has the potential to inform policy developments and improve the efficacy of the business rescue process, thereby enhancing South Africa's economic prosperity.

**Scope of the study**

This case study focuses on the impact of business rescue laws on employee protection at Big Five Mine in Mpumalanga, South Africa, covering the process from 2015 to 2021. While the law affects various stakeholders, this study specifically evaluates its influence on employee protection, acknowledging that the law intends to protect employees. However, this is not explicitly stated as an aim (Levenstein, 2018). The study did not investigate the law's implication on other role players, except for considering the position of unions, which is not explored in depth.

The study's scope includes evaluating comparable laws in the United Kingdom and Australia, through a literature review, without conducting physical examinations in these countries. The study analysed existing literature to investigate the origins of this law and assess the potential influence of similar laws on employment protection in other nations. However, the case study is limited to a single mine in South Africa, providing an in-depth exploration of the business rescue process and its effects on employee protection within a specific context.

## Dissertation Structure

**Table 1**

*Outline of the Study*

Chapter	Descriptions
Chapter One	This chapter introduces business rescue statutes and conflicts with employment protection laws. It explains the study's significance, design and research aim. It explains stakeholder management theory and critical theory.
Chapter Two	Validate research gap and employee perspective. Concepts such as job security, business rescue, and the history and implementation of corporate rescue laws were reviewed. Reach consensus on using reason to determine obligations, rights, and interests.
Chapter Three	The study's methodology, as well as the reliability, validity, and

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	trustworthiness of the data, are presented in Chapter Three.
Chapter Four	This chapter presents the research results and a brief discussion about the results.
Chapter Five	The final chapter presents the study's findings, conclusions, and recommendations for their application and future research.

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Source: Research results.

### **Sampling**

Sampling refers to the technique employed by a researcher to select a limited number of individuals from a broader, predetermined group to serve as subjects. Another name for subjects is the data source (Sharma, 2017).

The procedure by which the researcher deliberately chooses people who would be able to respond to the research questions is known as "purposeful sampling" (Berk, 1983). This study employed a purposive sampling technique to deliberately select participants who could provide rich and relevant data to answer the research questions. Unlike probability sampling, where every member of the target population has an equal chance of being selected, purposive sampling relies on the researcher's judgement to choose

participants who possess specific characteristics or expertise. Also known as judgemental sampling, this approach requires the researcher to be aware of potential biases and ensure that the selection of participants is well justified and not based on ill-conceived or poorly considered judgment. In contrast to probability sampling, which aims to eliminate bias through random selection, purposive sampling acknowledges the subjective component of this sampling process. However, this process is appropriate for study as it allows for the selection of participants who can provide in-depth insight into the phenomenon under investigation.

Researchers need to be vigilant because the idea that a purposive sample has been created solely on the researcher's judgment would not make a good definition when it needs to be justified, especially if it is compared to probability sampling techniques designed to eliminate such bias. Thus, the subjective aspect of purpose sampling would only be susceptible to criticism if the decision was poorly designed or not thoroughly considered.

Assuming that judgements are made using explicit criteria, such as a robust theoretical framework or other widely accepted standards. Under those circumstances, purposive sampling would be appropriate and might offer researchers the rationale to draw generalisations from the sample under investigation (Sharma, 2017). The target population for this case study was the unemployed workers of Big Five Mine, who were employed by the mine at one branch of the mine for at least twelve months before the mine went into Business Rescue. The total population was 180 people. The sample of participants approached to participate in the study all had experience living and working while their

employer was under Business Rescue. Due to their unique experience with the research topic—having lived and worked at the mine throughout Business Rescue—the sample group was determined. Since the researcher could only accommodate four of South Africa's eleven official languages, their ability to converse elegantly was taken into consideration. An argument might be made that an element of convenience sampling was present in the selection process as all the participants stayed in the same geographical area. Their participation meant that the researcher did not have to travel across provincial borders, as traveling was restricted because of COVID-19. Still, the involvement of the sample was not based on the convenience of their location but rather on the qualities the participants possess (Sharma, 2017). In simple terms, the researcher decided what needed to be known and found people who could and would be willing to provide the information required.

A lawyer and two business rescue practitioners also participated in the study, bringing the total number of participants, including the employees and union representative, to 31 people. The legal specialists clarified legal inquiries during the first focus group meeting. Their viewpoint provided a high level of intensity and clarity that was not achievable in face-to-face discussions. The study acknowledged the potential for researcher bias, and the researcher was aware of scenarios that could influence their perspective (Patton, 2002). The research findings' integrity was safeguarded by adhering to Saunders et al.'s (2007) research onion design. The researcher strived to be transparent and truthful regarding any bias that could impact the research findings.

## **Summary**

This study evaluates the impact of business rescue on employment protection at Big Five Mine in Mpumalanga, South Africa. Chapter One introduces the business rescue statute and the conflict between employment protection and business rescue laws. The chapter also explains the study's significance, design, and research aims, which were informed by stakeholder management theory and critical theory (Freeman & Mcvea, 2018). Critical theory demands an explanation of the problem with the social reality under study and the identification of those individuals or organisations with the power to change reality (Horkheimer, 1972).

Chapter Two provides a literature evaluation that confirms the existence of a study gap where the viewpoint of employees intersects with the safeguarding of their jobs and the requirement to save a company through essential cost-cutting actions. The literature review concluded that it is imperative for all parties involved to employ rationality in order to establish the principles that govern their obligations, rights, and interests.



## **CHAPTER 2: LITERATURE REVIEW**

### **Preamble**

The literature review is a critical component of this research, providing a comprehensive overview of existing knowledge on business rescue laws, employment protection, and job security. This chapter validates the research gap, which was identified as the employee perspective on business rescue law being under-researched. The chapter explored the need for cost-cutting measures in business rescue procedures and consensus on using reason to determine obligations and rights. This chapter conducts a thematic analysis of current literature to elucidate the concept of job security. It also explores the historical context and the rationale behind the implementation of a corporate rescue statute aimed at safeguarding employment security. The Companies Act 71 of 2008, which introduced business rescue laws in South Africa, is examined in the context of international best practices and historical development. The data collected from the literature reviewed were evaluated to address research questions one and two. The literature review followed a straightforward, methodological, and repeatable approach (Munn et al., 2018), ensuring a concise and comprehensive understanding of the complex topic. This chapter delves into the application of business rescue laws in the legal profession and how business rescue practitioners apply them. The literature evaluation aimed to enhance understanding of the effects of these policies on the corporate sector, job security, and the economy as a whole. This would shed light on how company rescue procedures may be contributing to the high unemployment rates in South Africa.

Employment is a subject universally crucial to any business. The business rescue law states that the secondary objective of this legislation was to save jobs in this country with a very high unemployment figure. No company can operate with zero employees. The government regulates economic processes to balance the interests of all members of society (Barakauskas, 2014). One such example of legal regulations is the laws on corporate rescues. Several countries have adopted statutes to make provisions for rescuing a corporate identity when it faces short-term financial difficulties (Fletcher, 2004). Numerous nations' rescue operations aim to give financially troubled businesses a realistic set of options so they can carry on with business (Levenstein, 2018). This study addressed the question of whether this legislation made adequate provisions for the fair treatment of employees while striving to rescue a corporate entity. The study analysed the historical development of corporate rescue laws by assessing the legislation in the United States and comparing it to South African law, as well as relevant regulations in the United Kingdom and Australia. Developing countries such as South Africa look to global trends as a guiding influence and a model to follow. International laws provide a foundation for the development of new laws and structures. By following these frameworks, governments can make significant advancements towards adopting international best practices. A legislative handbook published by the United Nations Commission on International Trade Laws (UNCITRAL) affirms that safeguarding employment is a fundamental objective of any insolvency process (UNCITRAL Working Group V, 2004).

This study evaluated the impact of the Business Rescue Law on employee safeguards in the mining industry, specifically within the mining sector. However, the

results of this study are likely to be useful to all South African workers. Ample secondary sources were accessible for the case study. The procedure at Big Five Mine spanned more than seven years at the time of the conclusion of this study, and the researcher had access to all court proceedings and communications related to this procedure. Information such as books, dissertations, and peer-reviewed journal articles was accessed electronically via search engines such as Google Scholar, International Directory of Philosophy, J Store, Mendeley, Nexis Lexis, Research Gate, and S Cielo. The researcher also had access to the University of Potchefstroom Library and the Unicaf Library and textbooks purchased for this study. Business rescue, stakeholders, employee protection, unemployment, corporate rescue, *Company Act South Africa, Chapter 11 in the United States*, and "employee protection during corporate rescue proceedings" are among the critical search terms. The literature review was conducted from 2015 to 2021. However, the literature assessment included important works published before these periods, as the law was put into effect in 2011, and only a limited amount of information was available on the subject. Articles that have undergone peer review and were published after 2021 were included in the study after it was edited to ensure that the information remains current. Early works from 2007 to 2015 strongly influenced the understanding and implications of this law.

## **Theoretical Review**

### **Ontology**

Researchers form a hypothesis and theorise about the state of things and how they exist. Ontology considers the researcher's assumptions of how the world operates and their commitment to specific views; sometimes, these assumptions are explicit. Two

researchers' perspectives of ontology were identified as "objectivism" and "subjectivism" (Saunders et al., 2015). The ontological question a researcher investigates is questioning what kind of reality exists. The researcher must answer whether their investigation is about a single and verifiable truth or whether it pertains to socially constructed multiple realities (Patton, 2002). The study's research topic was the influence of a Business Rescue statute on an employee's job security, and the researcher anticipated that the response would point to a social and economic construct with different realities. The question was intricate, and numerous participants may have significantly diverse experiences with this identical legislation. Nevertheless, the law is unambiguous and was implemented with the intention of preserving enterprises in the economy.

### **Epistemology**

Epistemological assumptions prepared the researcher to control the study approach. Epistemology is propositional knowledge. Propositional knowledge can be explained as follows: Learned knowledge will allow a person to know that if you add two and two, the answer is four, and this is opposed to learning, which will explain how to add two to two to get to four. The epistemological question will guide a researcher into debating the likelihood and benefits of subjectivity, objectivity, validity, and generalisability (Patton, 2002). A researcher's ontological beliefs will guide them toward their epistemological assumptions. Thus, if the researcher assumes a single, verifiable truth, a position of objective detachment will lead the researcher to discover "how things really work" (Guba & Lincoln, 2005). However, this research allowed the researcher to conclude that socially constructed multiple realities exist. Therefore, people cannot be studied like immovable

objects or objects of natural sciences. The researcher's epistemological beliefs necessitated a direct encounter with the subjects and a comprehensive understanding of a phenomenon in the context in which the subject experienced the phenomenon. The researcher was also concerned with how the acquired knowledge can be communicated to others.

### **Critical Theory**

A social theory does not determine our worldview but guides the development of questions and strategies for investigating a phenomenon (Kincheloe et al., 2018). Justice and power are central concerns of critical social theory (Fuchs, 2020). A social structure that provides competing interests is the basis for the interactions between the economy, issues of race, class, and gender, as well as those between education, religion, business, and other social institutions. These interactions are examined within the framework of critical theory (Kincheloe et al., 2018).

Critical Theory has six aspects, as explained in Table 2.

**Table 2**

*Critical Theory*

<b>Epistemology</b>	<b>Ontology</b>	<b>Praxeology</b>
Dialectical reasoning	Critique of the political economy	Critical Ethics
	Critique of domination and exploitation	Struggles and political practice
	Ideology critique	

*Note:* Student's compilation. Information gathered from *Critical Theory*, Fuchs 2020, p.8.

Critical theory strives to transcend merely explaining a phenomenon (Fuchs, 2020). It aims to understand and implement the blending of theory and practice as praxis (Watts, 2007). An epistemological dimension of critical theory is dialectical reasoning. It is used as a method of analysis. Marx reasoned that rational sense goes beyond the realities of class in society towards a transcendental reality far beyond class structures (Fuchs, 2020). In modern society, the law regulates the class structure that has moved beyond the concept of mere "bourgeoisie" and "proletariat" that was made famous by Marxist theory (Habermas, 1987). The terms "Bourgeoisie" and "proletariat" refer to two distinct social classes: the bourgeoisie is the capitalist class, comprising those who own the means of production, such as factories, land, and resources. Habermas (1987), and therefore critical

theory, contended that the capitalist class(“bourgeoisie”) exploits labour of the “proletariat” to generate profits and maintain their power and wealth. The capitalist class thus has control over the economy, political influence, and cultural dominance. The working class consisted of those who did not own means of production and must sell their labour for wages. They are the “proletariat.”They are exploited by the “bourgeoisie,” as they receive less value for their labour than the value of the goods and services they produce (Fuchs,2020 ). The terms “bourgeoisie” and proletariat” were first used by Karl Marx and Friedrich Engels in their book “The Communist Manifesto” published in 1848 (Fuchs & Mosco, 2012) . They described the class struggle between the owners of the means of production and the working class. In an academic context, understanding the terms “bourgeoisie” and “proletariat “is crucial for analysing social inequality, power dynamics, and economic systems. South African workers have many rights bestowed upon them by a modern democracy (Heinz, 1995). In less-developed countries, the ideals of Marxism are still relevant, although communism is a concept that belongs in the past (Fuchs & Mosco, 2012). Every employee aspires to be in charge of their own lives. Democratic rules enable workers in a society that prioritizes justice to achieve emancipation.

The barriers that keep people and groups from making decisions that have an impact on their lives are revealed by critical study. Kincheloe et al. (2018) have made a seminal contribution to the essential re-conceptualization of theory. They challenge the idea that societies like the United States of America, Canada, Australia, and the countries that make up the European Union, for example, are trouble-free, democratic, and independent.

Instead, they reject the conventional Marxist theory that holds that the "base" determines the "superstructure. "They believe that individuals in these societies live in a comfort zone where they have grown accustomed to domination and subordination. Therefore, they do not realise that equality and independence are not available to everyone. They recommend that researchers consider the information available against the knowledge that media is saturated, especially in the Western culture at the end of the 20<sup>th</sup> century. As a result, scholars must think about novel approaches to studying and analyzing how people are constructed (Kincheloe et al., 2018). The realization that there are various types of power emerged at the start of the twenty-first century. Instead of arguing that economic concerns are irrelevant in daily life, critical theorists acknowledge that economic factors are inextricably linked to all forms of oppression (Kincheloe et al., 2018).

Critical ethics forms the praxeological essential dimension of theory. The Hegelian method of comparing essence and existence forms the basis of critical theory's praxeology (Fuchs, 2015). This essence connects with the positive dimensions of humans, such as striving to be free. The ethical implication is that humankind should strive for conditions that enable every person to reach their full capability. This concept has strong roots in the African culture, which is referred to as "Ubuntu" (Maquthu, 2018). According to the Oxford Bilingual School Dictionary, "Ubuntu" means that you are a person because of other people (Gilles-Maurice de Schryver, 2015)

Critical theory originated in the Frankfurt School, where scholars such as Marcuse, Horkheimer, and Adorno worked (Grayling, 2019). The Frankfurt school adopted Marx's ideas. Still, in the era of Nazi Germany, they used the critical theory as a camouflaged term



to disguise many of their ideas, which would have been classified as having negative connections to communism (Fuchs, 2015). The critical theory uses Marxism as a starting point (Mazzoleni, 2015).

Jurgen Habermas (1984,1987) used the Classical Frankfurt School teachings to build his approach. This approach transcends the classical tradition. Habermas (1987) argued that the elite use money and power to dominate society (Habermas, 1984). Habermas argues that human beings need labour and communication to earn a living. While Habermas did refer to the fundamental Marxist distinction of labour and superpower, his philosophy emphasised the importance of communication (Habermas, 1987). He argued that labour and communication could not be separated. Humans need to think in order to communicate their plans. No labour can occur without the necessary thoughts being put into planning the action. A productive workforce needs to anticipate their actions by thinking and communicating these thoughts, thereby ensuring their economic existence. These two senses (thought and communication) are the cornerstones of an economy and a fundamental cultural understanding. Culture and communication are not commodities, but in capitalism, cultural labour power is frequently treated as a commodity that needs to be obtained as cheaply as possible (Fuchs & Mosco, 2012). Mass communication that is not controlled by the state is essential in a free society. However, in a capitalist society, communication is also a form of interaction. Mass media deliver ideas that become “needs” to the dominant groups (Fuchs & Mosco, 2012). Labour works to afford the fruit of their labour; in other words, it has been communicated to them that their

product is desirable. The access to knowledge and communication is a central theme of current research.

Habermas (1984) failed to understand that splitting communicative reason from instrumentality negates the idea that in capitalism, the controlling classes use communication, media, technology, or labour as the instruments that enable its rule (Habermas, 1987). Opposing this view, Horkheimer differentiates between influential and critical reasons (Horkheimer, 1972). Thus, he distinguishes between traditional and critical theory. Marx identified and analysed the contradictions of capitalism, for example, the stark contradiction between rich and poor or non-owners and owners, misery and wealth, or workers and capitalists (Fuchs & Mosco, 2012; Fuchs, 2015). Marx and Hegel proposed that the tension between these two pillars can be resolved in a process called sublation. Persistent contradictions that remain under capitalism and are not sublated are the root cause of untold misery in society (Fuchs, 2015). The term sublation stems from the German word “Aufheben,” which has several contradictory meanings: to lift, abolish, cancel, suspend, or even transcend (Fuchs, 2015).

The critical theory examines every idea and action that rationalises or enables domination or abuse (Fuchs, 2015). Marx posits that domination and exploitation alienate society from the ideal of achieving a good life for all (Fuchs & Mosco, 2012). Critical theory has a regulating aspect or normative dimension (Fuchs, 2015). When interpreting alienation and control (domination), critical theory insists on self-determination, participatory, and just democracy (Fuchs, 2015). Studying critical social phenomena demands a crucial critical philosophy as a foundation. Critical theory owes much to Marx

and Hegel, according to Fuchs (2015), although Horkheimer (1972) contended that critical theory and research should never settle for merely advancing knowledge.

Unlike critical researchers, who see their work as the foundation for addressing injustices discovered in study or on the field, traditional researchers see their work as a description and interpretation of reality (Horkheimer, 1972). In the critical tradition, investigators disclose their presumptions to all parties before beginning an inquiry. As people learn more about their subject, their political and epistemological baggage may alter (Kincheloe et al., 2018).

Fuchs and Mosco (2012) reflect on Marxism being over two hundred years old and the Frankfurt School of critical thinking dating to 1930, but they consider the ideas still valid today. They believe this is true, especially in less developed countries (Fuchs & Mosco, 2012). South Africa has a sophisticated democratic constitution but remains a country of many contradictions (Heinz, 1995). In a modern country with a current democratic form, workers have several rights (Nsubuga, 2016). South Africa operates mainly as a capitalistic society and is in the company of more prominent countries like Hong Kong, Singapore, New Zealand, and Canada. It is, by far, not the biggest in the world, but very influential on the African Continent. Capitalism is prevalent in South African society, and an added dimension is tribal law, which was not considered when most of the current legislation was promulgated (Maquthu, 2018).

The Business Rescue Law is a notable example of a statute that modifies the United States Chapter 17. Although this rule was incredibly influential in the United States of America, researchers such as Loubser (2010) contend that each nation should have the

freedom to create a system appropriate for its own culture. Maquthu (2018) supports this argument by adding that lawmakers in South Africa should consider the African concept of Ubuntu.

Several business studies use critical theory in their scholarly works (Watts, 2007). Several studies have investigated the problem from a legal background (Levenstein, 2015; Conradie & Lamprecht, 2018; Jombe & Pretorius, 2022). A legal thesis does not conform to general social science research rules but is concerned with using “precedent” to explain its hypothesis (Loubser, 2013; Levenstein, 2018). Nsubuga (2016) has studied the impact of corporate rescue law on employees. Current researchers have applied Ronald Dworkin’s and Marxist legal theories as general theories. Insolvency law is affected by some theories and models, including the Creditor's Bargaining Theory, the Team Production Theory, and the Authentic Consent Model (Etukapan, 2012).

### **Creditors Bargaining Theory**

The Creditors' Bargaining Theory was considered to support the framework of the current study (Buccola, 2019). The Creditor's Bargain theory is a normative theory of bankruptcy (Buccola, 2019). This theory argues that bankruptcy should be limited to facilitating coordination problems caused by multiple creditors. When a company experiences financial distress, private necessity temporarily supplants the standard trespass rule (Buccola, 2019). The creditors' bargain model could be helpful because it shows how and why financial distress can lead to ill-informed decisions when there are coordination difficulties. This theory does not offer any reference to technologies of investor coordination other than the law, as illustrated by Buccola (2019). Insolvency scholars have

traditionally employed the creditors' Bargaining Model to analyse insolvency laws. The Authentic Consent Model has been developed as an alternative model for analysing and justifying insolvency laws. This model argues that all parties affected by the issue of a business failing should be given a choice in selecting the principles of the process that would determine their rights and obligations in a liquidation procedure (Mokal, 2001). When drafting the rules of justice, money and negotiating power are meaningless; thus, all impacted parties - either employees or secured or unsecured creditors—should be given equal weight in designing the procedure (Mokal, 2001) . According to this principle, all parties affected by insolvency issues are free, equal, and reasonable. This egalitarian approach is admirable but not transferable to a society still striving for equality. The current study concurred with the findings of Loubser (2010), who stated that rules must develop over time and be adapted to society's needs. Thus, this theory was not acceptable in the framework of the current study.

### **Team Production Theory**

The notion of team production made its appearance in the Virginia Law Review in 1999. Lynn Stout and Margaret Blair created the theory (Cheffins & Williams, 2021). They meticulously contrasted their theory development with “shareholder primacy.” They espoused the idea that the board of directors is tasked with balancing the interests of a corporation's various constituencies in a manner that addresses challenges associated with “team production” in a corporate setting. In 2021, the hypothesis was examined by Cambridge University Fellows at the Harvard Law School Forum on Corporate Governance (Cheffins & Williams, 2021). Corporate law academics mostly argue that

United Kingdom corporate law is a shareholder playground; therefore, this theory did not translate well to the current study investigating the South African perspective, where the legal emphasis is placed on rescuing a company for the benefit of all stakeholders. Under Southern Africa's new Companies Act No. 71 of 2008, shareholders were not granted any rights over other stakeholders. Investors are genuinely interested in how a business rescue process turns out, and they are dedicated to the process because they see it as a better option than liquidation. The Team Production theory was not applied in the current study because the practitioners are given control of the company during the business rescue phase. The board of directors no longer has exclusive control over the company; now, the Practitioner must consider all stakeholders' interests.

### **Stakeholder Management Theory**

Stakeholder management theory, when applied as a critical theory, enables scholars to expose structures that often remain hidden in common sense (Freeman & Mcvea, 2018). The Business Rescue law was examined for non-obvious meanings and intentions of various situations and texts. Thus, stakeholder management theory provided the lens through which the researcher could understand and critique society honestly and intelligently.

The extant body of literature on stakeholder management theory (SHMT) indicated that a critical approach to stakeholder management theory could serve as a foundation for the study's justification. Applying the idea of stakeholder management was warranted by the researcher's ontology for business rescue laws, which are thought to be beneficial for employees. Although the assumption that Business Rescue Law offers more favourable

terms to employees than the alternative, liquidation, was supported by original data derived from supporting documentation in this case study.

In recent years, Stakeholder management theory has gained popularity in business studies (Fuchs & Mosco, 2012). A critical theory perspective elaborates on a normative Stakeholder Management theory. A vital feature of the critical theory method is the differentiation of ontological dimensions into three categories. These are legitimacy, morality, and ethics (Fuchs & Mosco, 2012). The terms "stake" and "stakeholder" are essentially formal and provide a broad definition that can encompass a normative range of viewpoints (Reed, 1999). This study employed a critical perspective on the application of stakeholder management theory, taking legitimacy, morality, and ethics into account.

Freeman and Mcvea (2018) indicate that any scholar applying Stakeholder management theory should first establish what constitutes a stake. They further suggest that the term "stake" often includes a list of criteria, such as need, morality, or loyalty, but they disagree with these definitions as they do not ground stakes. Occasionally, writers utilise relatable experiences or common sense to clarify the risks. Freeman (1984) defined a stakeholder as someone "who can affect the operation of a corporation" in a previous study. This definition includes employees, shareholders, directors, and creditors. The authority of tradition is another popular explanation for stakes (Freeman & Mcvea, 2018). In his 2018 study, Freeman confirmed his previous definition of a stakeholder (Freeman & Mcvea, 2018). This study concentrated on the description as it is applied in South African law and confirmed by the King IV Commission (King IV Report, 2016). Therefore, this study referred to anyone with a stake in the organisation being rescued as a "stakeholder."

Thus, employer, worker, creditor, shareholder, and owners were included in this description. According to Freeman and Mcvea (2018), management creates and promotes procedures and guidelines consistent with the company's self-perception. Defining stakeholders constituted a complicated field of study, but the researcher concluded that adhering to this theory required management to act legitimately and consistently with the firm's identity (Freeman, 1984). Administration cannot be forced to work on ethical norms that are not explicitly mandated by valid legislation. However, it is essential for management to carefully contemplate and acknowledge the justifiable demands of potential stakeholders (Freeman & Mcvea, 2018).

Through the application of a critical theory framework, the author of this study proposed a contemporary interpretation of the notion of stakeholder management. By concentrating on normative theory, this study attempted to show how a critical theory approach brings two primary benefits to the understanding of Stakeholder management theory. First, by carefully putting theory into practice, a strong foundation for validating the extent of management's normative obligations to stakeholders is established. Second, the analysis of Stakeholder Management Theory is made more conceptually clear by the critical theory (Reed, 1999). Possessing three different normative domains was advantageous. The conditions that can affect these responsibilities owing to the stakeholders were identified, and the foundation for precisely defining the nature of these responsibilities became evident (Reed, 1999). This framework also provided guidelines on how to resolve disputes involving conflicting stakes. Stakeholder Management Theory was linked to strategies for effectively running a company. The idea that shareholders are the



sole stakeholders that management should be concerned about was contested by Reed (1999). The foundation of stakeholder theory is the idea that conducting business involves values. Stakeholders become more critical when a business is in trouble and business rescue is a possibility. The theory of stakeholder management evaluates how to strengthen the bond between stakeholders and the company, particularly in times of crisis. The Business Rescue process increases the number of parties involved in the organization. Directors, management, shareholders, owners, workers, consumers, secured and unsecured creditors, and contractors are the main stakeholders of a firm in a prosperous state; in a difficult period, a corporation has additional stakeholders. These include turnaround specialists, such as business rescue practitioners, potential investors, regulators, and courts. The interest of this study was the employees as stakeholders and how the Business Rescue process influenced their employment security. Regretfully, Chapter 6 of the Companies Act merely refers to stakeholders once in the context of the Act's objectives and does not define them. Stakeholder theory centers on how corporate management considers the interests of all pertinent stakeholders (Jombe & Pretorius, 2022).

Scholars use the Stakeholder theory to understand and inform the management of an organisation about the stakeholders in that institution. The normative perspective regards stakeholders as having essential value. The understanding is based on an assumption of a moral or philosophical grounding being prevalent in an organisation. Therefore, the normative strategy is determined by the philosophical approach to managing stakeholders. In contrast, an instrumental perspective views stakeholder management as a tool for reaching traditional organisational goals, such as increased profitability.

Stakeholders include shareholders and other groups who contribute to the company's profitability. Stakeholder management theory acknowledges a “social contract” that accepts the moral obligation to perform. The traditional view that a company has duties to shareholders alone is challenged by accepting this “moral contract.” A company cannot exist in an environment where the only objective is profit for shareholders alone. Botha (2015) argued that this traditional view of company law is too narrow and outdated and should be challenged by a new set of principles.

The first rule is that businesses should act in the best interests of society at large. The success of a business should be evaluated in light of factors other than its bottom line. Additionally, the business needs to report on the total value it delivers to society. The organization cannot be considered successful if a company's fundamental social importance is less than its social value. *King III* acknowledges that businesses that uphold the sustainability principles enshrined in the South African Constitution are excellent corporate citizens (King III Report, 2009). The new Companies Act seeks to enforce the Bill of Rights in the application of company law and take into account the robust growth of the South African economy, which will lead to the creation and maintenance of jobs. "Transparency and good standards of corporate governance" are promoted by the King III Report. Companies should, therefore, consider their responsibilities more broadly if they are required to be more accountable. This view should include profitability to their shareholders and consider all their stakeholders' well-being, such as a safe and healthy work environment. However, a company's sustainability must also be considered while a corporation creates wealth for society.

The second principle espoused by contemporary researchers is that companies serve the public interest by generating financial success (Botha, 2015). This idea sets modern corporations apart from other types of enterprises. The corporate legal framework that allows firms to create economic gain is established by society. This framework would include restricting companies from discrimination based on race or disability. The financial cost of adhering to this principle will be offset by the profit of contributing to a healthy society and economy. The values of protecting justice, fairness, and human rights are essential to the young democracy of South Africa.

The third concept is that corporate law should further the first and second principles. That raised the issue, "If corporate law upholds these ideals, how would corporate governance serve these objectives?" As a result, principle three also leads to principle four, which maintains that the wealth of an organization ought to be equitably distributed among all people who have contributed to its creation. The premise that corporations are communal enterprises formed the basis of this theory. Several inputs allow a company to create wealth. Employees provide labour, and the government provides the infrastructure to the company and the community in which it operates. The traditional perspective of shareholders is being challenged by the shifting roles that firms play in society; shareholders are no longer seen as the only or most important stakeholders.

The fifth principle promotes democratic corporate governance and participation as the optimal means of maintaining company wealth. The fiduciary responsibility of directors and management must be accountable to all stakeholders for a corporation to serve them all. The managerial prerogative is still essential but should not be absolute.

Employees are responsible for working and acting in good faith, despite the employer's authority to assign and control in terms of the abovementioned managerial prerogative.

According to contemporary ideas and models of businesses, the shareholder primacy model is no longer the most popular one (Botha, 2015). It's still unclear how much employee participation in decision-making is appropriate, but the principle of “fairness” should advance employees’ rights. Stakeholder Management would guide “fair” employee participation in the “voice” of the company.

### **Conceptual Review**

The capacity of workers to maintain employment and avoid unemployment is what we mean when we talk about job security (Pacheo, et al., 2020). Ensuring job security also entails lessening workers' anxiety about losing their jobs. Because it enables companies to keep their current workforce and lowers the costs involved in employing new staff, job security is essential for both employees and employers (Alsharif et al., 2021). Employees may be motivated to strive toward the organization's objectives and guarantee the organization's success by providing them with job security. "Having authority and control in a job environment and a guarantee for job future" is what Newman et al. (2019) define as "job security," whereas "job insecurity" is defined as "an involuntary and fundamental dread of losing one's job." Being offered voluntary retrenchment is often perceived as a permanent job loss (Dept of Trade and Industry, 2004). According to Almeida & Santos (2020), job security refers to the anticipation that employees have that they will be able to keep their positions for an extended time. It denotes that an employee has a guarantee about the continuation of their job and that they are protected from being fired without cause

from their job. As a result, it is concerned with the likelihood or potential of an employee preserving their job to forestall the occurrence of job loss. Certain professions and types of work activities provide higher levels of job security than others. For instance, positions not supported by an indefinite contract cannot be guaranteed for a fair amount of time. They are thus considered to have little job security. An employee's certainty or trust that they may keep their current job for a long time or as long as they choose is the essence of job security for that employee. It is the guarantee given by the firm to its staff that they will remain employed by the company for a certain amount of time without being laid off. According to Abri et al. (2022), job security is one of the primary factors contributing to job satisfaction and commitment to the company, which, in turn, leads to the employee devoting more time and effort to their work. (Jarosch, 2021).

According to the expectation theory developed by Victor Vroom in 1964, employees would put in more effort to ensure that organisational objectives are met if they are provided with incentives and advantages that they find personally meaningful. According to this principle, one may get better benefits by working hard and doing well. In addition to this, it asserts that people have the potential to make reasonable choices, which helps them when it comes to making decisions. After that, they work hard to attain significant rewards, such as job security, and succeed in doing so. Workers are willing to take ownership of administrative objectives and improve their performance if successfully completing those goals would bring value, directly or indirectly, to their aspirations. The expectancy hypothesis, hypothesises that people join organisations because they share similar ideals and expectations with such organisations. The employee looks to the

employer to offer work for an undetermined time, expecting the job to be permanent, and one of the employee's expectations is that the employer will fulfill this expectation. If such an expectation is satisfied, employees will respond by making the extra effort to help the business achieve its objectives. Therefore, job security, which refers to employees' overall attitude toward their respective jobs, is essential to employee happiness (Newman et al., 2019).

When defining individual aspects of job security, legal elements like the employment contract, labour regulations, collective bargaining agreement, and personal characteristics like experience, academic credentials, and industry play an essential part. According to Sokhanvar et al. (2018), positions in the public sector are considered to have a higher level of job security than those in the private sector. The private sector is believed to have a lower level of job security. However, an employee's job security depends on their employability, which refers to whether or not the firm needs their specific abilities. Even though legislation may provide some relief from the threat of job loss, the benefits it affords employees in terms of job security are marginal at best. Therefore, it is still the case that the employer is the one who decides which skill sets are necessary for the efficiency of the business. Employees who do not possess the required competencies are more likely to experience job insecurity. Employees long for job security, but what makes them anxious is the prospect of losing their jobs. The term "job insecurity" refers to being employed but feeling threatened by the possibility of being unemployed. It is situated between "employment" and "unemployment" (Bhargava et al., 2021).

The notion of job insecurity may be examined from two different vantage points: first, as a multi-dimensional concept, and second, as a worldwide concept. Umrani et al. (2019) describe job insecurity in terms of the former as a feeling of impotence to keep the intended continuity in a precarious job environment. "Job insecurity" in this sense refers to the risk of having one's employment terminated or otherwise altered. Therefore, an employee's beliefs regarding any prospective dangers to the continuation of their present job are considered examples of job insecurity. Assumptions regarding the possibility of losing cherished aspects of one's job, such as compensation and fringe benefits, advancement chances, and prestige, are included in this category. They highlight two critical themes within job insecurity: the difference between affective and cognitive job insecurity. Affective job insecurity is the fear of losing one's job, whereas cognitive job insecurity is the possibility of losing one's work. Affective job insecurity is the fear of losing one's job, whereas cognitive job insecurity is the possibility of losing one's work. Both of these topics are essential to job insecurity. It is said that the macro-environment, which is influenced by the capitalist system that promotes accessible business with little intervention from the government, has an overall impact on job security in the United States of America (Abri et al., 2022). South Africa operates mainly as a capitalist society, so it is reasonable to infer that South African employees are similarly affected.

Consequently, it is clear that the state of the economy highly influences the security of one's job in a capitalist country. If the economy is operating at its full potential, businesses will have booming sales, creating new jobs and increasing job security on a national scale. On the other hand, this may not be the case during an economic slump such

as the one that several nations in the third world, such as Nigeria, Zimbabwe, and South Africa, are experiencing. This is because, during such a moment, firms tend to employ cost leadership techniques to cut operational expenses by laying off personnel. As a result, job security for those who remain in the organizations is reduced due to these policies. In the United Kingdom, contractual employees are only eligible for a legitimate minimum of one week's redundancy pay per year of service and one and a half weeks for employees over the age of 40. Therefore, contract workers experience low job security in European countries like the United Kingdom because countless firms consider replacing permanent contracts with fixed-term contracts, which they regard as a more cost-effective option. South African legislation protects employees against contract employment lasting indefinitely, but the social security payments from the government will only pay for three months of unemployment.

Nevertheless, as in Europe, many employees in South Africa are employed under indefinite contracts. Although they do not promise work for the rest of one's life, South African employment contracts are exceedingly difficult for employers to end at their own will (Jarosch, 2021). The current study considers whether Business Rescue legislation makes getting out of responsibilities towards employees easier.

### **Challenges of Job Insecurity**

According to recent studies, job insecurity is challenging for employees financially and poses a risk to their sense of identity (Pacheo, et al., 2020). Patterns have emerged concerning people's levels of education. It has been observed that people with higher levels of education are more likely to experience status inconsistency if they lose their jobs.



However, persons with lower levels of education are more likely to suffer from the adverse effects of job insecurity than those with higher levels of education since they have fewer social and economic resources (Sokhanvar et al., 2018).

### **Cognitive and emotional insecurity about the job**

Affective work insecurity is the emotional condition of being worried about losing one's job, whereas cognitive job insecurity is the awareness of the likelihood of losing one's career (Abri et al., 2022). Employees aware of the chance that they may lose their jobs may not experience any emotional fallout from the prospect, given that most countries offer services available to help solve the jobless problem. However, the same support is not readily available in South Africa, a developing country. Therefore, losing job security in South Africa might also mean a person experiences emotional insecurity. Job security is a description of a person's thinking style and how an individual feels since these variables are more significant when examining the effects of job insecurity on an employee's well-being (Alsharif, et al., 2021). Although there is a connection between the cognitive and emotional types of job insecurity, each type's repercussions are often different (Ito & Brotheridge, 2007). For example, cognitive job insecurity within the framework of the psychological contract is the perception that an organization is not living up to the psychological commitments it makes to its workers. On the other hand, emotional job insecurity denotes a breach of the worker's affective state (Abri et al., 2022). When changes or crises inside the business are adequately communicated, job insecurity may be lessened on both an emotional and cognitive level (Wright & Huang, 2012).

Cognitive abilities are a type of coping mechanism, and they are shown to an employer in the form of an employee's emotional reactions to the job environment. Additionally, cognitive abilities improve an employee's capacity to deal with the stresses of their job (Altinay, et al., 2019). Job insecurity has a number of negative effects that impact the organization as well as the individual, much like many other work-related stressors. A robust relationship exists between an employee's perception of job security and their degree of job involvement, organizational commitment, job performance, and overall productivity (Dhanpat et al., 2018). Insecurity about one's job status has been linked to decreasing motivation, safety, and compliance in the workplace, which may lead to increased risks and accidents (Pacheo, et al., 2020). It is clear that poor job-related attitudes and behaviors and high degrees of hopelessness, burnout, and anxiety are associated with job insecurity (Gu et al., 2021). A person may have a great deal of anxiety if they cannot accurately forecast or get information about the future of their present job line. Several studies confirm that job insecurity is linked to various unfavourable consequences, including those relating to one's health, attitudes, and behaviours (Gu et al., 2021).

According to the hypothesis presented by Staufenbiel and Konig (2011), affective job insecurity concerns the psychological and emotional components of the job insecurity experience. According to Jarosch (2021), the emotional components of knowing about work insecurity are referred to as affective job insecurity. Affective work insecurity can manifest as feelings of worry, unease, or anxiety around the possibility of losing one's job or certain components of it. However, Svalund et al. (2016) contend that cognitive job instability is the likelihood of losing one's employment. Staufenbiel and Konig (2011)

provide evidence in support of this notion by elucidating how the cognitive aspects of job insecurity are captured by mental job insecurity. These elements include, for example, the perception of the potential to quit a job or lose desirable job features. The emotional components of knowing about work insecurity are referred to as affective job insecurity. Affective work insecurity can manifest as feelings of worry, unease, or anxiety around the possibility of losing one's job or specific components of it. However, Svalund et al. (2016) contend that cognitive job instability is the likelihood of losing one's employment. Staufenbiel & Konig (2011) provide evidence in support of this notion by elucidating how the cognitive aspects of job insecurity are captured by mental job insecurity. These elements include, for example, the perception of the potential to quit a job or lose desirable job features.

According to Moshoeu and Geldenhuys (2015), the perception of being in danger of losing one's job is the quantitative manifestation of job insecurity. Quantitative job insecurity refers to a situation in which people are unsure whether they will be able to maintain their current work or be forced to look for new employment. According to Sverke et al. (2006), the quantitative definition of job insecurity is the anxiety associated with the possibility of losing one's job. Moshoeu and Geldenhuys (2015) assert that quantitative job insecurity is analogous to the global viewpoint, which comprises being concerned about the prospect of losing a job. In addition, Bhargava et al. (2021) define qualitative job insecurity as the perceived danger of diminished quality in an employment connection.

The findings of the previous study support this perspective. According to the hypothesis presented by Tilakdharee et al. (2010), "qualitative job insecurity" refers to a

lack of security regarding the continued availability of highly valued aspects of a job, such as a salary, favourable working conditions, and a meaningful career. As evidence, Tilakdharee et al. (2010) concur with the view that qualitative job insecurity refers to the possibility of a decline in the quality of the employment relationship, which is primarily caused by deteriorating working conditions, a lack of jobs and promotional opportunities; and a decrease in pay, amongst other valuable job aspects. The concept of qualitative job insecurity echoes the multi-dimensional viewpoint that pertains to the risk of losing essential elements of one's job.

### **Organisational Aspects of Job Insecurity**

According to Gu et al.( 2021), the degree of unemployment in a nation has been shown to correlate with the impression of job insecurity in that country. Variables about the industry and the organization and whether or not the entity in question is public or private all contribute to disparities within the nation. According to Qin et al. (2021), government positions and parastatals are seen as more secure than those in the private sector. This is attributed to the fact that legal and cultural limitations operate in favour of employees in the public sector. Private businesses allow for letting employees undergo the retrenchment process simpler than state-owned organisations. The perception of job insecurity is exacerbated by organizational upheaval and reductions in workforce size (Johnston et al., 2020). Feelings of job insecurity might emerge when the reorganization is done regularly, and public pronouncements are made about the need to adapt to change. It signals that the person's job security may be in jeopardy due to the situation. Newman et al. ( 2019) asserted that when employees experience organizational change, they worry

about losing their jobs or being unable to master the newly implemented procedures and mechanisms. Following the aforementioned, Tilakdharee et al. (2010) agree that employees are profoundly impacted by organizational change due to job loss, the disappearance of valued job aspects, and the experience of witnessing the dismissal of co-workers.

According to Pacheo et al. (2020), emotions of job insecurity are more prevalent during the organizational transition. This insecurity is because employees are anxious that their permanent employment contracts will be replaced with temporary contracts. The development of new technologies has resulted in the automation of processes, which in turn has led to the de-skilling of employees and the elimination of positions for those workers across various businesses and industries. The sense of job insecurity is often preceded by organizational transformation processes such as reorganization, business process re-engineering, mergers and acquisitions, and outsourcing, among others. According to Umrani et al. (2019), one of the primary reasons employees resist organizational change is that it would render their current positions outdated or limit their possibilities for future salary raises.

Alterations to a work's structure, procedures, or culture might result in eliminating jobs or the reduced or eliminated aspects of the job that are valued. In part, employees feel job insecurity due to factors inherent to the larger environment. The macro-environment encompasses not only the macroeconomic and global surroundings but also the technical, demographic, and social settings, as well as the political and legal contexts (Jarosch, 2021). As a result, the macroeconomic environment significantly impacts active organisations in

a particular setting. Employees may develop a sense of job insecurity when protective legislation is lacking, leading to increased competition for available positions (Gu et al., 2021).

### **The implications for job security and employee performance**

Most modern businesses are apprehensive about the efficiency of their labour teams. This is because the performance of the employees is a good indicator of the employer's performance. It has been shown that increased levels of job security have a major impact on employees' overall performance. The idea that a worker's credibility as a credible performer in their occupations rises in direct proportion to how much job stability they enjoy has strong empirical backing. An employer must acknowledge the extrinsic motivations of employee success and dedication (Jarosch, 2021). It has been shown that increased levels of job security have a major impact on employees' overall performance. The idea that a worker's credibility as a credible performer in their occupations rises in direct proportion to how much job stability they enjoy has strong empirical backing. An employer must acknowledge the extrinsic motivations of employee success and dedication (Jarosch, 2021). This finding was highlighted in Tilakdharee et al. (2010). Therefore, the degree to which job security may be considered a reliable driver of employee performance varies significantly. In times of economic downturn, providing employees with job security is one of the most effective methods to motivate them to work (Tilakdharee et al., 2010). Employees need to believe and expect that they will continue to be employed by their existing companies for as long as they wish since this is a significant motivator for improved performance (Porter et al., 2011).

Therefore, job security is founded on the view of employees that they are gainfully employed and the promise of the continuous existence of that job, along with the absence of any aspects that may be seen as threatening. Job security affords employees piece of mind as they do not worry about their future careers. This, in turn, contributes to sustaining labour peace and boosts both productivity and personal growth. This is one of the primary reasons it plays such an essential part in social and professional life. The reasoning that job security plays a role in maintaining social stability and values, in addition to the importance of employee performance in this regard, is thus a natural deduction. The argument was put forth by Tilakdharee et al. (2010) that, in most cases, employees may expect long-term employment, and over time, they are prone to consider it as a fundamental commitment of the employer. Workforces that are provided with a high degree of job security have a greater sense of assurance about the permanence of their work, and they see their future as being more predictable and controllable. When an employer does not provide enough job security for its employees, that employer causes those workers to lose faith in their future, negatively impacting their overall performance. The more excellent employee's feeling of job security, the greater the likelihood that they will be able to effectively complete tasks, ultimately transferring to the firm's overall performance.

On the other hand, when workers have a pessimistic view of their job security, it is unreasonable to anticipate that they would successfully and enthusiastically use their knowledge, skills, and experience in their work. As a result, companies owe it to their employees to provide long-term job security and to create management strategies that reassure employees and inspire them. According to the social exchange theory, the

formation of social interactions is predicated on an individual's subjective evaluation of the costs and benefits of various possibilities (Newman et al., 2019). The transaction is carried out by persons acting on their own will and being motivated to do so by the potential rewards their actions will bring. It could thus be argued that employees are more likely to go the extra mile for their employers, put in additional effort, and enhance their performance if their employment can be guaranteed or made more secure.

In the same way, job security can be a motivation; it can be a disincentive that prevents employees from reaching their full potential at work. When employees start to worry about their jobs, they put themselves under much strain. They may withdraw from the stressful situation by reducing the effort they put into their work. Similar findings from earlier studies have been made about the positive relationship between job stability and worker performance (Grand et al., 2007). High levels of work instability were found to cause employees to perform poorly, whereas high levels of job security were found to improve employee performance. King (2000) discovered that white-collar employees who felt uneasy about their positions lacked the motivation to act on behalf of the organization. This lack of inspiration led to lower productivity levels, according to the results of a study conducted by Sokoro (2012) on the factors that influence employee performance in the Kenya Wildlife Service. He concluded that organizational factors such as the organizational structure, the work environment, non-material incentives such as job security, and individual characteristics such as knowledge, skills, attitude, and rewards all impact employee performance. Qin et al. (2021) found that work performance in Chinese employees improved, and they put in additional effort if given perks that helped them



identify with the organization. Enhanced performance was recorded when the social identity perspective of employees' needs was considered. According to Mael and Ashforth (1992), organizational identification is a particular type of shared identity in which employees express who they are in line with their participation in a specific organization. Following this argument, organizational identification helps employees feel less apprehensive about their futures, leading to self-enhancement and self-continuity. Workers who are confident in their positions are eager to use the organization to define who they are and are committed to making a good impression on the employer. There is a clear correlation between job security and the growth of affiliation in the workplace, while job insecurity poses a danger to this affiliation.

When an organization provides its employees with job security, they will have the impression that the organization is concerned about advancing their careers and will see the organization as a responsible and helpful body. In addition, providing employees with job security reassures them that the organization values their individual and collective efforts. Employees will be more motivated to put in extra effort if they feel recognized and appreciated. As a result, low levels of job security convey the message that the firm is capitalistic and places minor to no value on its employees. Qin et al. (2021) assert that the social identity perspective indicates that employees identifying with the organization are motivated to expedite its sustainability. Therefore, organizational success is, to some extent, synonymous with employee success. They argue that when employees assimilate their self-concept with that of the organization, they can better fulfill its requirements and move it closer to achieving its goals; in other words, they become overlapping mental units.

The perception of job security held by workers is critical to the formation and maintenance of a social identity that is both gratifying and progressive. Employees with a strong sense of job security believe that their company has a high degree of social responsibility, and they respond to this perception by improving their level of productivity. They are required to care for the organisation's well-being. As a result, they direct their efforts toward advancing the organization's interests and achieving success on behalf of the organization.

The performance will increase when employees demonstrate corporate citizenship behaviours like these. It will suffer when employees believe the business does not care about them or their future, which is the reverse of the desired result. According to Abri et al. (2022), management may use a variety of tactics and processes to inspire optimum employee performance. It was discovered that bank employees are motivated to perform best by receiving superior financial and non-financial rewards (Bhargava et al., 2021). Furthermore, Bhargava (2021) found that they place a high value on security in their positions to ensure they may keep reaping the benefits of those jobs. They found that the three most important aspects were job stress, motivation, and communication.

They said that the most effective motivator is something that employees appreciate and do not have enough of. Bhargava (2021) concluded that when employees lacked job security, their performance suffered, leading to an overall negative effect on the company. Sokhanvar et al. (2018) contrasted the importance of intrinsic and extrinsic elements to the concept of motivation. According to the results, job security is one of the most critical outside motivating factors.

**The difficulties that Organizations encounter in trying to guarantee Job security.**

The nature of work has been undergoing profound changes over the last several decades because of rising competition worldwide, the development of information technology, and the re-engineering of business processes. According to Dhanpat et al. (2018), for organizations to adapt to the current situation, they have been forced to adopt reorganization strategies such as outsourcing, downsizing, and mergers. This is because of the constantly changing macro-environment, characterized by rivalry, uncertainty, and an increased demand for flexibility. According to Newman et al. (2019), after enduring the challenging economic environment of the global dilemma, many businesses have opted to decrease expenses by adjusting their workforces rather than making other structural changes. Downsizing, or "rightsizing," a term made famous by specialists attempting to take the negative connectivity away from the company image, has been one of the most widely used ways to cut operating expenses. This strategy involves maintaining the same number of employees as before, even if some positions grow and need more people.

According to Almeida and Santos (2020), there has been a significant development in the usage of temporary employment contracts worldwide. These contracts enable businesses to utilize employees with more flexibility than they would be able to under traditional open-ended employment contracts. Those still employed permanently suffer from acute stress due to the lack of any sense of control over their job conditions. Their anxiety is exacerbated by the fact that they may lose their job at any moment. Their main concern is that they could one day find themselves working on temporary contracts. This has had the effect of heightening workers' emotions of vulnerability, which in turn has led

to a reduction in their participation and identification with the business as a whole. Therefore, the breakdown of the psychological and lowered job security among those still on permanent contracts has been caused by the ever-increasing usage of fixed-term contracts.

Firms have been forced to resort to precarious employment to stay financially viable due to universal competition and the need to be cost-efficient. This has become necessary due to the macroenvironment, which has forced organizations all over the globe to find the most appropriate and adaptable strategies to deal with a wide variety of tactical and functional circumstances. A smaller staff is the reorganization strategy with which reduction has the most immediately noticeable impact. According to Dhanpat et al. (2018), the employees admitted that following a decline, the primary worries of employees were issues about their careers. According to the research findings, the vast majority of those who survived the downsizing process were either ignorant of the procedure or had incorrect information about it. Dhanpat et al. (2018) argued that most survivors did not clearly understand the important persons who were departing or changing jobs, as well as their position within the reorganized structures of the organization as a whole. They were also unaware of the required performance standards, the additional value they would bring to the company, or the promotional prospects that would be open to them under the new organizational structure. They felt uncomfortable about their careers due to all of these different causes.

## **International Business Rescue Mechanisms**

In the past 20 years, a number of countries have implemented corporate rescue programs, with South Africa being the pioneer. Judicial management originated in South Africa and served as a model for corporate rescue laws later enacted in the United Kingdom and Australia. Many laws are in place in South Africa and a few other carefully chosen countries, like the United States and England, that are intended to save failing businesses and allow them to be turned around into sustainable ones. These laws were enacted in South Africa in 2011. Legislation must be passed to assist companies in danger of going bankrupt or closing their doors to mitigate the adverse effects caused by the deterioration of the global economy (Rajaram et al., 2018).

The Global Economic Crisis lasted from 2007 to 2012. It caused a significant global downturn in financial stability. Mpolokeng (2020) states that the collapse of firms, a drop in consumer wealth, and extended unemployment were characteristics of the global economic crisis. Even while there have been some encouraging signals of progress in the global economy, the level of business confidence in many nations is still relatively low. The 2008 global financial crisis had an effect on the South African economy as well. As a result, there was a drop in business confidence across the nation and numerous company closures. Joubert (2018) published figures indicating that in 2009, South Africa had a recession for the first time in 17 years. The same year, the country also saw a loss of roughly one million employment positions. When discussing the harmful effects of closing a business, Mpolokeng (2020) connected the significant economic and social losses suffered by a business's stakeholders to the closing or liquidation of the company. The

detrimental and disruptive influence this business has on the community where it operates underscores the importance of regulation that aims to avert these undesirable repercussions.

Regulatory procedures are in place in several nations, and they are applied by the state to prevent the closing of firms and alleviate the effects of these harmful consequences. This is done in an effort to minimise the impact of these adverse outcomes. South Africa and a few other nations, including England and the United States, have enacted similar regulatory legislation to rescue businesses in precarious financial positions and enable them to be reborn and transformed into entities that can survive in the long run.

The Insolvency Act of 1986 established guidelines for liquidating businesses and corporations in the United Kingdom. In 1982, after a study of the previous Insolvency Law by Sir Kenneth Cork and subsequent suggestions for an update of the law made by the Cork Committee, the Act was enacted due to these reviews and recommendations (Levenstein, 2020). One of the Cork Report's key findings was that a number of bankrupt companies had to close since there was no rescue plan in place to protect those that could withstand the danger of collapse. The fact that companies need an alternative to liquidation was an important discovery made by the report. Establishing a formal rescue mechanism was recommended as one of the most critical steps in the Cork Report to prevent the liquidation of businesses and maintain business in commercial enterprises (Joubert, 2018). As a result of the advice, a formal rescue mechanism was eventually included in the Insolvency Act of 1986. This Act was adapted as a consequence of the recommendation. The rescue mechanism suffered from many flaws, including high costs and a lack of

adaptability to the needs of small and medium-sized firms. As a result, the tool saw minimal application (Joubert, 2018).

The Enterprise Act of 2002 partially replaced the Insolvency Act of 1986, which increased the possibility that a failing company would continue to function as a going concern in spite of its financial troubles (Naidoo et al., 2018). In the United States of America (USA), Chapter 11 of the Bankruptcy Reform Act of 1978 allows firms that are struggling to make their payments to creditors to defer payment for up to 120 days while the company works out a restructuring plan (Levenstein, 2020). The Enterprise Act of 2002 partially replaced the Insolvency Act of 1986, which increased the possibility that a failing company would continue to function as a going concern despite its financial troubles (Naidoo et al., 2018). In the United States of America (USA), Chapter 11 of the Bankruptcy Reform Act of 1978 allows firms struggling to make payments to creditors to defer payment for up to 120 days while the company works out a restructuring plan (Levenstein, 2020). The overarching purpose of Chapter 11 is to provide protection and rescue to struggling enterprises by implementing a reorganization of their finances that is legally enforceable on all involved parties (Naidoo et al., 2018). Many people agree that the corporate rescue procedure outlined in Chapter 11 is effective and successful and that it serves as a framework for the company to help it reorganize (Rajaram et al., 2018). South Africa established a plan to rescue enterprises that were not meeting their potential to fulfill its obligation to assist companies in a state of financial crisis. Before the Companies Act (Act No. 71 of 2008) was enacted into law, financially challenged businesses were brought back to a sustainable state through a procedure known as judicial management (Naidoo et

al., 2018). The Companies Act, Act No. 46 of 1926, included the judicial management approach with the primary goal of enabling a business to be saved and averting its liquidation and the negative consequences that would ensue from that rescue (Conradie & Lamprecht, 2018). Only enterprises incorporated under the Companies Act are eligible for judicial management. Small businesses were not intended to benefit from judicial management. One legislative rescue process was advocated in scholarly literature. Companies and corporations can use the new Companies Act; however, smaller enterprises are frequently prevented from pursuing business rescue due to the expense of the process (Levenstein, 2015)

### **Chapter 11 of the United States of America influences South Africa's business rescue laws**

The South African Business Rescue statute was designed by Canadian experts who concentrated on Chapter 11 of the US Constitution (Dept of Trade and Industry, 2004). The United States of America's business reorganization process is discussed in Chapter 11. Although many consider this legislation the “hero” of corporate rescue laws, Loubser A (2013) disagrees that this model suits every country. Loubser argued that not every company should be rescued, and some need to be liquidated. Her argument seems to be supported by the “creative destruction” theory, which states that liquidation will contribute to the revitalization of an area and even induce growth. Evidence does not support this theory, as Bernstein et al. (2019) have found that liquidation leads to a decline in the employment rate and a lower growth rate in the remaining sector of an agglomeration. The structure of The United States of America's Bankruptcy Code indicates that Chapter 11 is



a system established over a long period. According to Loubser (2007), a nation's laws should reflect its discipline and culture. South Africa and many other nations also grew to feel that since the Chapter 11 reorganization was so successful in the United States, it ought to be implemented globally. Every country has unique needs, and solutions specific to that country's culture should be considered.

Martin (2005) and Omar (2007) made observations regarding the impact of the United States of America's Chapter 11 on European business rescue laws. Omar (2007) points out that when researching and designing the reform of national insolvency laws, the majority of European countries were enthralled by the United States of America's Chapter 11 procedure. Martin (2005) warned against the perils of transplanting a legal system onto any other country without allowing for the law's historical, political, and cultural context. In Martin's (2005) view, an insolvency system should arise from a country's existing cultural conditions and attitudes. The aforementioned is confirmed by Loubser (2010). Professor Anneli Loubser argued that the South African Business Rescue should consider the culture in South Africa, where insolvency carries a stigma that does not exist in the United States of America. It appears that creditor-friendly practices are still ingrained in South African courts, which is more evidence that new rules alone would not be able to completely alter societal norms and views (Loubser, 2010)

Pretorius and Rosslyn-Smith (2014) argued in favor of the new law, pointing out that the most important reform in the United States of America had been successfully implemented elsewhere. The reform they are referring to is when a company files for a reorganization, a moratorium is placed on all creditors. The suspension prevents debtors from

enforcing any proceedings to collect the debt until a plan for re-organization is agreed upon by all creditors and voted for adoption. Pretorius and Rosslyn-Smith (2014) argue that South African law achieves its objective of saving a business, thereby preserving it as an active taxpayer and employer, as these are the main driving forces behind most corporate rescue regimes.

The influence of any corporate bankruptcy is far-reaching, and many people are affected, but the most acutely affected are the employees. (Berry, 2012) An essential aspect of re-organization is allowing an employer to remain in business while re-organizing. The ideal outcome is for the employer to emerge from the procedure stronger and as a financially sound company. The desired result will be for many, although not all, employees to remain employed and, therefore, still earn a salary and continue to receive benefits (Glynn, 2009).

Experts and activists pointed out that this corporate rescue procedure has several flaws. One weakness is that not all employees are treated equally (Berry, 2012). The Code preserves certain privileges for executive-level employees. This inconsistency has negative consequences, to the extent that some struggling companies are reluctant to apply for reorganization and would instead seek protection in a bankruptcy regime. Glynn (2009) argues that corporate law doctrine pushes employee interest to the sidelines. They posit that looking at American employment law helps to evaluate the employee's position in corporate law by ensuring that we approach the subject broadly and are not confined to workplace relationships and doctrine that neglects the importance of class, practice, and public policy lenses.

The contemporary rescue systems of Australia, the United States, and the United Kingdom are examples of recent global advancements. The United Kingdom system served as a benchmark for developing countries, such as South Africa, but ironically, South Africa already initiated this trend in 1926 under the term “judicial management (Pretorius & Rosslyn-Smith, 2014). When a company in the United States of America applies for restructuring, it is a process that requires the intervention of the courts. When a company owes employees remuneration for the period before using Business Rescue for restructuring, the employee becomes a creditor (Pretorius & Rosslyn-Smith, 2014).

Refer to Appendix A for a table of creditor rankings in the United States of America. It's interesting to note that employment law standards in the United States of America do not stem from any one statute or standard (Pretorius & Rosslyn-Smith, 2014). They believed that employment law and corporate law are related. Sarra (2008) concurs but believes that labour rules establish the relationship at the federal level, even though the Bankruptcy Code governs it throughout bankruptcy procedures. This division results in a lack of consistent protection for every employee (Sarra, 2008). The United States of America's corporate law makes provision for any firm to be governed by managers selected by shareholders or themselves (Pretorius & Rosslyn-Smith, 2014). Managers are mainly free to control the enterprise as they see fit. They are not obliged to consult or share information with non-shareholder stakeholders (including employees). Often, this results in Managers operating the firm to maximize the surplus to be distributed between themselves and shareholders (Pretorius & Rosslyn-Smith, 2014). The idea of Stakeholder Management Theory to maximize the firm's operations for the benefit of all stakeholders

is not a priority. (Glynn, 2009). Stakeholders management theory holds that a corporation is a network of essential elements, such as the employees, creditors, suppliers, and stakeholders, collectively described as stakeholders (Freeman & Mcvea, 2018). The theory hinges explicitly on all businesses creating value for all stakeholders and is not operated to the benefit of only one group of stakeholders.

According to Warren and Westbrook's (2009) investigation of the success elements of Chapter 11, the relative speed at which cases are settled is a critical component in the process's success. They concluded that an average Chapter 11 case gets settled in around 11 months. On the other hand, studies conducted in South Africa determine whether a business rescue operation was successful based on the number of jobs rescued rather than the numbers projected in the business rescue plan (Conradie & Lamprecht, 2015). Numerous studies show that appropriately managing all stakeholders influences successful financial rehabilitation (Loubser, 2010; Smith, 2014; Museta, 2011). The survey by Bharath et al. (2013) also noted the rise of key employee retention schemes, in which high-earning staff members receive court-approved bonuses as a perk for sticking with the company that is being "rescued." Creditors acknowledge that providing these incentives is preferable to losing managers and engaging in the time-consuming process of finding and training competent managers. Within a period of 120 days, management in the United States of America possesses the only authority to suggest a plan for reorganization. However, Rajaram et al. (2018) warn that South Africa cannot depend solely on the success measures employed by academics from other countries. South Africa is an emerging economy and should proceed to establish its place in the global market. It is advised that

literature research be conducted to add to the body of knowledge already available about the standard set of success variables associated with South African business rescue (Rajaram et al., 2018).

### **Evaluating South Africa's position to that of the UK and Australia**

While the United States of America's system provides history and understanding of the origins of corporate rescue law, evaluating the similarities of the laws in the United Kingdom and Australia gave a clear sense of the international perspective and whether or not South Africa follows international standards.

South Africa, Australia, and the United Kingdom have a common Commonwealth past. Joubert (2018) confirms that the law in the United Kingdom has a long history of influencing the South African legal system. In the United Kingdom, as with Australia, a major inquiry into the insolvency regime in the 1980s led to significant reforms in the corporate rescue mechanisms. The United Kingdom Insolvency Act 1986 (c.45) provides information regarding bankruptcy; however, Part 10 of the Enterprise Act of 2002 contains the laws governing the administration process (Keay & Walton, 2008; Pretorius & Rosslyn-Smith, 2014).

The objectives of the Business Administration process in the United Kingdom, Australia, and South Africa are similar to those of Business Rescue (Rajaram et al., 2018). According to all three jurisdictions, the main goal of this statute is to save enterprises. According to Pretorius and Rosslyn-Smith (2014), the official process in the United Kingdom for handling financially troubled enterprises is the most likely model to be comparable to Chapter 11 in the United States of America. They point out one noteworthy

variation. In the United States, the failing business is still owned by a debtor (Pretorius & Rosslyn-Smith, 2014). With this technique's help, management can keep running the struggling organisation. An administrator, sometimes known as a practitioner, assumes management and control of a firm in the United Kingdom. Because South Africa uses a "practitioner in possession" regime, the South African system (under Chapter 6) is similar to the one in the United Kingdom (Rajaram et al., 2018). The United Kingdom's Rescue Procedure (Administration) has a third provision not commonly found in other rescue regimes; they also make provision for realising property and distributing the proceeds to one or more preferred creditors (Museta, 2011).

The Cork Report investigated corporate rescue and laid a solid foundation for the rescue regime in the United Kingdom (Hunter, 1999). Administration starts as soon as an administrator is appointed. The administration needs court approval, which relies heavily on information supplied by the proposed administrators (Loubser, 2010). They will be an officer of the court (Cork Report, 1982). According to Loubser (2010), the appointment of the administrator is essential to the rescue process's effectiveness. Due to the fact that there are multiple legal ways to designate an administrator, the choice of administrator is contentious. There are three ways to appoint an administrator in the United Kingdom. The administrator selection process is "creditor-friendly," meaning that secure creditors are permitted to have a say in who is chosen (Wilson & Deniz, 2008). Firstly, an administrative order can be made. This order won't take effect until the court determines that, despite the company's inability to pay its debt, granting the order will serve the administration's (already stated) objectives (Cork Report, 1982). A company's directors may also choose

an administrator. A copy of the notice of intention to appoint an administrator must be submitted to the court, but an application to the court is not necessary for this kind of application. Finally, a "floating charge" holder may designate an administrator (Pretorius & Rosslyn-Smith, 2014). According to Loubser (2010), the appointment of the administrator is essential to the rescue process's effectiveness. Due to the fact that there are multiple legal ways to designate an administrator, the choice of administrator is contentious. There are three ways to appoint an administrator in the United Kingdom. The administrator selection process is "creditor-friendly," meaning that secure creditors are permitted to have a say in who is chosen (Wilson & Deniz, 2008). Firstly, an administrative order can be made. This order won't take effect until the court determines that, despite the company's inability to pay its debt, granting the order will serve the administration's (already stated) objectives (Cork Report, 1982). An administrator may also be chosen by a company's directors. A copy of the notice of intention to appoint an administrator must be submitted to the court, but an application to the court is not necessary for this kind of application. Finally, the holder of a "floating charge" may designate an administrator (Pretorius & Rosslyn-Smith, 2014). A floating charge is a class of asset that may occasionally change during the ordinary course of business, as identified by Lord Justice Romer (Re Yorkshire Woolcombers Association Ltd, 1903). The "floating" charge will be qualified if it relates as a security to a substantial or "whole" of a company's undertaking. This type of appointment only needs the notice to be filed with the court. The first two selection methods are similar to the dual methods available in South Africa to appoint a Rescue administrator (Levenstein, 2018).

A company will be placed under administration in the United Kingdom if it cannot pay its debts and meet its administration goals (Wilson & Deniz, 2008). The law in the United Kingdom differs from that in South Africa in that it does not stipulate a period during which a business must fail to pay its debts. According to South African legislation, there must be evidence that the company won't be able to pay its debts within the next six months (Levenstein, 2018). In the United Kingdom, an employee becomes a creditor on the commencement of rescue procedures, but an employee cannot initiate compulsory administration proceedings (Wilson & Deniz, 2008). This provision was addressed by the South African legislation that came into effect in 2011. The worker may submit an application to have their company included in Business Rescue as an "affected" individual (Loubser, 2010). The provision complies with the need to treat employees as essential stakeholders, as advocated by this study, and places South African legislation at the forefront of protecting employee interest during a Business Rescue procedure. In recent years, growing attention has been paid to the implications of this legislation for South African workers (Botha, 2015); although Botha considered the position of the employee, they did not interview employees for their study.

### **The Australian Influence on South African Business Rescue Law**

Up until 2001, Australia adopted the South African judicial management model, incorporating business rescue procedures under Chapter 5 of the Corporations Act.

Anderson (2008) examined the proposed legislation in South Africa compared to Australia's voluntary administration process. A comparison with Australian law is required because the country's previous corporate rescue system, known as official management,



was primarily modelled after South Africa's judicial management system (Anderson, 2008). The Harmer Report, published in 1983 following a significant investigation into the insolvency law, recommended that Australia replace liquidation with a more informal approach. The Harmer Report suggested that the procedure should be more adaptable, economical, and successful (Murray & Harris, 2016).

The Hamer Report (1983) stated that the available options in Australia were very conservative (Harmer Report No 45, 1988). At the time, the options available were schemes of arrangement and official management, a procedure adopted from South African law (Loubser, 2010). The Corporations Act 2001, Part 5.3 A of 2001 introduced Australia's Voluntary administration as a corporate rescue mechanism (Anderson, 2001). In 1992, the Corporate Law Reform Bill was released. Publishing this Law repealed official management (Murray & Harris, 2016). In June of 1993, Part 5.3A came into effect. Joubert (2018) claims that this procedure provided a speedy reorganization process that provided an adaptable and affordable decision-making method.

Since the Corporations Amendment (Insolvency) Act 2007 was introduced, voluntary administration has lost some of its appeal (Blazic, 2013). Since the inception of this law, only one in four distressed companies opted for the Voluntary Administration Procedure. Blazic (2013) differs from Anderson (2001) in that he opines that the existing voluntary administration procedure does not encourage companies to explore this option. According to Anderson (2001), Part 5. 3A strikes a balance between the goal of saving a company, should it be judged feasible by an impartial expert, and the necessity of creditors to obtain the maximum return on their investments. Countering Anderson's argument,

Pretorius and Rosslyn-Smith (2014) offered the view that voluntary administration was designed to be a fast and efficient process that almost eliminates the need for any involvement from the courts. Despite this, they attest to the fact that the objectives of South African Business Rescue and Voluntary Administration in Australia are similar. They both provide the troubled company with the best possible chance of surviving. The procedure attempts to give the company's creditors a higher return than they may anticipate from an instant liquidation when it becomes impossible to keep the business operating (Anderson, 2001).

The appointment of an administrator is the first step in the rescue procedures in the United States of America, the United Kingdom, and Australia. The regimes in Australia, the United Kingdom, and South Africa all have this characteristic. In Australia, the appointment process is not handled by the courts. The directors or liquidators of a company, a charge holder, or even a provisional liquidator can appoint an administrator. At the conclusion of the first day of administration, the procedure does provide for notice of the administrator's appointment to be filed with the Australian Securities and Investment Commission (Anderson, 2001). After the appointment of an administrator, the Australian procedure largely corresponds with the South African Procedure during Business Rescue (Joubert, 2018). Within five days after starting the process, the first meeting of creditors must occur. This meeting aims to reach all company creditors as far as possible. At this creditor meeting, an inspection committee could be formed. If such a committee is appointed, it will play a consultative role. A second meeting will be convened within a reasonable time. This meeting aims for the administrator to present the creditors with a

plan for how the company will proceed (Anderson, 2001). The administrator's statement will show his opinion on the best way forward. Regulations provide that the creditors will have a vote on the suggested terms at this meeting.

The goal of the reorganization processes is not expressly stated in the statutes governing voluntary administration in Australia or South Africa's Business Rescue Act (Loubser, 2010). However, retaining employment is a powerful incentive to enter voluntary administration. The notion exists that employees are not necessarily considered in voluntary administration, although the outcome will significantly affect their lives (Murray & Harris, 2016). See Appendix C for a brief explanation of the role assigned to employees in the commencement of Laws pertaining to Corporate Rescue in Australia and the United Kingdom.

There are similarities between South African and Australian company legislation (Joubert, 2018). Similarities are easily discernible, but the vast differences in these countries' commercial and social circumstances influence the application of this legislation and might influence any possible reforms. It is nevertheless valuable to examine the juxtaposition of the different country's legislation, where the stated aims of these laws are the same for each country.

The background to Australian law, as briefly investigated in the previous section, does provide some insight into the development of South African Law (Anderson, 2008). South Africa was a world leader in Judicial Management procedures, and Australia based its legislation on the South African process (Loubser, 2010). In 1983, the Australian Government commissioned the Hamer Report. This report's outcome was moving away

from liquidation towards a more “debtor-friendly” solution (Keay & Walton, 2008). In 1992, The formal management system was revoked with the publication of the Corporate Law Reform Bill. Financially struggling companies now had the option of restructuring to save the company as an economically viable entity. Part 5.3A offered companies a chance to survive rather than liquidate. Section 435A of Part 5.3A allows a firm to restructure its affairs in any way that improves the company's chances of surviving. However, if survival is deemed impossible, a second objective is to make provisions for amplifying returns to creditors and members (Anderson, 2001). This second objective justifies adopting this procedure instead of moving to immediate liquidation. Australian courts are incredibly cautious in preventing abuse of Part 5.3A (Anderson, 2012).

Employees have well-protected employee entitlements that are strongly protected under Australian law. The Fair Entitlements Guarantee Act safeguards ensure that employees do not lose everything when their employers are liquidated. Voluntary Administration Part 53A of 2001 is identified by Anderson (2012) as an ideal form of insolvency administration that protects employment and the entitlement of employees. When a company is registered in Australia, it becomes a separate legal entity. Employees are essential to a company's operation even though they are not involved in the liquidation or winding up of the business. A company cannot act independently; it needs employees, but employees are not afforded any legal right in a procedure that might terminate their employment (Anderson, 2012). The employee only has a say if they exercise their right as a creditor. Employees cannot initiate the commencement of corporate rescue procedures, but creditors have the right to do so, so once an employee has money owing to them, they

will become creditors (Joubert, 2018). Therefore, they will be able to start voluntary administration processes as creditors. This is an ambiguous phrase because an employee won't become a creditor until voluntary administration begins if they aren't owed money (Blazic, 2013).

Australia's Supreme Court of Victoria rendered a decision about what constitutes a "creditor" for the purposes of Part 5.3A. The word would refer to all company creditors "for the time being of the company," the Court further decided. All employees due at least one month's salary will be deemed creditors. (*Brash Holdings V Katile Pty Ltd*, 1994). The ruling further explained that all creditors with a valid claim on the date the deed of the company arrangement was drawn up would be deemed "creditors." From 1994, the court consistently applied this definition to the term "creditor" (*Brash Holdings V Katile Pty Ltd*, 1994). Despite the description from *Brash Holdings* being the accepted definition of creditors, different opinions persist. When it comes to Voluntary Administration, O'Donovan (1994) emphasized that employees are not granted any particular entitlement to be acknowledged as a "distinct class of creditors" (Joubert, 2018). The reading of Part 5.3A by O'Donovan (1994) clearly ignores the rights that an employee should have during a company's voluntary administration procedure. His opinion overlooks the recognition of unpaid employees as creditors of the business, giving them access to all creditor rights and benefits during this administrative procedure. O'Donovan's (1994) opinion did not acquire traction amongst scholars and legal experts and can be disregarded in light of the remaining provisions of Part 5.3A. (Joubert, 2018). Notification of proceedings under the Voluntary Administration is a right that employees possess. A meeting of employees must follow the

requirements of Section 444, but only "qualified employee creditors" may participate (Anderson, 2008). In order for the eligible employee creditors to determine whether to accept the exclusion of s444DA(1), which safeguards the employee creditors' priority in the deed of company arrangement, a meeting must be called.

According to Anderson (2012), workers will only vote against the rule's inclusion in section 444DA(1) if they believe their employment rights under the provisions of the company's deed of arrangements will result in a better conclusion than any outcome they may anticipate from an early liquidation. However, Anderson did not base the opinion on interviews with employees, but rather based it on information available from the administrators. Employees rely on the administrator's explanation of how non-inclusion will produce a more favourable outcome than expected results with a winding-up of the company's affairs. Employees would have to be convinced that they would be better off financially in voluntary administration than they could expect from liquidation (Anderson, 2012).

In Australia, the administrator is obligated to convene the first creditor meeting. The onus is on the administrator to reach as many company creditors as possible (Blazic, 2013). If the Administrator heeded O'Donovan's (1994) viewpoint as acceptable, no employees would be informed at the start of this process. Such a course of action would not be fair to employees (Anderson, 2012). However, the administrator would face an unfair financial burden for a large company with many creditors and employees, should they need to deliver notice to all creditors and employees in person. To overcome this

obstacle, the court allows using a website and issuing electronic notifications (Blazic, 2013).

The Insolvency Law Reform Act of 2016 was the first significant reform allowing employees some participation in the administration process (Blazic, 2013). This reform changed the position of employees significantly. The reform allowed employees to appoint a committee member. The committee of creditors was now renamed “Committees of Inspection.” The function of a Committee of Inspection is to allow creditors to provide guidance and advice to the external administrator of a company. They are also entitled to do anything conducive to the functions of this company (Anderson, 2012).

A significant factor in determining the company's future is its creditors. During the second meeting of creditors, they are permitted to cast a vote on the company arrangement deed. When a company enters voluntary administration, creditors assume they hold the company's future in their hands (Blazic, 2013). Their decisions will help map the way forward for the company. However, as decided in the instance, this may only be acknowledged as fact if workers are encompassed within the term of creditors (*Brash Holdings V Katile Pty Ltd*, 1994). Employees who are due outstanding payments on their salaries, pensions, or overtime must be recognised as the company's creditors (Keay & Walton, 2008).

Although Australian employees appear to enjoy adequate protection during liquidation and voluntary administration, it is essential to notice that most rights are only conferred upon them if they are eligible for employee-creditor status. These rights do not belong to them solely because they are employees (Joubert, 2018). However, this can only

be accepted as truth if employees are included in the definition of creditors, as ruled in the case of *(Brash Holdings V Katile Pty Ltd, 1994)*. They do not always have the right to initiate legal action or get information in their role as employees. Only creditors are granted the privilege of voting or being present at meetings (Anderson, 2012). He states that employees can only assist with the development of the process if they are recognised as creditors at the time of formulating the business's deed of arrangement.

One could argue that if the company enters voluntary administration without owing the employees any pending compensation, they won't be very interested in these rights. Still, most employees will be interested in keeping their jobs. Employees should be regarded as active Stakeholders and treated as such (Freeman & Mcvea, 2018). A company that looks after all its stakeholders has a greater chance of surviving. Riley made the valid observation that employees are still treated as if they were in the very fortunate position of gaining employment and should, therefore, be subjected to the manager's commands. (Riley, 2002). The law makes provision for employees to participate as “external creditors” (Blazic, 2013). When the business they work for faces difficulties, they are granted some restricted rights.

Workers devote their time, physical strength, talent, and skills to their company of employment. As participants in a business, employees should be equipped to handle risks threatening their continuous employment (Reed, 1999). Australia is a world leader in supplying a safety net for employees who have lost their jobs (Joubert, 2018). Giving workers the freedom to contribute to creating a deed of company structure will assist them in managing the risk associated with losing their jobs (Murray & Harris, 2016).



## **UK Corporate Rescue**

In the United Kingdom, when an employee loses their job, the state provides a certain level of security. The state also refers to the “Retail Price Index” to ensure that the value of benefits stays relevant and that the maximum amount claimable assists in shielding the employee somewhat from the devastating effect of losing their jobs (Glynn, 2009).

The Cork Report 1982 investigated the importance of a rescue regime when a company faces financial difficulties. This report examines the effects of insolvency on a company, its employees, and society at large. (Cork Report, 1982). Business failure affects many stakeholders, including employees. A "rescue" culture was brought to the United Kingdom via the voluntary administration process in 1986. The Cork Committee emphasised the importance of saving jobs, although it is not the administration's stated objective. The Cork Committee acknowledges that an employee contributes to the economy of a town and region; therefore, any insolvency law should consider this factor when deciding on rescue proceedings.

Similar to the Australian approach, employees in the United Kingdom do not have any special rights to participate in or cast ballots in administration proceedings (Fletcher, 2004). For the employees to be allowed to attend meetings, they must be able to be classified as creditors of the company. They will only be permitted to vote in their capacity as creditors (Fletcher, 2017). The legislators carefully crafted the 2008 Companies Act in South Africa to recognize and grant rights to employees (Levenstein, 2018). According to Loubser (2005), this law is better than what's in place in Australia and the United Kingdom. However, South Africa's implementation of this law is impacted by the socioeconomic

conditions of a developing nation, which is very different from what is happening in the United Kingdom and Australia (Loubser, 2005).

One of the most critical decisions any administrator must make upon resuming their position is how many employees will keep their jobs in the company's restructuring process. In the United Kingdom, the administrator is allowed 14 days after the appointment to make this pivotal decision (Pollard, 2009). It is expensive to uphold employee contracts; administrators must remember this when compiling the restructuring plans. The administrator will recognize that employees contribute valuable skills, some of which might be crucial to saving the company's business (Fletcher, 2017). The administrator is required to settle the claims made by workers who are still employed by the business since he is an official of the court. The administrator remains in the power of an officer of the court while they oversee the company's business throughout the administration process.

Suppose the administrator decides to make employees redundant during administration. Then, in accordance with the guidelines provided by the Trade Union and Labour Relations Act of 1992 and the Employment Rights Act of 1996, they have to guarantee redundancy benefits and adhere to the prescribed consultation process. A landmark legal proceeding in the United Kingdom was (*Powdrill and another v Watson and another* *Re Paramount Airways Ltd No 3*, 1195). Lord Browne-Wilkinson summarized the position of employment contracts in administration. He ruled that employee contracts can only be terminated by the administrator issuing a notice of termination to the employee. An administrator is legally obliged to follow the correct legal proceedings. The other condition that will terminate an employment contract is when the company does not pay

wages for services rendered. Thus, as long as an employee receives a salary, the employment contract remains valid and enforceable (Powdrill and another v Watson and another Re Paramount Airways Ltd No 3, 1195).

The above ruling adds an extra layer of complication for the administrator. It is not easy to decide within 14 days how to treat employee contracts. The Insolvency Act 1994 was passed by Parliament in 1994. The Insolvency Act of 1986's section 19 provisions were redesigned to give administrators minimal accountability with regard to settlements of claims pertaining to employment. In these processes, the administrator's position is essential. The employee contracts will be seen as “adopted” by the administrators if they keep paying salaries in the period after 14 days of their appointment (Lightman & Moss, 2011). The change in the Act of 1994 was necessitated because the liabilities on the rescued business finance threatened to derail the ‘rescue culture.’ Administrators tended to remove employers within the 14-day contract term rather than take responsibility for employment contracts because they thought they would have to give priority to employee claims (Fletcher, 2004). The idea of rescue culture shared worldwide is to retain and keep employees in jobs.

Upon examination of the rescue procedures during administration in the United Kingdom, employees are afforded rights only when they are also creditors of a company. Australian law is similar to this provision. United Kingdom employees hold no explicit rights to be informed of pending proceedings, nor do they have any right to vote during the administration process. Their rights to be consulted are limited (Fletcher, 2017). Again, considering the importance of an employee to a company, this position is difficult to

justify. The perception of the better status of South African employees is so strong that some academics contend that workers receive excessive protection throughout corporate rescue procedures (Burke-le Roux & Pretorius, 2017).

The reform that took place was an improvement in the rights of employees. However, the United Kingdom cannot be considered as adequately protecting employees and treating them as essential stakeholders during the administration process (Fletcher, 2004). The perception of the better status of South African employees is so strong that some academics contend that workers receive excessive protection throughout corporate rescue procedures (Burke-le Roux & Pretorius, 2017). Prioritizing the payment of overdue salaries and wages over other interests, such as the administrator's compensation, offers some protection to the staff (Finch, 2009).

Permitting staff involvement in administrative proceedings can enhance the current rescue culture in the United Kingdom (Kastrinou & Jacobs, 2017). Employee contracts remain a concern. Fourteen days remain a noticeably short period to decide whether to continue or terminate the employment contract. This 14-day period is a busy time for an administrator. He must consider a statement of continued existence for the company, meet with creditors, and prioritize employment contracts. If he does not do those things, it may have far-reaching implications for the eventual rescue plan (Murray & Harris, 2016). Joubert (2018) states that employee entitlements are treated adequately in the United Kingdom, but she considers the South African system more favourable to employees during Business Rescue proceedings. Fletcher (2017) suggests that the United Kingdom Insolvency Law, in its present form, does not support an authentic “rescue culture.”

From the above, it can be surmised that Australia and the United Kingdom have similar legislation on employee positions in corporate rescue proceedings (Joubert, 2018). They have no particular rights as employees, but they are permitted to participate in the administrative processes as creditors of the business, albeit with restricted powers. As the Business Rescue plan for a company in trouble was being developed, South Africa worked to grant employees additional rights (Loubser, 2005). The Labour Law is the highest law in South Africa, and it provides remedies for those who are unemployed (Constitution of the Republic of South Africa Act 108, 1996). The history, practical use, and safeguards provided to South African employees during Business Rescue processes are all critically examined in the following sections.

#### **An outline of the company rescue process in South Africa.**

The term "business rescue proceedings" describes the actions taken to bring a company back to profitability. This is achieved by temporarily supervising the company's management and affairs. The Act was implemented in May 2011. The primary concern of the adjustments in the new act is the aim of assisting financially distressed companies. When a firm is placed under the supervision of a Business Rescue practitioner, the Practitioner develops a plan to turn around its affairs that are significant enough to jeopardize its survival (Levenstein, 2015). After South Africa ratified a democratic constitution and the apartheid regime came to an end, Section 128(1)(b) of the Companies Act 71 of 2008 was created (Constitution of the Republic of South Africa Act 108, 1996). The changes, including the political, social, and economic spheres, impacted all aspects of South Africa's environment.

The Companies Act 71 of 2008 will celebrate its tenth anniversary in 2021, the year this study was concluded. Although the Department of Trade and Industry began the reform process in 2003, this law was only put into effect in 2011. In May of 2004, this Department released a policy document. It showed the government's earnest determination to enact democratic standards and fair business practices. It was titled “South African Company Law for the 21st Century: Guidelines for Corporate Reform.” This law has now been operational for an entire decade in South Africa. The legal procedure relies heavily on precedent cases. These are not readily available after only ten years, and courts often revert to the old Judicial Management system and favour creditors as per liquidation legislation (Levenstein, 2015). Several South African studies investigated different aspects of this legislation and its impact on all stakeholders (Bezuidenhout, 2012; Coertser, 2012; Levenstein, 2015; and Loubser, 2010).

## **The Business Rescue Law's effects on workers**

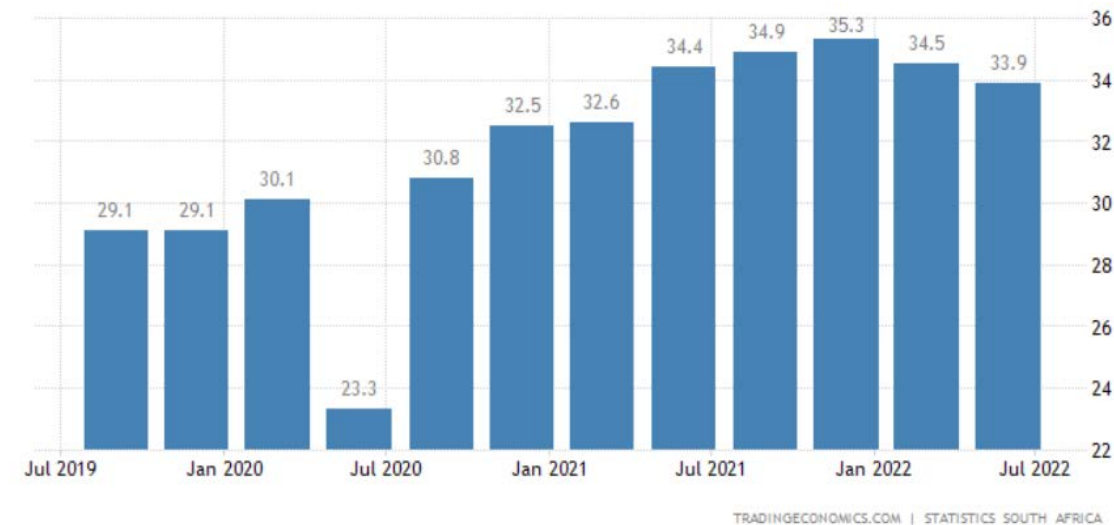
### **South Africa's Workplace Security**

The high rate of unemployment in South Africa is a cause for concern. The global COVID-19 crisis has significantly contributed to unemployment (Rajaram, 2020). Unemployment went as high as 32.5%, and when people who no longer actively seek jobs were included, this figure rose to 42.6%. See Figure 2 for unemployment percentages since July 2019. This percentage (33.9%) represents 7.2 million unemployed people. The total labour force in South Africa is 22.3 million people (Statistics South Africa, 2022). The July 2020 outlier statistic was caused by a complete lockdown in South Africa at the height

of the pandemic and is not an accurate representation of the data. During this period, Statistics South Africa was unable to collect accurate data.

**Figure 2**

*Unemployment statistics*



Source: *Trading Economics* (Statistics South Africa, 2022)

Business Rescue aims to save a business for the economy. A secondary aim, confirmed by court judgments and re-iterated by Cassim et al. (2018), is that employees must be treated fairly and justly, which ought to be regarded as the main objective of the company rescue procedure (Cassim et al., 2018).

In 2004, the Department of Trade and Industry put forth a number of recommendations to bring South African procedures into line with contemporary trends in international jurisdictions (Dept of Trade and Industry, 2004). The Department of Trade and Industry was explicitly focused on developing a corporate rescue program that would

meet the demands of the economic landscape of a contemporary, democratic society. The law expressly mentioned the necessity to "balance the right and interest of all relevant stakeholders as seen in section 7(k) (King III Report, 2009)" when adhering to these rules.

Employee participation rights during corporate rescue operations cannot be discussed without specifically citing the Republic of South Africa's Constitution, Act 108 of 1996, which enshrines some workers' rights as fundamental human rights (Levenstein, 2020). Chapter 6 of the Companies Act recognizes and acknowledges the rights of creditors, workers, and owners. A great deal of emphasis is placed on protecting employees. This includes not only treating them as creditors in the event that they owe money before the business rescue operation starts but also giving them participation rights in the process just by virtue of their employment. This is done to make sure the process doesn't have a detrimental impact on the staff (Joubert & Loubser, 2016). Section 130(a)(i) of the Companies Act gives employees the right to object to rescue proceedings if they don't think the company is in any way in financial trouble or that it can't be saved. In addition, employees have the right to be paid for their time during the course of their employment. Employees also have the right to organize a committee of employee representatives that will be contacted by the Business Rescue practitioner throughout the creation of the plan and will be allowed enough time to examine it. This right is in addition to the fact that employees have the right to review the plan. They also have the opportunity to vote for or against the proposal and ask the court for permission to begin the rescue procedures (Mpolokeng, 2020).



According to Joubert (2018), the cause of financial difficulty in enterprises may be traced back to over-employment, which results in a significant pay bill and high salary expenditures. Because of this, it is crucial that plans for company rescue include preparations for layoffs in organizations where it is evident that this is the primary cause. In some instances, there's no need to retrench workers because the higher turnover brought about by business rescue measures could incite workers to leave of their own volition. This helps to lessen the stress of retrenching staff (Levenstein, 2020). With the overarching goal of preserving employment opportunities and mitigating the adverse outcomes typically connected with a struggling business, the Companies Act's Section 144 devotes a significant portion of its text to discussing the rights of workers involved in business rescue proceedings. In the *Lidino Trading 580 cc versus Cross Point Trading (Pty)Ltd* case and *Re: Mabe v. Cross Point Trading 215 (Pty)Ltd*, the court determined that the primary focus of business rescue procedures is the interests of employees. Cross Point Trading 215 was at issue in this lawsuit between Lidino Trading 580 cc and Cross Point Trading (Pty)Ltd. (Joubert, 2018).

Additionally, as it grants workers greater autonomy, the right to access a wealth of information is recognized as the most successful strategy for fostering employee engagement. In reality, employees are usually the last to realise that a company is distressed. Their options to rescue a company are also minimal, as they cannot access the necessary funding to institute proceedings. Exceptions did occur. Employees of the company pushing for liquidation were successful in their application to place the company under business rescue in the case of *Solar Spectrum Trading 83 (Pty) Ltd vs. AFGRI*

Operations Limited and Solar Spectrum Trading 83 (Pty)Ltd. This application was accepted. The court decided in favour of the workers and acknowledged a plausible possibility of rescuing the firm while preserving existing employment opportunities (Conradie & Lamprecht, 2018). Even if a business rescue is not the best course of action for a company facing financial difficulties, disgruntled employees of that company may petition the court to have their employer placed under business rescue (Naidoo et al., 2018). The firm, its going concern value, and its ability to retain its employees and trade assets should be given more weight than the company itself as a legal entity, according to Conradie and Lamprecht's (2018) conclusions. The three sources in Chapter 6 of the Companies Act that give rise to the rights of employees during business rescue proceedings are the inclusion of employees in the definition of "affected persons," who have quite a few powers and rights, recognition as creditors where the company is their debtor, and the fact that they are employees of the financially distressed company. The firm, its going concern value, and its ability to retain its employees and trade assets should be given more weight than the company itself as a legal entity, according to Conradie and Lamprecht's (2018) conclusions. The three sources in Chapter 6 of the Companies Act that give rise to the rights of employees during business rescue proceedings are the inclusion of employees in the definition of "affected persons," who have quite a few powers and rights, recognition as creditors where the company is their debtor, and the fact that they are employees of the financially distressed company.

The provisions of the Labour Relations Act apply to any layoffs that are deemed necessary as part of the company recovery plan (Levenstein, 2020). Zwane (2015) states

that section 23 of the Constitution contains a provision addressing the need to protect workers' rights. If a company goes bankrupt before implementing the Company Act of 2008, the clause offers vital protection for the employee's rights in the corporation. The unrelenting drive to adopt equitable employment policies gave rise to the technique of business rescue. It is claimed that in light of this, Chapter 6 of the Companies Act does not specifically address safeguarding the rights of the company's employees in the event that the corporation decides to pursue business rescue measures (Conradie & Lamprecht, 2018).

Interestingly enough, workers in South Africa can be classified as creditors under the corporate rescue system in the United States and the United Kingdom; however, this is only an option available to creditors (Rajaram et al., 2018). It is imperative to bear in mind that, despite exerting every effort to satisfy its suppliers and creditors and complying with strict labor regulations, a firm may still find itself exposed to the risk of business rescue failure as the payroll commitments would stifle the company's cash flow. This is something that needs to be remembered constantly. It is, therefore, justifiably required to uphold employees' rights throughout corporate rescue proceedings while assisting in the success of the process. Striking this balance might be difficult, but it is crucial. Where these rights are not adequately protected, the possibility exists that workers may be laid off for no reason (Mpolokeng, 2020).

### **Business rescue preserves employment**

The discrepancy between the protection employees receive during insolvency, and their commitment and contribution to a company is the reason Finch (2009) refers to

workers as “the lost souls in insolvency” (Finch, 2009). One of the main objectives of business rescue is to prevent companies from being consumed by bankruptcies and other forms of liquidation. The company rescue process may be able to maintain employment, protecting workers and their families from the terrible cascade effects of unemployment, including unemployment's negative influence on the so-called “Black tax” (Naidoo et al., 2018). “Black tax” in South Africa refers to the cultural obligation of a member of a black family that is financially successful to support other family members. The data on business rescue reveals some highly unfavourable outcomes, particularly for workers. Workers who believe their jobs are stable and secure no longer feel that way when a company files for business rescue.

Consequently, they look for other jobs, which has a detrimental effect on the company. Although it has been proposed that low employee morale may already exist due to delayed salary payments prior to the start of company rescue operations, the impact of business rescue cannot be understated (Levenstein, 2020). A decrease in employee morale has a detrimental effect on productivity since it leads to workers who are disengaged from the business. Absenteeism is likely to rise because workers at the firm do not see a bright future with the organization; hence, they are looking for work elsewhere. Employees who are actively engaged in ensuring the safety of their workplace may experience an increase in anxiety for the future of their careers with the struggling organization.

Consequently, there may be an increase in the number of injuries that occur in the workplace. The instability of the employment market may also contribute to increased theft. While the business is struggling to stay afloat, it is badly impacted by all of these

variables (Mpolokeng, 2020). During the process of business rescue, there is a rise in the staff turnover rate, particularly among key personnel. The high personnel turnover is another factor that works against the effective turnaround of the business. Because replacing the institutional knowledge these key workers depart the company with is expensive and time-consuming, the higher turnover rate could postpone, if not completely destroy, a successful turnaround. The failure could thus be attributed to a loss of essential knowledge because these employees leave the company with the knowledge they bring (Naidoo et al., 2018). Although third parties bought some of the firms or their divisions, higher profits than in liquidation were achieved, and several jobs were spared, all of which, had the company filed for insolvency, would have been forfeited (Rajaram et al., 2018).

### **Employees as Stakeholders during Business Rescue proceedings**

"Anyone, other than an independent contractor, who works for another person or assists in performing the business of an employer" is the definition of an employee under section 213 of the Labour Relations Act. According to the definition, an independent contractor is "someone other than a person who works for oneself." Workers are the most susceptible group when firms are forced to liquidate since they are the last to know about the company's financial issues. In the worst-case scenario, workers are notified of the firm's status only when they report for work and are greeted by shut gates (Conradie & Lamprecht, 2018). It is generally agreed upon that effective turnarounds are crucial because they preserve employment opportunities, and employees play an essential part in the process of resuscitating failing businesses (Rajaram et al., 2018). As a result, workers

are considered the second most significant stakeholders throughout the business rescue process.

It's interesting to note that the law does not define stakeholders. According to the King IV Report, stakeholders include the following: Please see Appendix D.

*"Those groups of people whose actions may reasonably be expected to considerably affect an organization's potential to produce value over time, or whose actions can reasonably be expected to be significantly affected by an organization's business operations, outputs, or outcome."*  
(2016, King IV Report).

The King IV Report goes on to describe internal stakeholders as an organization's workforce. The challenge of defining stakeholders and giving meaning to the word is addressed by the Stakeholder Management Theory (Reed, 1999).

An "interest for which a genuine normative claim can be made" is referred to as a stake (Ackroyd & Fleetwood, 2004). People share a common interest in the laws that regulate their lives. The primary normative claim made by critical theory is for our ordinary lives to be controlled by statute (Habermas, 1987). Fulfilling this promise of the normative critical theory claim can only be done if all citizens have an interest (stake) in the pursuits of the company in which they are stakeholders (Ackroyd & Fleetwood, 2004).

Loubser (2010) concluded that striking a balance between promoting a successful company rescue and safeguarding the interests of employees is a difficult task. Any

business rescue procedure must be given the freedom to make sound judgments in order to promote the best result, which is primarily concerned with ensuring the company's survival. Although it would be ideal to protect workers during this process, overly stringent protection of employee rights could result in the failure of the Business Rescue plan. The consequence might be a negative outcome for creditors (Loubser, 2010). If liquidation is the final event, the available dividends for distribution to creditors might be significantly diminished (Botha, 2015).

The reality of Business Rescue Procedures being abused does exist. Workers could be retrenched without compulsory adherence to the statutory requirements and procedures (Pretorius, 2013). The balance that needs to be sought between the rights of employees that need to be protected and the need to succeed with a Rescue plan will be hard to achieve. The contradiction is that this one procedure serves both the needs of the employee and the needs of re-organisation (Loubser, 2010). The rights of employees may make re-organisation difficult. The challenge facing a Business Rescue practitioner is to reconcile these interests in a manner that is fair to all stakeholders. Additionally, Loubser (2010) issued a warning, saying that one must take corporate social responsibility into account when studying corporate law. Here, the Business Rescue practitioners are confronted with shifting from a pure shareholder approach to the current stakeholder one (Loubser, 2010).

### **Labour laws and Employee Rights during business rescue**

Amartya Sen said that labour laws “should provide the real capacity to lead a life that we have reason to value” (Pressman & Summerfield, 2008). Employee rights are recognized by the South African Constitution. The Labour Relations Act of 1995 is one of

the few rights that supersedes the requirements of the Companies Act of 2008. (Labour Relations Act 66, 1995). Section 23 holds the utmost significance (Joubert, 2018). The entitlement to fair labour practices is granted by this provision (Constitution of the Republic of South Africa Act 108, 1996).

The main goal of the Labour Relations Act is to encourage employee participation in decision-making from the outset to completion in the workplace. South Africa's new Constitution came into effect in 1996 and became the country's supreme legislation. All laws must comply with this law (Joubert, 2018). Enshrined in Chapter 2 is the Bill of Rights (Constitution of the Republic of South Africa Act 108, 1996). Labor, corporate, and bankruptcy laws are governed by and influenced by the Constitution (Loubser, 2010). While employees are directly protected by Section 23, creditors are entitled to information under Company and Insolvency laws. A stringent implementation of company law could jeopardize certain of the core rights guaranteed by the Constitution. These rights are safeguarded, but they are not unqualified. Any of these rights may be restricted by Section 36, provided that the limitations are both "reasonable and justifiable" (Joubert, 2018). In business rescue processes, employee rights must be upheld by the three distinct legal branches of the law (labour, corporate, and insolvency law). Thus, the nation's fundamental law should be governed by the Bill of Rights when it comes to the many areas of the law (Bezuidenhout, 2012). The primary goal of this study is to evaluate the protection this law provides workers during the Business Rescue process. In 2021, no studies could be found that specifically undertook a case study to investigate the effects of the law on the experiences of employees losing their jobs during this procedure. A study published in



2022 recommends further investigating the employee's position from their perspective at the helm of the process (Jombe & Pretorius, 2022). Although the law is relatively comprehensive and does strive to protect employees, the implementation of the law seems to be problematic. An article in a South African newspaper refers to the stark problem of desperate workers turning to the law to protect themselves against unscrupulous employers (Mndebele, 2021). The article refers to the "Commission for Conciliation, Mediation, and Arbitration," which did not provide workers with any protection because COVID-19 and budget cuts forced offices to run with bare minimum staff. This newspaper article alleged that vulnerable workers are left to scam artists and lawyers who prey on them. The plight described demonstrates that although the supreme law protects South African workers, the protection does not reach those most in need of it.

The law governing companies impacts all stakeholders of that company, as it regulates the way a company is run and how it affects a country's economy. The Companies Act of 2008 superseded the Companies Act 61 of 1973. This law was archaic and needed annual changes (Cassim et al., 2018). The law was inadequate and was based on Victorian English law. When this law was reviewed early in the 2000s, there were reasonable indications of the need to change (Burke-le Roux & Pretorius, 2017). The Department of Trade and Industry explicitly stated the consideration of the United States rebuilding legislation in the formulation of the South African Business Rescue method. Still, one significant difference between the two procedures is evident. A debtor-friendly insolvency procedure known as Chapter 11 was created in the United States over many years via cultural evolution. The procedure does not carry the same stigma as seems to be

attached to it in other parts of the world (Loubser, 2010). The creditor-friendly system in South Africa is comparable to practices in Australia and the United Kingdom. The special provisions made for employees to become post-commencement creditors in this regime reinforce the position of the creditor and employees. Another distinction is that the business owner maintains control over the operation of the company while the debtor in possession is a feature of the American system (Joubert, 2018). In South Africa, the Practitioners are tasked with controlling and running the business (Pretorius, 2014).

All employers should familiarise themselves with the rights and powers available to employees in South Africa (Pretorius, 2015). Employees have the right to initiate business rescue measures. The employer should also be aware of the necessity to inform and instruct staff members regarding corporate rescue protocols. Employees, being recognised creditors with unpaid wages, possess the entitlement to vote and are required to participate in the formulation of the Business Rescue Plan. Employees are entitled to communicate with creditors during the meeting prior to casting their votes on the Business Rescue plan. If any creditors oppose the Business Rescue Plan, staff members are empowered to buy and get the interests of those creditors who disagree. This is done to prevent the need for a majority vote to adopt a business rescue plan.

Certain rights that employees enjoy under Chapter 6 of the Companies Act are not identical in other similar legal systems (Loubser, 2010). Cassim regarded Chapter Six as “pro-employee” (Cassim et al., 2018). He opined that employee rights appear to take precedence over the ideal of maximising wealth for creditors. In 2008, the Companies Act introduced South African corporate and insolvency lawyers to a constitutional setting with

which they were unfamiliar. The Companies Act of 2008 makes it quite evident that one of its main goals is to ensure that the Constitution's Bill of Rights is followed, which, among other rights, expressly provides that every employee has the right to fair labor practices. In response to this newly promulgated law, some critics were concerned that employee rights were over-protected and that some companies could not be rescued due to excessive employee entitlements that would use up any available funds (Joubert et al., 2011). The Companies Act of 2008 was only implemented in 2011. A decade later, the fears of these critics seem somewhat exaggerated. The courts have shown a great deal of sensitivity in upholding the objectives of the Companies Act of 2008. Complying with global norms, the Act does not explicitly list job retention as one of its goals. Nonetheless, the court's decisions supported the idea of employment retention as a crucial goal of business rescue (Joubert, 2018).

The Hon. Justice Claassen clarified what it meant to save a firm in the matter of *Oakdene Square Properties (Pty) Ltd and Others v. Farm Bothasfontein (Kyalami) (Pty) Ltd and Others*, 2012. He pointed out that section 128 (1) of the Act's paragraph (b) definition of "reaching the aims" refers to avoiding needless liquidation of businesses that may be saved, protecting jobs for staff members in the process. Judge Claassen stated in his ruling that Business Rescue provisions acknowledge a company's worth as a going concern. As a result, it is referred to as a "business rescue" rather than a "company rescue." The strategy of striking a balance between the various interests of creditors, shareholders, and employees is favoured by current rescue regimes. Business Rescue attempts to move from having only the interest of creditors to more widely considering all stakeholders'

interests. The judge reasoned that saving the skills and experience of employees might prove a better option to creditors if retaining them secures the full recovery of the debtor.

In 2015, the question of whether or not employees are overprotected was discussed once more in light of a legal case (*Richter v Absa Bank Limited*, 2015). In this case, a Business Rescue application was submitted when the final liquidation order was approved. Judge Dambuza, the court overseeing this case, stressed that Business Rescue needs to look out for the interests of more individuals than simply the creditors. A company's primary goal during Business Rescue is to realize "economic and societal benefits." Consequently, the judge authorised the impacted party to submit an application for Business Rescue. The judge stated that nothing should stand in the way of a company's goal of being rescued if there is a reasonable chance of success. According to Joubert (2018), this does not constitute an overindulgence of employee rights but rather a fair concern for the country's economy and the possible social consequences of job losses.

Business Rescue aims to save a business for the economy. One of the main objectives of the Business Rescue process should be to ensure that employees are treated justly and honestly, as this has been reaffirmed by court rulings and reiterated by Cassim (Cassim et al., 2018). Any affected individual has the right to apply for the start of the Business Rescue Procedure under Section 131(1). This right is granted to workers regardless of whether they are members of a trade union. In the event that a trade union does not act on their behalf, people may directly exercise their rights as "affected persons" (Companies Act 71 of 2008, 2009). Employees may petition the court to start Business Rescue proceedings under Section 131(1). The exercise of this privilege by a disgruntled

employee could have a negative impact on a company entity. Although reasonably good checks and balances are in place to counteract such behaviour, the rumour of a business being in financial distress might significantly negatively influence the business's reputation. This privilege was invoked in South Africa by 76 workers of Solar Spectrum Trading 83 (Pty) Ltd. Every worker resided on a single farm. They frequently had dependents staying with them (*Employees of Solar Spectrum Trading v Afgri Operations*, 2012). This case is relevant because the workers asked the court to put the business in business rescue on a collective basis. They would also have been qualified to file an application in their own capacity because the legislation clearly grants all employees, both individually and collectively, this right (Joubert, 2018). The Honorable Judge Kollapen stressed the rights of workers and said that no employee should be put in a situation where they are less powerful than any other person involved.

The National Union of Mine Workers of South Africa filed a precedent-setting lawsuit in 2015. Their application kept Wilro Supplies CC from going out of business and preserved 165 jobs (*National Union of Metal Workers of South Africa obo Hlongwane and Others v Wilro Supplies CC*, 2015). The judge ordered the closed corporation to bring the employees back on board. Following that, Wilro Supplies CC filed for liquidation. The Union successfully counter-applied to have the company placed under Business Rescue as a result of the company's application. The court acknowledged that there was a plausible chance of saving the shuttered company and that doing so would be advantageous to all parties involved. The individual who received a mandatory Business Rescue order is responsible for designating an interim Business Rescue

practitioner (Pretorius & Rosslyn-Smith, 2014). At the first creditors meeting, the majority of the independent creditors must approve this Practitioner's nomination with a voting interest. Only after this approval—section 131(5) of the Companies Act of 2008—may any business plans be drafted. Only in South Africa may employees initiate Business Rescue Proceedings (Loubser., 2010). Employees in Australia and the United Kingdom are not entitled to start Business Rescue actions. They may apply in their role as creditors if they meet the requirements to become company creditors (Naidoo et al., 2018). Workers become creditors of the business when the business owes them money for unpaid wages. Creditors may apply to commence the Business Rescue Procedure in almost every country that uses this procedure (Joubert, 2018). This provision is in line with liquidation procedures where creditor rights reign supreme.

### **The significance of communication during the Business Rescue process**

Every stakeholder is entitled to notice. The right to notification is mentioned often in Chapter Six (Companies Act 71 of 2008, 2009). All "affected persons" must be notified within five days of the resolution to start Business Rescue procedures being filed. Because Business Rescue may result in a company's liquidation, section 197B of the Labour Relations Act of 1995 provides further protection for employees (Labour Relations Act 66, 1995). Although the right to be informed is clearly expressed in Chapter Six, employees also have the right to be notified why a Company has decided not to initiate Business Rescue proceedings when they are in financial distress. Addressing this right, Joubert (2018) insists that employees have the right to be equipped with any knowledge that would affect their future. Although South Africa has a reputation for exploiting and abusing

workers, some of the problems were addressed by progressive legislation promulgated in 1990 that bestows specific rights on workers with the aim of bettering work and living conditions (Devereux, 2020). Through the lens of critical theory, Stakeholder Management Theory is concerned with the difference between ethical and moral reasoning. While ethical reasoning deals with questions of good living, moral reasoning deals with generalizable interest and the acceptable way to regulate conflict and interpersonal affairs (Habermas, 1987). He detailed this normative theory based on a “rational reconstruction” of current laws and the construct of democracy. Habermas argued that relying on a just and legitimate law could control our ordinary lives. The work of Stakeholder Management Theory is to elaborate on management responsibilities while protecting the stake of employees. Workers need to feel that they are leading an authentic life by involving them in the activities of a company so that they may feel the need to protect their “stake” in the company. Capitalist business practices could represent a generalisable interest under the right circumstances. These worker interests are addressed effectively if marginalised social groups are considered and acknowledged (Reed, 1999). Management has a social and moral responsibility to inform workers of the rights and conditions of a firm that will affect their lives (Reed, 1999). Workers cannot be treated as mere factors of production. They need to be informed about decisions that a Company makes that will influence their livelihood. Once more, some detractors voiced their worries about the astronomical expenses associated with educating every employee about the Business Rescue procedures. They believed that the law placed an undue burden on the Business Rescue Practitioner, who is already operating on a tight budget to save a company that is facing financial

difficulties (Loubser, 2010). Loubser recommends exploring alternative options for informing employees and other stakeholders by providing a link to one website where all the notifications are posted. Evraz Highveld Steel and Vanadium Ltd. investigated this option. Business Rescue case number 1960/001900/06).

Feedback from employees on the success of this endeavour could not be found. Employees' inalienable right to participate in consultations allows them to influence the process. One of the responsibilities of the business rescue practitioner is to schedule a meeting with the employee representatives no later than ten days following the appointment. The main aim of this meeting is for the practitioners to share information with the employees regarding their insights into the prospects of saving the company (Pretorius, 2014). Although representative employee committees cannot instruct Business Rescue Practitioners, those Practitioners have an obligation to share their rescue plans for the company with the committee. One intriguing feature of Section 149, 2 of the Act is that company stockholders are not granted the same privileges to organize committees as employees (Joubert, 2018).

### **Employee claims during Business Rescue**

The Companies Act's section 135(3) establishes a preference for employee claims. Many writers call this a "super-preferential" claim (Joubert, 2018). The term refers to claims that employees have. Lenders of post-commencement loans, whether secured or unsecured, rank employee claims before any other claims. Salary claims and other claims that become due and must be paid during Business Rescue are included in this category. Some legal experts and writers disagree with paying these claims from post-



commencement funds. They feel the legislature should have dealt with employee claims under the cost of Business Rescue proceedings. Post-commencement finance should not ordinarily have to make provisions for employee claims (Delport, 2018). Stoop and Hutchinson disagree with this opinion and argue that stakeholder inclusiveness is nearest to the intentions of the Companies Act (Stoop & Hutchin, 2017). A company is already in trouble when it applies for Business Rescue. Payroll is frequently the first place where payment cuts are made. As stated in section 135 of the 2008 Companies Act, employers must prioritize employee needs. Some scholars perceive a problem with this section because it allows for a “super-preferential” status to employee claims and might discourage investors and lenders from providing new capital to a distressed company (Loubser, 2010).

This preferential status does not end if a company enters liquidation following a Business Rescue procedure. The Insolvency Act, particularly section 98A, ensures that employees will continue to enjoy preferential status without any limitations (Insolvency Second Amendment Act 69, 2003). Without any restrictions, the rights granted to employees present a challenge as post-commencement finance is crucial to any rescue procedure. However, if there is no assurance that their investment will be repaid as soon as it is due, lenders will not give money (Joubert, 2018). Section 135 of the Act fails to provide this guarantee to lenders (Companies Act 71 of 2008, 2009). Scholars agree that while it is imperative to protect employee rights, all stakeholders’ interests should be contemplated in an equally fair manner (Etukapan, 2012). This provision might necessitate another look at the implementation of the provisions of this legislation.

## **Conclusion of employee's rights and obligations**

Chapter 6, referring to the company's law, gives employees a voice during Business Rescue procedures. These rights should be an essential consideration for any business owner. They should be aware of these rights before entering a business rescue procedure. The employees expect that this procedure will safeguard their income and future. Employee abuse of the privileges granted to them under the terms of Business Rescue processes is not supported by any observable evidence (Joubert, 2018). The Companies Act of 2008 confers numerous benefits for its workforce. Although this definitively demonstrates the consequences of government involvement and those of organized labour, much still needs to be done to make all employees aware of their rights and responsibilities (Rajaram, 2016). According to the philosophy of stakeholder management, all stakeholders should be informed of their rights and obligations through a dialectical approach. This will gradually relieve the pressure that arises when a business experiences financial difficulties. This could be done during the ordinary course of operations and not attempted when tension exists because a company finds itself in financial distress. Regretfully, a number of authors and attorneys continue to downplay the significance of upholding employee rights during the Business Rescue procedure. Employee experience and training are crucial to a business's performance. Thus, a company fighting for survival will benefit from keeping this expertise. When restructuring, the business rescue professional should operate with consideration for the significance of preserving employee rights.

## **The purpose of the Companies Act 2008**

Section 7 of the Companies Act must be read in conjunction with Business Rescue, and the South African Labour Relations Act, No. 66 of 1995, continues to be the governing statute for any labour-related matters. As the Act's language makes clear, Section 7's goal is to further the growth of the South African economy by "facilitating the effective rescue and recovery of financially distressed firms." The Act's requirement that this legislation be applied "in a manner that balances the rights and interest of all relevant stakeholders" is an essential component. As identified in this study, stakeholders are not specified in the statute. The study was interested in an employee being a significant stakeholder during the Business Rescue process.

The Companies Act of 2008 has replaced the Companies Act 61 of 1973. This 37-year-old law saw nearly yearly changes (Cassim et al., 2018). The law, which was derived from Victorian English law, was insufficient. This law made it very evident that South Africa needed to alter when it was examined in the early 2000s. When deciding how to create the South African business rescue procedure, the Department of Trade and Industry notably cited the business rescue procedures in the United States of America. However, there is one notable distinction between the two systems (Loubser, 2010). In America, Chapter 11 is a debtor-friendly insolvency system developed by culture over many decades. The procedure does not carry the same stigma as it seems in other parts of the world. South Africa's creditor-friendly system aligns with the systems of the United Kingdom and Australia. It is anticipated that liquidation will continue to have societal repercussions because there is no sign of an impending cultural shift in South Africa.

(Loubser, 2007). Professor Loubser feels strongly that a culture develops its insolvency system. The possibility exists that not all companies can be rescued. In South Africa, the courts still favour creditors, and court rulings are inconsistent (Bezuidenhout, 2012). Judges may make some decisions based on previous liquidation legislation where no precedent exists to do otherwise.

Under the South African regime, the special provisions for employees to become post-commencement creditors re-enforce the creditor's position and employees. The debtor-in-possession element of the American system, which keeps the business owner in control of the failing enterprise, is another distinction. By contrast, the South African system assigns a Business Rescue Practitioner to take over the management and operations of the company (Loubser, 2005). The outcome of a company's successful business rescue proceedings ought to have a favourable effect on South Africa's high unemployment rates.

### **Additional features of the company rescue provision in South Africa**

Section 128,[1][b] of the Companies Act No. 71 of 2008 provides an option for liquidation (Companies Act 71 of 2008, 2009). This legislation aims to provide companies with a temporary moratorium on their debt to restructure and rehabilitate and hopefully emerge after this period as a strong and viable company able to contribute successfully to the country's economy. The Companies Act's business rescue tools are essential to preserving a strong economy (Kaulungombe, 2012). Two prerequisites must be satisfied before business rescue measures can be implemented. First, the business must be in financial difficulty to the extent that they will be unable to honour their financial obligations as they become due in the next six months. Second, evidence is required to

support the belief that the company can be rehabilitated. If the company's financial health cannot be reasonably expected to be restored, the only option will be immediate liquidation (Companies Act 71 of 2008, 2009).

### **Commencement of Business Rescue Proceedings**

There are two pathways to apply for business rescue proceedings. The first way is when the board of directors of a company applies for business rescue, and the second one is for an affected person to bring a supplication to court. Thus, a company can enter the Business Rescue process voluntarily, or one of the affected persons may apply for business rescue. This right is enshrined in Section 131(1) of the Act.

A court ruling under Section 131 of the Companies Act of 2008 permits the placement of a firm under Business Rescue. Anyone who is impacted may request this court order. For a definition of an impacted person, see Appendix D. "Affected persons" receive extensive rights during Business Rescue processes and are materially impacted during the process. Chapter 6 of Act 106, Part "C," addresses the rights of the "affected person." Notification of court hearings, rulings, meetings, and other events pertaining to the Business Rescue procedure is a right that creditors and shareholders enjoy (Levenstein, 2018).

Additionally, it is recommended that a Creditors Committee be established. When creating a business rescue strategy, practitioners must confer with the committee if one of these is established. The formation of a creditors committee is not a prerequisite for the right to be consulted on the Business Rescue plan by creditors (Levenstein, 2018). The stakeholders recognized by South African law are creditors, shareholders, and employees

(Bezuidenhout, 2012). Business rescue processes will begin with filing a resolution or the application for permission to file this resolution to the court under Section 129(5)(b). After that, the process allows only five days for every known affected person to receive notification of the resolution. They have to have a sworn statement on all pertinent facts with this notification, and they have to designate a Business Rescue practitioner (Bezuidenhout, 2012). If "affected people" (as defined in Appendix D) have reasonable suspicion that the firm is not following the Act's section 129 procedural requirements, they may lawfully petition the court to have the board's resolution set aside. Removing a Practitioner appointed by court order is an expensive process. Thus, this decision should be made carefully (Bezuidenhout, 2012). The burden of proof will be with the impacted party to demonstrate that the practitioner did not follow the guidelines or that the appointment process was not done correctly.

### **The start of the procedure:**

The directors of a corporation may voluntarily launch Business Rescue procedures under Section 129 of the Companies Act of 2008. The boards of directors must abide by the requirement that they reasonably foresee effective rehabilitation, even though they can file for business rescue procedures without a court order or the consent of the shareholders (Companies Act 71 of 2008, 2009). The employee's important role and influence under the new Business Rescue Act in South Africa is another feature of the laws. Right from the drafting of the Company Act, it was clear that this law aimed to protect the employees' interests (Loubser, 2005). The prominent attention to the interest of the workers gave rise to the opinion that workers are given too much protection. Some experts are concerned that

employee overprotection might harm the overall success of business rescue proceedings (Loubser, 2013). The right that a single affected person, be it a single shareholder or employee, must apply for Business Rescue can only be found in South African Law (Loubser, 2010). Section 128(a) of the Act defines "affected people" to include employees.

Although Loubser (2010) recognizes that stakeholders have a right to participate in the Business Rescue regime, she contends that because they may not always possess the knowledge or expertise required for this application, they may not be able to meaningfully contribute to the process. Another problem that Loubser (2010) foresees is the possibility of employee abuse. No obstacle exists to stop an irate worker who may be unhappy with a management decision from filing an application with the court, even in the absence of the required knowledge of the business's operations.

In the spirit of a contemporary and just democracy, the ability to apply for Business Rescue was extended to shareholders and employees. Still, suppose an employee or shareholder starts the procedure. Therefore, the likelihood of a successful rescue will be reduced if other stakeholders do not provide enough support for the Business Rescue strategy. Botha (2015) noted that elements that could affect the outcome of the proceedings include the level of commitment to the Business Rescue process and the various motivations for participation. If all parties involved believe that the process is in their best interests, there is a greater probability that the rescue will succeed (Botha, 2015).

A company's board of directors can decide to apply for business rescue, or an impacted party could file a court petition. As a result, creditors are eligible to apply as "affected" parties in business rescue proceedings. While a business rescue aims to

increase the possibility that a company will remain viable, a creditor requesting a business rescue will not be given special consideration during the procedure. When business rescue procedures are initiated, creditors' ability to enforce their claims against the company in business rescue is put on hold. Therefore, in order to be eligible for business rescue, a creditor must be quite certain that the company will not be able to pay its obligation within the next six months. Following the issuance of a business rescue order by the court, each creditor is handled based on their creditor rating. Section 135 of the Act governs the ranks of creditors' claims and states the following:

“ If an employee does not receive any payment, reimbursement, or other monetary amounts related to their employment that are owed by the company during the business rescue proceedings, such funds will be classified as post-commencement financing. These funds will be disbursed following the preference order specified in subsection 3a of Section 135 as mentioned above.

The company has the option to secure funding during its business rescue operations, in addition to what is outlined in the subsection. If the financing is acquired, it will be paid based on the preference order specified in the subsection and can be protected to the degree that the company's assets are not already burdened. Once the practitioner's fees and other claims related to the costs of the business rescue proceedings are resolved, all claims falling under subsection 1a will be treated equally and given priority over claims falling under subsection 2 of Section 135, as mentioned above, regardless of whether they are secured. Additionally, claims falling under subsection 2 of Section 135 will be prioritised based on



the order in which they were incurred over any unsecured claims against the company. (Levenstein, 2018).

In South Africa, there is a precedent where creditors applied for corporate rescue. (Jijana, et al., 2015). A creditor will only petition for a firm to be placed in business rescue if it has a reasonable belief that doing so will result in a higher dividend than would be anticipated from liquidation. Generally speaking, creditors want a quick liquidation if there is a good chance they will get their money back sooner rather than later.

## **The Business Rescue Practitioner**

### **Appointment and removal**

Without recognizing the significance of the court-appointed Business Rescue practitioner, it is impossible to comprehend the Business Rescue process (Pretorius, 2014). Practitioners may be designated to supervise enterprises during Business Rescue procedures pursuant to Section 128(1) of the Act. Pretorius (2015) states that the Business Rescue Practitioner is the most essential participant in a business rescue case. The Companies Act assigns the Practitioner the position of supervisor. According to Section 128 of the Companies Act 2008, the Practitioner is appointed by the Regulator Companies and Intellectual Property Commission (Pretorius, 2015) and is responsible for a number of tasks .

Business rescue processes will begin with the filing of a resolution or the application for permission to file this resolution to the court under Section 129(5)(b). Following this, the procedure gives each known affected person five days to be notified of the resolution. They have to have a sworn statement on all pertinent facts with this

notification and designate a Business Rescue practitioner (Bezuidenhout, 2012). The process of designating a Business Rescue Practitioner is still somewhat unclear. The role of "Business Rescue Practitioner" does not have a particular admission exam or examination, even though members of a professional body are required. (2018, Levinstein). Academics frequently criticize this criterion (Bezuidenhout, 2012; Burke-le Roux & Pretorius, 2017; Conradie & Lamprecht, 2018; Levenstein, 2015; Jombe & Pretorius, 2022). The Companies Act of 2008, a piece of South African legislation, specifies the qualifications needed to become a business rescue practitioner in Section 138, according to Section 138(1) of the Companies Act.

An individual can be designated as a business rescue practitioner if they meet specific requirements. These include being a member in good standing of a legal, accounting, or business management profession accredited by the Commission. They must also be licensed per the Commission's standards, but this is not a uniform requirement, as different professional bodies, such as accountants, managers, and legal professionals, are acceptable. As such, the chartered accountant/associate general accountant must take the requirements in sections 138( e ) and (f), as well as the SAICA Code of Professional Conduct (SAICA Code), into consideration before accepting the appointment. There are several threats to applying these law provisions, as Pretorius (2013) identified. The individual might not be suitable for the procedure they have been nominated for and will have to acquire expert assistance, including retaining current management. Doing so might mean working together with the people responsible for the business and encountering financial hardships in the first place. Levenstein (2018) agreed that a business rescue

practitioner should possess the necessary credentials to rescue a failing business but cautioned that stricter criteria should apply. The law does not establish a professional board for business rescue professionals or provide an admission exam to determine a practitioner's suitability for the work at hand. The threats identified are the possibility of self-interest due to a professional accountant receiving remuneration as the Business Rescue practitioner. These could threaten the Companies Act's core values of objectivity, professionalism, integrity, and due care. A long-standing or intimate relationship between the client and the professional accountant is another factor contributing to the threat of familiarity. It's also possible that the expert accountant lacks the objectivity necessary to see the outcomes of earlier tasks completed by another person. Regulations under the Companies Act specify appointments for Business Rescue Practitioners. The company's size is based on its Public Interest Score (PI Score), which determines whether a Senior Practitioner, Experienced Practitioner, or Junior Practitioner is appointed. The appointment is not based on the industry in which the company operates. Therefore, a junior practitioner cannot rescue a company deemed significant due to its public interest score.

Practitioners of business rescue have extensive authority and responsibility. In effect, they gain control of the management of the companies. They are, however, allowed, at their discretion and with sufficient motivation, to delegate some powers and functions to the previous administration or even a board member (Bezuidenhout, 2012). This provision in the legislation does allow for some ambivalence in the system. (Loubser, 2013). In theory, since the business covers the Business Rescue practitioner's fees, a board under duress or management of the company could potentially select a

business rescue practitioner they could manipulate. Business Rescue practitioners are highly respected professionals who do an honourable job. Still, the scope for improvement does exist and can, for example, be achieved by setting a uniform, professional standard and an entrance exam for which Business Rescue practitioners must qualify (Pretorius, 2013). Pretorius (2013) noted that Business Rescue practitioners are compelled to determine whether the evidence supports the case for a successful rescue. To maintain the choice to move further with the recovery or to petition the court to halt Business Rescue proceedings and urge an instant liquidation, a comprehensive examination of the company's financial records is necessary (Pretorius, 2013). If "affected people" (as defined in Appendix D) have reasonable suspicion that the firm is not following the Act's section 129 procedural requirements, they may lawfully petition the court to have the board's resolution set aside. Removing a Practitioner appointed by court order is an expensive process. Thus, this decision should be made carefully (Bezuidenhout, 2012). The burden of proof will be with the impacted party to demonstrate that the practitioner did not follow the guidelines or that the appointment process was not done correctly.

### **The Business Rescue Plan**

The role of the Business Rescue Practitioner is to create a comprehensive Business Rescue Plan that outlines the steps required to repair a company's financial situation (Pretorius, 2014). In 2020, Goncalves attests to this. They suggested that the business rescue specialist create a business rescue strategy. A business rescue practitioner's first and foremost duty is to create a business rescue plan to develop a

business rescue strategy (Goncalves, 2020). A business can be brought out of the financial crisis by following the Business Rescue Plan, which a business rescue practitioner created. Let's say a practitioner determines there is a legitimate hope of saving the business or providing a better result than would be anticipated from an early liquidation. If so, they will draft and present a business recovery strategy to the stakeholders for approval (Levenstein, 2015). According to Pretorius (2014), one of the primary duties of the business rescue practitioner is to create a comprehensive business rescue plan that outlines the steps required to restore the organization's financial health.

A rescue plan must fulfill specific requirements in order to be deemed successful. It must be approved by the creditors, promptly accepted, and implemented (Naidoo et al., 2018). Owners, creditors, laborers, and trade unions that represent employees will all be included in the rescue plan. Nevertheless, the curriculum offers minimal direction in terms of information and understanding of people's roles and prospects. Understanding employees' position as crucial stakeholders in a successful turnaround is crucial (Naidoo et al., 2018). At a creditors' meeting, the plan's implementation is approved or rejected. This includes workers or their unions in South Africa. Whether or not all parties were present at the meeting called in accordance with S151 of the Companies Act of 2008, they are all legally bound by the strategy chosen by the majority of creditors and the holder of company securities. It is also legally binding, even if a minority of stakeholders voted against adopting the plan (Pretorius, 2014). The Business Rescue plan became lawfully binding when agreed upon and voted for by the majority of the stakeholders. One of the

Business Rescue process success measurements is that this plan is largely successfully implemented.

According to Cassim et al. (2018), even in cases where creditors do not want to, they are compelled to obtain a reorganization or business rescue plan due to the requirement that a plan approved by the majority of creditors be legally obligatory on all parties. Deciding to push the creditors to take the proposed methods is called a “cramdown” (Cassim et al., 2018). The legislation allows an affected person to offer a buyout of their voting rights to dissenting creditors. Following this option allows for another method to reach majority acceptance. The law stipulates that the meeting must be immediately adjourned for a maximum of five business days if the "buy-out" option is used (Levenstein, 2018).

### **Business Rescue Process Success Rate**

Assume that Business Rescue is initiated prior to the pre-insolvency phase. The likelihood of the process working in that scenario is far higher than if the procedures are initiated later when the business is experiencing severe financial difficulties (Kastrinou & Jacobs, 2017). According to Kastrinou and Jacobs (2017), the Enterprise Act (2002) and the Insolvency Act (2000) of the United Kingdom have elements of the "corporate rescue culture." 2011 saw the implementation of the South African Companies Act No.71, which was modeled after the business practices of developed nations like Australia and the United Kingdom (Rajaram et al., 2018). A new system was created under the Companies Act of 2008, Chapter 6. This regime provides a liquidation substitute. Even though this legislation was hailed as “revolutionary,” provisions in the act presented challenges (Loubser, 2007,

2013). These were addressed in recommended reviews in 2016 (Naidoo et al., 2018). Initial revisions were made because of the efforts of academics like Professor Anneli Loubser, who documented her criticism against the use of Canadian scholars to draft the initial rescue legislation. However, in order to fully understand the impact of business rescue legislation, more research into the provisions and applications of this law is advised (Burke-le Roux & Pretorius, 2017). The success rate of business rescue proceedings is low, even with this Act's groundbreaking nature. 12% of the companies placed under Business Rescue between May 2011 and March 2014 were subsequently re-enrolled as successful rescues (CIPC, 2014). In June 2015, the success rate was reported as 13.6% (CIPC, 2015). The success rate did increase at the end of 2016, when it was said to be 15% (The Commission, 2016). In 2020, the CIPC website reported a success rate of 10% (CIPC, 2020). However, many cases should not have entered business rescue and did so with the full knowledge that the business would eventually be liquidated. Thus, if these are discarded, a success rate of about 35% is more realistic, according to the assertion of a respected senior business rescue practitioner, George Neil (Smith, 2020). The reported success rate differs according to different sources. Practitioners use criteria to measure success other than those of the CIPS.

The mining sector contributes mainly to South Africa's gross domestic product. Up till 2021, 106 mining businesses have gone into business rescue from the 2015 book year. This figure reflects 4.87 percent of all concurrently initiated corporate rescue proceedings in South Africa (CIPC, 2020). Please consult Appendix 5. Fewer mining houses have entered this process than in previous years (8 commencements versus 25 in 2015). See

Appendix E for information on these procedures. At the same time, fewer liquidations were reported (CIPC, 2020). This does not seem to indicate a more significant success rate of business rescue procedures in 2021 but rather shows the effects of strict lockdown procedures during 2021 due to the worldwide COVID-19 pandemic (Rajaram, 2020).

If stakeholders agree at the outset of business rescue operations that the business rescue plan will be implemented, then the business rescue procedure is deemed successful (Pretorius, 2014). When a Business enters distress procedures, different entities enter the procedure as stakeholders. Banks are considered key stakeholders in Business Rescue. Banks, as secured creditors, usually choose liquidation to safeguard their interests against additional losses. Because banks may readily persuade their stakeholders to support them as secured creditors, they indirectly influence the decisions made by business rescue practitioners (Jombe & Pretorius, 2022). Banks are seen as significant stakeholders in this regard. They have the ability to cast votes, influence other votes, and provide financial assistance to ensure the business continues to operate. According to Lusinga & Fairhurst (2020), banks are considered the most influential stakeholders. Businesses must prioritize the interests of all stakeholders in addition to their services and goods if they are to survive as a going concern.

While the Commission's 2020 report indicates that Business Rescue proceedings have a low success rate, they did outperform Judicial Management in terms of outcomes. When comparing 2020 to prior years, the rate of liquidations had also decreased, suggesting that businesses are taking the Business Rescue Procedure into consideration before pursuing liquidation (South African Government, 2020). Many legal experts,



Business Rescue practitioners, and scholars agree that Business Rescue has a future, as the process aims to save companies and job opportunities (Levenstein, 2015). The general consensus appears to favour applying this rule strictly to benefit business rescue practitioners' obligations and responsibilities. Therefore, they must provide assistance with the procedure they must follow. (Smith, 2020; Burke-le Roux & Pretorius, 2017).

The goal of business rescue is to give creditors a better outcome than liquidation would bring. Restoring businesses is essential to preserving jobs. Sadly, it is a reality that businesses fire employees as soon as problems arise (Jombe & Pretorius, 2022). Some jobs were rescued by the effective implementation of Business Rescue. Still, a low success rate with this procedure meant that not as many jobs were saved as the South African legislator intended. The low success rate has been attributed to several factors, including whether an amicable relationship exists between management and the Practitioner or whether the relationship is too comfortable to the extent that creditors feel exposed (Pretorius, 2013). Difficulty finding post-commencement financing and the practitioner's experience contribute to the low success rates reported in 2020 (CIPC, 2020). A prominent Director-attorney in South Africa, Grant Nirenstein, opined that the process of Business Rescue is often misappropriated (Smith, 2020). The claim that South African business Rescue is quickly turning into a spoiled industry lends credence to their viewpoint (Jombe & Pretorius, 2022). They say this happens when a company abuses this legislation to create a breathing space or tries to manipulate its creditors. Although this researcher is not in complete agreement with these statements and statistics are not available to support this

statement, the high percentage of unsuccessful Business Rescue procedures indicates that problems exist (CIPC, 2020).

By the time most businesses enter Business Rescue proceedings, it is often too late. Business Rescue practitioners call this phenomenon the “ostrich syndrome” (Smith, 2020). When directors avoid dealing with issues and abandon corporate rescue procedures until it is too late to save the company successfully, this is referred to as a circumstance where the “ostrich-syndrome”-phrase would be appropriate. Smaller businesses that are already having financial difficulties find it challenging to use the Business Rescue process because of its high cost (Coertser, 2012). Many academics are also of the opinion that business rescue practitioners have a significant impact on whether the procedure ultimately succeeds or fails (Pretorius, 2014). Their abilities—or lack thereof—could contribute to a company's continued decline (McKay, 2019). Business rescue professionals are believed to be eager to take on a rescue without thoroughly researching the situation, yet they promptly write up the costs and commit the funds. These funds would otherwise be earmarked for creditors (Smith, 2020). In reality, though, the Business Rescue process is highly regulated. Practitioners who do not uphold a good code of practice are rooted out and de-registered (Pretorius, 2013). Though a practitioner must be a member of a professional body today, having a single body that controls their behavior would be advantageous. Although it's a part-time role, lawyers, accountants, and seasoned businesspeople apply.

The poor success rate of this method is caused by a number of factors, including the inconsistent application of court rulings and international regulations that have an

impact on South Africa (Naidoo et al., 2018). Like other countries that trade internationally, South Africa is expected to emulate international insolvency, company, and labour laws developments. Significant legislative impact comes from the United Nations Commission on International Trade Law (UNCITRAL) in South Africa (UNCITRAL Working Group V, 2004). The judiciary is the backbone of the South African system, serving as an impartial arbiter and upholder of business rescue laws. However, Pretorius (2013) does not trust the court system as he feels South African courts are not equipped to deal with these cases. He cites a shortage of judges with the required specialist knowledge to consider these cases and several contradictory judgments that emanate from these cases (Pretorius, 2013). Despite the low success rate, several businesses were successfully rescued in South Africa (Rajaram R., 2020).

### **Business Rescue laws impact on the local economy**

A set of regulations and laws regulates every business. It is the responsibility of the business owner or the entity governing a business concern to know the existing rules and regulations applicable to them. Business law is a section of the code that protects liberties and rights, maintains orders, resolves disputes, and establishes standards for business concerns and dealings with government agencies and individuals (Keay et al., 2020). All business studies involve a degree of knowledge of business laws. A business has a duty of care to all its stakeholders. The law regulates all business activities. Sometimes, a license is needed to conduct business, and Labour law, sales, and purchases are regulated by law. A company that does not heed the law of the country handling the specific sectors you trade in will quickly face legal consequences. Since 2007, there has

been a marked increase in legal liability for directors of companies (Keay et al., 2020). The main focus of traditional legal corporate regulation is accountability. Recently, employees and other stakeholders have used law and regulatory enforcement action to enforce corporate responsibility.

Loubser ( 2007) concluded, "Every country and every type of economy has evident advantages from an effective and well-functioning corporate rescue procedure." Although this is true in many nations, the South African economy, where employment retention is a top priority, makes the remark especially pertinent. According to STATS South Africa's most recent data, an additional 70,000 jobs were lost in the final quarter of 2022. (South African Statistics, 2022). The concept behind Business Rescue is that rather than letting all operations end, it would be better for the economy to keep a business alive with its workers and capabilities.

The use of Business Rescue legislation has an impact on the regional economy. Business rescue laws have spillover effects that are frequently localized, affecting the services and non-tradeable industries (Bushe, 2019). Business Rescue legislation worldwide aims to rescue businesses and thereby save employees. However, students of business studies consider the knowledge of the legislation as an integral part of business studies. No business education could be regarded as complete without understanding the rules governing the different aspects of business transactions and how they apply to the current business context.

Business law is that part of the law about doing business. Although no business starts by planning to fail, it is essential to recognise that in the event of a company

becoming financially distressed, many stakeholders will experience the consequences of the failure and will have a stake in the business 's recovery or eventual demise. There is a very high failure rate for business in South Africa (Bushe, 2019) . Mines are no exception. The failure of mining businesses often threatens a whole town's existence. The devastation of these towns leads to the term "ghost towns." In South Africa, several "ghost towns" exist (Marais et al.,2018). They are also found in Australia, the United Kingdom, and other countries worldwide. Former mining towns have fallen prey to this phenomenon. All share the common denominator of a village dependent on one industrial activity. The whole city collapses when a natural disaster or economic calamity forces that mine to stop operations.

Sometimes, this happens overnight; sometimes, it is a gradual process. The spillover effects are highly localised and consistent with a sudden reduction in local consumer traffic. This effect highlights the impact of a failing business on other firms that are not yet experiencing financial distress or bankruptcy (Bernstein et al., 2019). When a mine closes unexpectedly, the consequences and impact on the local economy are far-reaching. A rise in poverty leads to a drop in buying power. Living standards decrease and crime rates rise steeply. The loss of second-order employment becomes evident in the limited money circulation and buying power reduction. The unemployment rate and lack of money leave local councils unable to collect rates and taxes. A town not receiving revenue from its citizens has the negative consequence of services deteriorating and the town eventually dying, with only empty houses remaining. In South Africa, mining towns often consist of housing supplied by the mine. One employed person in

South Africa usually provides for at least eight other people (Pretorius, 2015). With the breadwinner no longer receiving an income from the town's main economic activity, they usually have to move the extended family into the now-abandoned mine housing. Because the mine no longer regulates the accommodation and does not supply essential services, the living conditions are far from ideal, leading to socio-economic problems over which the central government has little control and insufficient resources to support unemployed people.

Unemployment is the most pressing and vexing problem the South African economy faces. Unemployment severely threatens social and political stability (Bushe, 2019). It is, therefore, not surprising that the government will try everything in its power to create more jobs. The motivation to preserve more jobs is one of the main drivers behind the Business Rescue Laws. Government resources cannot keep up with the social and political demands of the unemployed. South Africa experienced a decline in population growth, primarily attributed to the rise in death rates from HIV- and AIDS-related deaths. Economic growth has exceeded population growth over the past twenty years, resulting in South Africa experiencing "jobless growth" (Bushe, 2019). No economic growth has vastly increased the unemployment rate, leading to a downgrade by rating agencies such as Fitch Ratings and a poor outlook for industries relying on export activities, such as mining houses. Ordinarily, people are a product of their society; as local community members, they identify with their job. When employment opportunities are taken away, they become despondent and rely on the state to provide a social network of support. Consumption, the cornerstone of the economy, is a function of the

individual's behaviour (Bushe, 2019). Towns that rely on miners to support the infrastructure will be destroyed when all buying power ceases to exist. South Africa has a poverty rate of 34.7 and a life expectancy of 56.7 years (Bertelsmann, 2016). Several factors contribute to the low life expectancy, such as the high prevalence of HIV and AIDS in the country (Bushe, 2019). The government is motivated to intervene in a company's eventual demise by the poverty rate since enacting business rescue laws may be viewed as a constructive measure to reduce unemployment and alleviate poverty.

### **The reason businesses fail**

New businesses are commonly accepted as a much-needed solution to promote economic growth. New companies create most new financial jobs (Bushe, 2019). Well-established businesses typically concentrate on growing their output while adding only a small number of new employees. In South Africa, entrepreneurship is essential to the country's economy since it can potentially reduce the region's unemployment rate. The National Development Plan (NDP) is an economic development plan by the government of South Africa that states that new firms will become more prominent in the business landscape and generate the majority of jobs in the future. The general perception in South Africa is that the central government can do more to stimulate increased economic growth. The government offered the solution of implementing the Business Rescue Laws in 2021. However, the challenge of creating employment is still far from fathomed, and much work is needed to understand why businesses fail and employment opportunities are lost. South African government has a policy of maintaining a market economy, private ownership, and freedom of speech to support a free economic market

(Bezuidenhout, 2012). They will, however, intervene if a company acts monopolistically or when a firm's actions are perceived to impede the functioning of a market.

Bushe (2019) agrees with Pretorius (2015) that unemployment is arguably the most pressing problem affecting the South African market. Consequently, economic growth at a rate below the population growth impedes people 's standard of living. No universal list of why businesses failed could be found, and scholars often do not agree on the causes of business failure. In the African milieu, a pattern has been established since the 1990s, where a downward spiral has been noticeable in the economies of the different countries in Africa. South Africa is no exception (Bhaskar, 1978). The economic crisis led to severe consequences for Africa, such as poverty, starvation, and unemployment. Small businesses that start up do not meet expectations, and these new businesses fail within the first five years of existence. This phenomenon might be partly due to many scattered initiatives, and one central organization did not tackle the challenge of correcting it.

Entrepreneurs form many new initiatives without financial resources or the financial knowledge to start a new business (Shafique, et al., 2011). Because scholars, academics, and the business world disagree on the common cause for business failure, the challenge of correcting firm failures remains scant and ambiguous. Shafique et al. (2011) confirmed eight dimensions of performance measurement that researchers use to establish entrepreneurs' success factors. These eight dimensions are” efficiency, growth, profit, size, liquidity, success/failure rate, market share, and leverage.” Financial terms are used to measure most of these, and a few through operational and non-financial



measurements (Shafique, et al., 2011). This does not answer why businesses fail in South Africa and why the African diaspora is experiencing significant financial suffering and hardships. Bushe (2019) argues that native Africans do not have a long history of reasonable economic activity. In South Africa, equal opportunities are available to native South Africans, who are ensconced in a democracy that is only 24 years old. Equal opportunities were stifled by “apartheid regimes. South Africa became a democracy in 1994. The new democracy created a lot of options, but unfortunately, the majority shares of significant mining industries are still in the hands of foreigners (King IV Report, 2016). Countries such as Malaysia and Ghana, both former colonial rule countries, as is South Africa, established their economies by advancing policies, frameworks, and support structures that promote entrepreneurship. Small, medium, and micro enterprises, or SMMEs, are seen as the economic miracle for developing countries, according to global perspectives such as those of the Organisation for Economic Cooperation and Development (OECD). South Africa has the challenge of picking up lessons learned from these countries for its advantage to surface and bring down the unemployment rate.

Failures occur at various stages of the business cycle. Business cycles have the same characteristics as product life cycles: “introduction, growth, maturity, and decline.” This is consistent with the views of Alsharif et al. (2021) that each stage of the business cycle requires a lot of initiative from the entrepreneur. Without proper knowledge, the business could fail at any one of these stages. (Matenda, et al, 2023) Companies formed entirely dependent on Government grants do not involve an entrepreneur’s funds and have a lower chance of succeeding. At the initial stage, where money needs to be

invested in the business, it requires a lot of commitment as the firm does not yet generate revenue to take off its expenses; most companies fail at the inception stage (Bushe, 2019). More recent business studies such as Ackroyd and Fleetwood (2004) and Burke-le Roux and Pretorius (2017) confirm that financial difficulties, managerial problems, and lack of industry experience surface as significant causes for new start-ups to fail. In South Africa, poor economic management is often cited as the reason why most businesses fail, in this instance, when the management of a new business fails to manage the cash inflow and outflow of his business. (Goncalves, 2020). A business entrepreneur needs considerable knowledge and experience for their business to succeed. Bushe (2019) identifies a lack of knowledge, poor marketing and management skills, and poor business planning as significant reasons for failure. They also criticize government commitment. The commitment of the government in Malaysia, which includes financial support and advice, marketing, management, and technical support, is an excellent example of the type of commitment that South African entrepreneurs lack in their quest for success.

### **The results of business failure on the economy**

Several definitions for business failure exist. Scholars and prominent exponents of the business world do not commonly agree on the meaning of business failure. Although the Thesaurus English Dictionary defines breakdown to mean breakdown, stoppage, malfunction, crash, collapse, closure, bankruptcy, not a success, or a disappointment, business rescue is not considered a failure of the business; instead, it is a backup strategy to help a business overcome its financial challenges. It is not legally permissible to assert

that Business Rescue has failed. Many reasons exist for a firm to enter business rescue proceedings. For instance, mismanagement might cause a business to falter, but better management can rescue the business. So, insolvency and failure could have two different meanings. Bushe (2019) argues that failure means losing a business to the economy. They say that failure is when a firm's value falls below the opportunity cost of staying in business. In the business environment, failure occurs when a business loses revenue drastically (Bushe, 2019). Business failure has widespread consequences, but not all scholars agree it is a universally negative experience. Professor Loubser (2013) and Pretorius (2015) both agree with Professor Hart Posen of Washington University (Knott et al., 2009). They stated that sometimes businesses fail and that it is a good thing. To support this statement, they argue that excess entry into the market leads to decreased price margins, spurring new firms to be innovative and reduce costs over the long term. The second reason is that failed firms produce knowledge that survivor firms may absorb due to the spillover effect. Loubser (2013) even suggested that firms have a natural lifetime and should not be artificially kept alive at the end of this lifespan. "An effective and well-functioning corporate rescue mechanism has obvious advantages, especially in the South African setting," claims Loubser. but not all businesses should be rescued. In addition, Knott et al. (2009) found that the more firms enter a market, the greater the likelihood that poorly performing established companies will disappear. This finding suggests that failure is merely a byproduct of a phenomenon that yields superior firms.

### **Hidden Cost of Business Rescue Procedures**

Business rescue may have many hidden costs (Tajti, (2017), Winer, (2016), Conradie and Lamprecht,( 2021) and Bushe, (2019 ). One of the first things a Business Rescue Practitioner does in a business rescue situation is to determine the company's valuation (Conradie & Lamprecht, 2021). Diverse stakeholders may possess varying views regarding the valuation of a business. A corporation in financial trouble may have its valuation influenced by qualitative issues. With mining companies in South Africa, the re-organization process might take several years, as was the position with the current case study and several other mines in South Africa that have been under business rescue for some time. The average time a company in South Africa spends under business rescue is sixteen months (Klokow, 2018) . The time-lapse is long enough for the value of assets to deteriorate considerably if not sold off immediately. The time worth of money should be expressly taken into account in any business report. Since creditors generally like to collect any outstanding money owed to them as soon as possible, the Business Rescue Practitioner should consider this when determining the TVM (Time Value of Money) when a company is placed under business rescue.

The South African Business Rescue served as the backdrop for the current investigation. It is crucial to remember that, in contrast to South African law, which requires that a company be in financial hardship to petition for Business Rescue, a firm does not need to be in economic crisis to file for Chapter 11 protection in the United States. According to the South African statute, a corporation is considered to be in financial difficulty if it cannot pay its bills within the next six months or if its liabilities

are more than its assets (Loubser, 2010). A company can discover that the stigma associated with taking part in business rescue makes it more difficult for them to get post-commencement financing (Tajti, 2017). Where the procedure is under twelve years old in South Africa, the business community is not well versed in the process, and the mindset is to equate it with liquidation. Since liquidation carries a stigma unlike the situation in the United States of America, it places undue strain on a company already in distress. Considerable research has been devoted to changing the mindset around business restructuring worldwide (Tajti, 2017). They state that both China and Europe perceive the dominance of the liquidation process as a competitive disadvantage compared to the relevantly successful Chapter 11 model of the United States. China and Continental European civil legal regimes manifest a common discrepancy between what is on the law books and how the situation plays out in the business world. Statistical data shows that completed reorganisations remain the majority, with liquidations still being the most favoured process for a distressed company (McCormack, 2009). While there is a stigma associated with bankruptcy that is even visible in the United States, it is less prevalent there than in China and Europe (Tajti, 2017). Even in South Africa, the process carries a stigma that policymakers should not ignore when discussing changes to the new law (Loubser, 2013).

After the worldwide recession of 2008, the business restructuring process received a lot of attention worldwide. The “second chance policy” was given priority status at the European Commission Recommendation of 12 March 2014 (Tajti, 2017). In its differing forms, the rescue process was hailed as a remedy to help companies in

distress. Still, the stigma of liquidation followed the restructuring process, and companies might hesitate to apply for rescue under these circumstances (Conradie & Lamprecht, 2021) . The company rescue procedures do not enthrall the business community in South Africa because of its low success rate. There will be a need for process education, and according to McCormack (2009), the issue still exists even if it will be difficult to provide factual support for the concept of "stigma." Creditors fear participating in the process, and a company's reputation will suffer, resulting in a loss of supplier and customer confidence (Lusinga & Fairhurst, 2020). Indirect costs may accelerate a company's deterioration. Although indirect costs are not calculated as monetary expenses, the genuine cost of lost opportunities will further hamper a business's recovery (Conradie & Lamprecht, 2021). Rosslyn-Smith et al. (2020) refute this claim, arguing that enterprises experiencing financial difficulties may also gain specifically from indirect costs.

Indirect cost refers to the lost profits due to lost opportunities and the inability to raise funds (Rosslyn-Smith et al., 2020). Commercial banks are especially reluctant to provide finance or support during business rescue operations (Conradie & Lamprecht, 2021). Assets are sometimes sold for lower than market value to generate quick cash (Sautner & Vladimirov, 2017). Conradie and Lamprecht (2021) stated that any asset's value is the amount a willing buyer is prepared to pay. The stability of employment protection and the effective completion of a business rescue operation are impeded by the incapacity to secure post-commencement financing (Pretorius & Du Preez, 2013)

The potential loss of client goodwill is another indirect expense associated with the business rescue method. The risk of a declining client base will make it more challenging to carry out a successful rescue strategy in the early phases of the business rescue process. Consumers may be reluctant to do business with a company that has initiated business rescue proceedings in order to disclose its financial difficulties (Conradie & Lamprecht, 2021). According to Rosslyn-Smith et al. (2020), a customer's response to a financially troubled company will primarily rely on their history with the company before business rescue proceedings and the price of locating a substitute provider. A company in South Africa may only initiate business rescue procedures if it has a reasonable belief that it will not be able to pay its debts within the next six months or if the value of its liabilities exceeds the value of its assets (Levenstein, 2022). As a result, when a business enters the business rescue program and acknowledges its difficulties, customers may decide to switch to other suppliers for their purchases. Customers leaving will make the company even more distressed, making the reorganization process fail and leading to both a reduction in government revenue and the loss of additional job chances. Customers could influence the distressed firm's fate in other ways, for instance, by demanding a lower price, so it may become difficult to collect trade receivables, resulting in the result described above (Tajti, 2017).

According to the current business study, losing key personnel and management and declining employee morale and productivity are the most catastrophic hidden costs associated with going into company rescue (Conradie & Lamprecht, 2021). The overall lack of knowledge about corporate rescue operations in South Africa is partly due to the

necessity of comprehending their indirect costs. Because of their nature, indirect costs are difficult to analyse and measure. Conradie and Lamprecht (2021) agreed that this crucial information may result in adverse behavior toward the distressed firm, further contributing to the existing problems. Sautner and Vladimirov (2017) reported another challenge in ensuring employee protection during this process. Workers view the company's business rescue procedure as its demise. Such anticipations could result in a self-fulfilling prophecy (Rosslyn-Smith et al., 2020). The issue emphasizes the necessity of process education for staff members as well as the corporate community (Conradie & Lamprecht, 2018). In South Africa, business rescue is typically seen as a last resort for a firm facing a certain death rather than the start of the company's journey back to health (Conradie & Lamprecht, 2021).

Although the very cost of business rescue proceedings may sometimes be why a business chooses liquidation over a restructuring process, the employee's position is directly impacted by this choice. In the case of liquidation, there is specific knowledge that employees will lose their jobs, but when a business is restructured, employees have some hope that their jobs might be saved in the process. Not all stakeholders are privileged to the knowledge of the financial problems a firm may encounter. Essential stakeholders like employees often are the last to discover the crisis and the least prepared to deal with the eventual economic fallout. Conradie and Lamprecht (2021) agreed that this crucial information may result in adverse behavior toward the distressed firm, further contributing to the existing problems. Sautner and Vladimirov (2017) reported another challenge in ensuring employee protection during this process. This challenge is the loss



of trading partners, customers, and suppliers, resulting in jobs becoming redundant. Employees face the threat of job losses during the restructuring process. The threat of unemployment may cause some employees to leave (Winer, 2016). Downsizing by decreasing employees is a widespread turnaround practice (Anderson, 2012). This is confirmed by Rosslyn-Smith et al.'s (2020) findings. Reducing the number of employees is made more attractive to business rescue practitioners by the potential to deliver substantial savings on the direct employee cost. The indirect cost of this practice may decrease employee morale and productivity, thereby adversely affecting the potential to restore a business to profitability (Joubert, 2018). Another cost-cutting strategy practitioners employ is to cut employees' pay to save jobs (CIPC, 2020). This practice leads to resentment among employees, which will also affect their commitment to the company's eventual survival. The firm will lose valuable experience when key personnel lose faith and decide to resign, when a company enters business rescue proceedings and is effectively run by an outsider, namely the Business Rescue Practitioner, stress, paranoia, and lack of trust between employees and management escalate, as Gu et al. (2021) report. During the business rescue, it is a significant challenge for firms to retain their key employees.

The situation stresses the importance of communication, as employees must feel their fears and concerns are being addressed (Berry, 2012). Opposition companies will headhunt employees with the most experience, and the loss of experienced personnel will leave employees with a lesser chance of being re-employed and vulnerable to unemployment. According to Winer (2016), a firm's directors and senior management

will likely find new employment during business rescue proceedings. The administration will be blamed for most of the company's problems (Burke-le Roux & Pretorius, 2017) . Tajti (2017) confirmed this argument. When a company faces financial difficulties, stakeholders often point the finger at the administration. The faith in the firm is thus eroded (Smith, 2020). The indirect cost of company rescue may not be impacted by managers quitting because they are tired or ashamed, but the indirect cost of financial trouble will arise from failing to retain talented staff.

### **Business Rescue in the Current South African Business Landscape:**

Innovation in finance and technology is the responsibility of businesses. Businesses promote economic expansion and reduce joblessness (Lusinga & Fairhurst, 2020). In 2022, COVID numbers had decreased drastically, and the South African economy showed a positive upswing. However, the global economy has shown a downward turn. Many countries experienced significant inflation, higher interest rates, fuel price hikes, and higher unemployment figures. The ongoing conflict in the Ukraine contributed to a weaker economy -with the adverse effects passed on to the consumer. South Africa is part of the interconnected global economy and, therefore, was not spared the impact of these negative influences. The most recent CIPC report through June 30, 2022, examines the business rescue situation in South Africa. (CIPC, 2022). About 4370 companies have undergone business rescue since the program started eleven years ago, with 19% achieving significant implementation, according to the CIPC study. Substantial implementation is the stage where a business plan is considered successfully implemented. Significant application is defined as the extent to which the company has

carried out the tasks outlined in the rescue plan and will continue to do so for the term of the business rescue, according to Levenstein(2022).

From the inception of business rescue, 546 business (12%) rescues have ended in liquidation (CIPC, 2022) . Although these figures indicate a positive trend, the economist pointed out that 63 companies entered into business rescue in 2022, and the latest Stats SA Report (Statistics South Africa, 2022) indicates a 45% increase in the number of liquidations compared to the financial year of 2021. The higher liquidation figures might suggest that companies only assess their financial position when it is too late to rescue the firm. Business Rescue can take place in any sector. In 2022, filings of several mines, such as Optimum Coal Mine, Black Chrome Mine, and Rebosis, entered the process, but all ended up in a liquidation process. It is clear from the most recent report available (CIPC, 2022) that business rescue is still a possibility for organizations with financial difficulties. Every stakeholder does not want a firm to fail because successful businesses are the economy's foundation (Matenda et al., 2022). A firm's collapse is linked to substantial economic and social consequences. The COVID-19 pandemic severely damaged South Africa's economy, and in the last quarter of 2022, the country's already high unemployment rate rose even further (Statistics South Africa, 2022). Numerous enterprises have utilised the present Business Rescue system, but policymakers are concerned about the poor success rate (Bernstein et al., 2019).

Professor Rajaram of the University of KwaZulu-School Natal's of Accounting, Economics, and Finance agrees that the COVID-19 virus has negatively impacted many enterprises across the globe (Rajaram, 2020). The outcomes of the Coronavirus Disease

2019 (also known as COVID-19) have disastrously impacted the South African economy. Many jobs were lost during and after the COVID-19 plague. South African economy suffered, and business owners had to resort to desperate measures to keep their doors open (Matenda et al., 2023). The most recent report from Statistics South Africa verifies company closures and the ensuing job losses. For example, in the second quarter of 2021, unemployment increased to 34.4 percent from 32.6 percent in the first (Statistics South Africa, 2022). The measures implemented by the Government to contain the COVID-19 plague had the economy come to a virtual standstill for prolonged periods. Many business owners decided they could negate the financial threats presented by the spread of the virus by placing their ailing companies under Business Rescue.

Restructuring a company's affairs with the intention of putting it back on the path to financial recovery is the goal of Chapter 6 of the Companies Act 71 of 2008, sometimes known as "the Companies Act." Rajaram (2020) argued that Business Rescue allows companies to survive by facilitating their rehabilitation. Professor Rajaram's opinion is strengthened by the statements made by Laurie Dippenaar, co-founder of a central commercial bank in South Africa (Smith, 2020). Dippenaar stated that unforeseen regulations on the Coronavirus affect much of the 2021 economic situation. Dippenaar mentions that Business Rescue might provide the breathing space a company needs to re-organize instead of going straight into liquidation. The one problem he foresees is that a Business Rescue practitioner is not an expert on every aspect of business and might not be familiar with the particular industry within which a company operates.

It's interesting to note that the Business Rescue program in South Africa is in line with global best practices and has many of the same goals as the Enterprise Act of 2002 in the United Kingdom and Chapter 11 of the US Bankruptcy Code. Although this Act is still in its early stages in South Africa, it has already drawn a lot of opposition and criticism from influential figures in the economy (Smith, 2020). It's common to criticize the Business Rescue Practitioner's skills (Pretorius, 2015). One such complaint is addressed by Erik Venter, former CEO of Comair (Smith, 2020). His concern is that when a company's owners and directors find it challenging to save a company, he does not believe that a stranger can do it (Smith, 2020). Venter also points out that the effects of a global crisis, like the COVID-19 pandemic, were not foreseen when implementing the Business Rescue option in 2011. He warns that Business Rescue should only be considered as a substitute for liquidation in cases where sufficient proof exists to validate the company's ability to function as a going concern. After a corporation initiates Business Rescue procedures, the Companies Act 71 of 2008 puts a stop to creditors' claims being paid. Prof Rajaram offers insight into how a company can improve its chances of success (Rajaram, 2020).

Firstly, they recommend that business stakeholders familiarise themselves with this act's provisions and when it would be appropriate to implement the Procedure. Many stakeholders would prefer to be actively involved during the time of the decision as opposed to being informed after the fact (Rajaram, 2016). According to Smith (2020), jobs could be saved, and businesses could become more resilient, resulting in a more robust democracy if the application of the Business Rescue law serves to mitigate the adverse

effects of COVID-19 on the economy. After a court order is granted or the firm approves a resolution, the requirements of "the Companies Act" become applicable (Levenstein, 2022). This provision is essential to employees who have no voting rights and often, at this stage, no input in the running of the decisions made by management. The protection of employees during these Business Rescue Proceedings is covered under Section 136 of "the Companies Act." Even though this clause expressly states that company workers will continue to be employed under the same terms and conditions as they did prior to the Business Rescue, the reality is, unfortunately, that many employees lost their jobs during the COVID-19 period of restrictions in South Africa. The law allows companies to discontinue employment and consider retrenchments when no other avenues exist. Attempts that fail lead to the loss of jobs, and skilled workers might emigrate and be forever lost to the knowledge pool of South Africa. These findings confer with the results of De Abreau (2018).

### **Successful completion of the business rescue procedures**

According to Section 132 of the Companies Act, the practitioner is required to submit a monthly report on the progress of the company rescue proceedings if the proceedings are not completed in three months (or within such a long period as the court may allow). If a court order starts the business rescue procedure, the court may order to convert it into liquidation proceedings if there is no hope of saving the company. In other words, the business rescue proceedings stop when the court issues an order to set aside the proceedings. The entity may also send a notice of termination to the commission in the event that the plan is rejected by the commission or if the organization is no longer in

financial difficulty. When one of the following conditions is met, a party with an interest may petition the court to have the resolution reversed: either the company has not complied with section (129) of the Companies Act's procedural requirements, or there is no realistic chance that it will be saved. The concept of "no realistic chance of the company being rescued" may also be used to overturn business rescue (Pretorius, 2013). If it is decided to close down a business that is undergoing business rescue, the employees will be the ones who suffer the most because their jobs will no longer be guaranteed. The effectiveness of the business rescue approach is critical for the economy as a whole as well as the employees of the company. "Affected individuals" are employees in the context of corporate rescue. Under normal circumstances, the Business Rescue procedure can result in four potential outcomes: The court order (Companies Act 71 of 2008, 2009) nullifies the section 129 or 131 court order that would have initiated Business Rescue processes. The procedures will cease if the Business Rescue practitioner presents a notification to end rescue proceedings with the Commissioner. Furthermore, according to section 153 of the Companies Act 71 of 2008, a Business Rescue proceeding will be terminated if it is rejected and no one makes an effort to pursue it further.

The final potential outcome is the conclusion of Business Rescue proceedings due to the successful execution of the Business Rescue plan in compliance with its adoption and the submission of a "notice of substantial implementation" by the Business Rescue practitioner (Cassim et al., 2018). The phrase "substantial" implementation refers to the predominant usage of action plans to execute the Business Rescue approach.

A "business rescue" process gives many enterprises a slim chance of survival. The low success rate of Business Rescue proceedings can be attributed to a few of the previously mentioned issues. In South Africa, the law is barely a decade old, and several research projects are being conducted on all facets of it. All scholars emphasize the continuous need for further studies (Bezuidenhout, 2012; Loubser, 2007). Business Rescue procedures have a poor success rate (CIPC, 2020). Previous research indicates that the many recommendations made by scholars over the last decade could be implemented to improve the success rate. (Rajaram et al., 2018) Court judgments are not consistent and often fall back on a system that favours the creditor, which is in line with the liquidation culture of South Africa (Loubser, 2005; Loubser, 2010). The King Code of Corporate Governance advises that 21<sup>st</sup>-century companies can only succeed if a concerted effort is made to balance the role of "planet, people and profit." (King III Report, 2009). King 111 emphasizes that the ability to rescue a company will benefit shareholders, creditors, employees, and other stakeholders.

## **Identifying the Research Gap**

### **Evaluating existing literature to identify research gap**

There has been much legal discussion since the Companies Act 71 of 2008 was introduced, especially Chapter 6 of the Companies Act, which deals with business rescue procedures. The issue is equally important to business studies scholars. Specific contentious problems are either caused by vague language in the Companies Act or by the fact that the Act does not address every scenario that could occur in real life (Loubser, 2010). The jurisprudence that developed with the promulgation of this new law kept



scholars and legal experts equally interested. Approaching the research question from a business management view and not having formal legal training, but nevertheless, following one process since inception more than five years ago, this researcher was prompted to investigate South African writers and senior legal experts as well as international scholars, to gain an understanding of the developments around this procedure.

Despite the fact that the situation of the workers in the Business Rescue case received adequate attention, this study found a research deficit. Previous authors approach the Business Rescue procedure from a legal standpoint. Most of the research articles were not written from a business research point of view. The theory anchored in this research, the methodology of qualitative case studies, and empirical evidence gathered with face-to-face interviews will uniquely contribute to the existing database. The accurate information from in-depth employee interviews is what adds the most value to the body of knowledge currently available. It helps us understand Business Rescue better and determines whether the process is fulfilling the intent of the Companies Act by establishing and operating businesses in a way that improves South Africa's economic welfare. Please see Appendix F for a table identifying the South African studies undertaken in the last decade. The Jombe and Pretorius (2022) study was added to the genre in 2022, recognising a need for future research investigating the employees as they find themselves at the “helm of the process.”

Business Rescue is the focal point of several South African studies undertaken since 2008 in South Africa, while international studies provided good insight for comparison. Referencing the studies of Botha (2015), Bezuidenhout (2012), Joubert (2018), Joubert & Burdette (2011), Loubser (2010), Levenstein (2015), Pretorius (2014), Naidoo et al.

(2018) and Rajaram (2016). All these studies added to the available knowledge on the legal application of Business Rescue laws. Appendix F provides a table summarising the South African writer's studies and the research gap identified. Professor Loubser researched the comparative aspects of corporate rescue in South African Company law (Loubser, 2005). Their research centered on the legal aspects and did not include the employee perspective.

The research methodology differed from the study undertaken by the author in that it did not include face-to-face interviews or thematic analysis. The authors on this subject almost universally agree that the gaps in knowledge regarding the intricacies presented by the Business Research proceedings could be improved with sufficient research (Pretorius & Rosslyn-Smith, 2014). Some studies concentrated on a review of the business rescue procedure. The documents of Bezuidenhout (2012) and Levenstein (2018) contributed to the knowledge of the implementation of this study but failed to address the employee perspective. These studies did not include a case study report. Joubert (2018) did a comparative study on the effects of business rescue or liquidation on the rights of employees. Although this study considered workers' rights, it did not compromise any employee interviews to gather in-depth data, as the author did. Pretorius (2015) delivered a business rescue status quo report that commented on the procedure and implementation and the people who lost their jobs during the rescue. Still, the report did not include data obtained from employees but rather analysed data from government and private statistics available at the time of the study.

Further studies dealt with the position of the business rescue practitioner (Pretorius, 2013), while other studies investigated the expectations of the business rescue plan

(Pretorius & Rosslyn-Smith, 2014). Rajaram (2016) surveyed the success factors for implementing business rescue. He interviewed several business rescue practitioners, identifying a lack of post-commencement finance as a contributing factor to the high failure of the business rescue procedure. Although the study employed face-to-face interviews, those were with business rescue practitioners and did not elicit the opinion of the employee.

Thus, the research gap in the methodology identified a similar need to interview employees directly. Rajaram(2016) failed to consider the contribution of employees to the success rate of the process. To achieve the study's objective, the author examined the correlation between job protection and the implementation of Business Rescue legislation. This evaluation aimed to identify the elements that led to the success of this method, with the primary goal being to provide recommendations for improving the implementation of this operation to achieve a more favourable outcome for all parties involved. In accordance with the recommendations provided by Saunders et al. (2015), the research onion was utilised to determine the necessity of utilising a qualitative case study methodology in order to conduct a cross-sectional study that included personnel from the Big Five Mine in Mpumalanga. The study's approach, which involved conducting in-person interviews with staff members, produced rich, comprehensive data that could be examined. The data was also unique as previous studies were unable to interview employees directly, as they had no knowledge of the process and could, therefore, not provide data (Pretorius, 2015). A fresh approach to the present methodology, which has not been used in the past due to the aforementioned lack of information, was carried out by conducting interviews with staff.

The critical stakeholder management theory was used as the anchor for the study, adding more legitimacy to the assessment of the accessible data.

## **Summary**

Since legislation, as we know it in modern times, has been adopted, many empirical studies have been undertaken to determine the effects of these laws on labour and employment (Deakin, 2009). They claimed that empirical research only has a limited influence on policymakers. Sometimes, evidence does come to the surface on empirical analysis having a marginal impact on policymakers, as referenced in the World Bank “Doing Business” Report (2008). The World Bank said laws “created to protect workers often hurt them” (World Bank, 2008). Loubser (2010) sternly cautioned against ignoring or not correctly consulting with trade unions or employees. She argues that over-protection of the employee might be more damaging to the economy if it results in a business being unable to survive because the interest of shareholders is treated as secondary to the welfare of employees (Loubser, 2005).

Nsubuga (2016) investigated corporate insolvency and employment protection. The Creditors Bargain Theory and the Team Production Theory of Corporate Reorganization were the two bankruptcy theories analysed in his research. While his research concentrates on the United Kingdom, his insights into the general theory of Marxist legal Theory and Dworkin’s interpretative Theory demonstrated that the research gap identified could be investigated by analysing Stakeholder Management Theory and referring to the general idea of Marxism to provide guidelines for analysing the impact Business Rescue legislation has on the employment security of mine workers. Nsugaba (2016) viewed the United

Kingdom as a capitalist society. He concluded that the United Kingdom's economic structure was based upon a relationship between those who own capital and those who provide the labour. A similar situation existed in South Africa. The labour force needs protection, but this protection should balance the interest of all stakeholders (Loubser, 2010). However, a capitalist mode of production prioritises the maximisation of wealth above social considerations, such as the need to look after the welfare of employees that provide the labour to keep the system going (Nsubuga, 2016). The analysis of Stakeholders Theory aimed to identify whether laws effectively protect employees or if their implementation bypasses the original purpose of the legislation (Freeman & Mcvea, 2018).

In the final quarter of 2020, the unemployment rate in South Africa was an alarming 32%. (Statistics South Africa, 2022). In an attempt to protect workers, the South African government has passed legislation akin to that of the European Union (Levenstein, 2015). Levenstein produced a comprehensive handbook detailing the rules of the Business Rescue legislation (Levenstein, 2018). His previous work appraised this legislation (Levenstein, 2015). Earlier South African studies (See Appendix F) have concentrated on different aspects of this law. Still, in 2021, no evidence of prior studies that analysed this legislation with the help of Stakeholder management theory was found. A 2022 paper by Jombe and Pretorius examined the direct and indirect effects of business rescue on employment and was added to the literature review as an update on available literature. The paper reported results similar to those of the current study, although the participants were union representatives and not actual employees.

Nsubuga (2016) conducted a study in the United Kingdom to examine the connection between employment protection and company insolvency (Nsubuga, 2016). Their paper demonstrated how the use of theory could justify research. One of the significant conclusions of this study was that normative theory could provide an interpretative approach to laws and policies that accord all stakeholders a seat at the table. The study confirms that jobs are saved when Business Rescue is pursued successfully. The problem that most Business Rescue regimes share is that the objective of saving a business might conflict with the aim of protecting employment (Nsubuga, 2016). They asserted that applying a general critical theory, like Marxism, would incentivise law and policymakers to address contentious issues being raised against the process. Nsubuga was adamant that in corporate rescue procedures, all parties' needs must be balanced. "It is the moral responsibility of those enforcing the law to adhere to the ideals of justice, equality, and fairness" (Nsubuga, 2016).

In South Africa, the debate over whether an employee is over-protected in a Business Rescue situation has attracted the attention of many scholars (Botha, 2015). An argument has been forwarded that workers whose contracts were terminated early on in the Business Rescue process might be better off than those who remain employed (Joubert, 2018). Those remaining stand a chance of eventually losing everything to the Business Rescue procedure. When an employee's contract is terminated, they are entitled to apply for unemployment benefits. Employees who stay in their positions might be worse off because there's still a chance that the rescue will result in liquidation and that their outstanding rights won't ever be paid in accordance with Section 144's priority (Joubert,

2018). Section 144 makes provision for the employee to be a preferred unsecured creditor. While, in theory, this seems like a practical solution to terminate unnecessary jobs and allow the workers to look for new jobs, it is not always practical. Unemployment is high in South Africa, and workers who lose their employment face a bleak future (SA, 2018). The question remained for investigation: could the law have done more to protect jobs? The answer remains crucial for any business management, as no organisation can endure without personnel. When the unemployment rate reaches almost 40%, as it did in South Africa in 2021, it poses a significant risk to the national economy.

## **Conclusion**

South Africa implemented the Companies Act No.71 of 2008, which is in line with developed countries such as the United States, the United Kingdom, and Australia. The Act becomes effective on May 1, 2011. (Burke-le Roux & Pretorius, 2017). The year of this study, 2021, marked a decade since the law was established. The Companies Act of 2008, which regulates all company activities in South Africa, captivates the attention of the students of business studies. Pretorius and Rosslyn-Smith (2014) noted that the majority of foreign governments made substantial changes to Chapter 11 of the US Constitution. The South African authorities considered Chapter 11 and talked with Canadian experts when developing the Business Rescue Act (Loubser, 2010). The United States of America provided recommendations for the new Business Rescue rules, whereas South Africa, the United Kingdom, and Australia share commonwealth histories (Rajaram, 2016). Common aims exist between the Business Rescue approach in South Africa and Business Administration in the United Kingdom and Australia. Examining this legislation

in relation to South African law helps determine if South Africa adheres to global norms (Rajaram, 2016). Scarcely any scholars dispute that Business Rescue processes have great goals. Reviving a company and returning it to the economy is unquestionably advantageous for the employees (Joubert et al., 2011). An effectively executed corporate rescue plan will also be beneficial for the government, aiming to maintain a stable taxpayer base, and the shareholders of a struggling organisation will find benefit in the effective rescue of a company as they seek to safeguard their capital investment. When a business is successfully rescued, the economy gains as employees persist in contributing to the nation's GDP (Gross Domestic Product).

According to Loubser (2010), several scholars argue that the South African government may have exceeded the necessary measures to protect workers. The South African government is highly concerned about safeguarding employees due to the unemployment rate reaching 32% by the conclusion of the last quarter of 2020 (Statistics South Africa, 2022). This 32% statistic excludes individuals who have ceased searching for official employment, as per Statistics South Africa's report from 2022. Scholars warned that balancing the protection of employees' interests with carrying out a successful Business Rescue procedure is challenging (Loubser, 2005). The main objective of the procedure is to ensure the company's existence, with safeguarding employees as a secondary objective. Occasionally, reducing employment may be necessary to ensure a company's existence. Business Rescue Practitioners must manage and consider the interests of all stakeholders (Pretorius, 2013). Loubser (2010) recognises the right of all stakeholders to participate but warns that not all stakeholders possess the required



information or abilities to contribute effectively to a successful rescue operation. Stakeholders' dedication to the process can impact its effectiveness, as a successful recovery is more likely when all stakeholders perceive it as beneficial (Botha, 2015). According to Reed (1999), management is morally and socially obligated to ensure workers are kept informed. Informing staff during the process incurs a significant cost. A Business Rescue Practitioner with limited funds may find the cost to be more burdensome. Loubser (2010) proposes that alternative methods of informing staff members should be authorised, like recognising emails as formal notifications. Employees are entitled to engage in the business rescue procedure (Levenstein, 2015). South African law is the only legislation worldwide that allows employees to initiate Business Rescue procedures (Loubser, 2010).

The paucity of information in current studies may indicate insufficient research and a requirement for more accurate and dependable data on legal content and its application context. The study found a lack of research on the necessity of data from employees. The data was gathered via in-person interviews and examined thematically to enhance the existing understanding of employee roles. This information could influence the unemployment rates in South Africa and thus impact the country's economic standing. Hence, the information deficit was addressed by conducting a qualitative case study that utilised face-to-face interviews and was grounded in stakeholder management theory. The methods and research findings identify the study as distinct from prior research. Deakin (2009) expresses that the benefit of more research and the greater use of evidence from

empirical studies might influence law and policymakers. However, they acknowledged that instances of using evidence to set policy remain exceptional.

Based on the literature review, the findings support that Business Rescue represents a significant departure from the prior liquidation laws. Business owners must adhere to the applicable legislation that could impact their actions in day-to-day business operations (Matenda et al., 2023). Recognising potential challenges in a firm could lead management to seek assistance in order to salvage the business before it becomes too late. Understanding available options and knowing the necessary measures might help prevent a crisis when a firm encounters financial challenges. This research improved and broadened the overall comprehension of rescue rules affecting ongoing employment stability.

### **CHAPTER 3: RESEARCH METHOD**

#### **Pre amble**

Qualitative research starts with a question that guides design but can also develop and become gradually more refined as the study progresses. This design contrasts with a quantitative design, which begins with a clear and fixed research question. (Denzin & Lincoln, 2018). Braun and Clarke (2013) provided some guidelines that advise that qualitative research should have some social relevance. Doctoral-level research should add a unique contribution to knowledge; therefore, it would be nonsensical to research a subject on which everything is known already, but originality does not imply that the subject must be unknown or completely new. The subject could be studied to generate new knowledge in a way that was not used before. An example would be using face-to-face interviews to gain a fresh perspective, as was the case for this research. A study's approaches might be new and unique, the context might differ from previous studies, or the problem might be studied using a theory not used before (Braun & Clarke, 2013). The notable difference might be as subtle as a sample different from previous studies. All these factors contribute to a new and unique insight into what might be a “well-researched “subject.

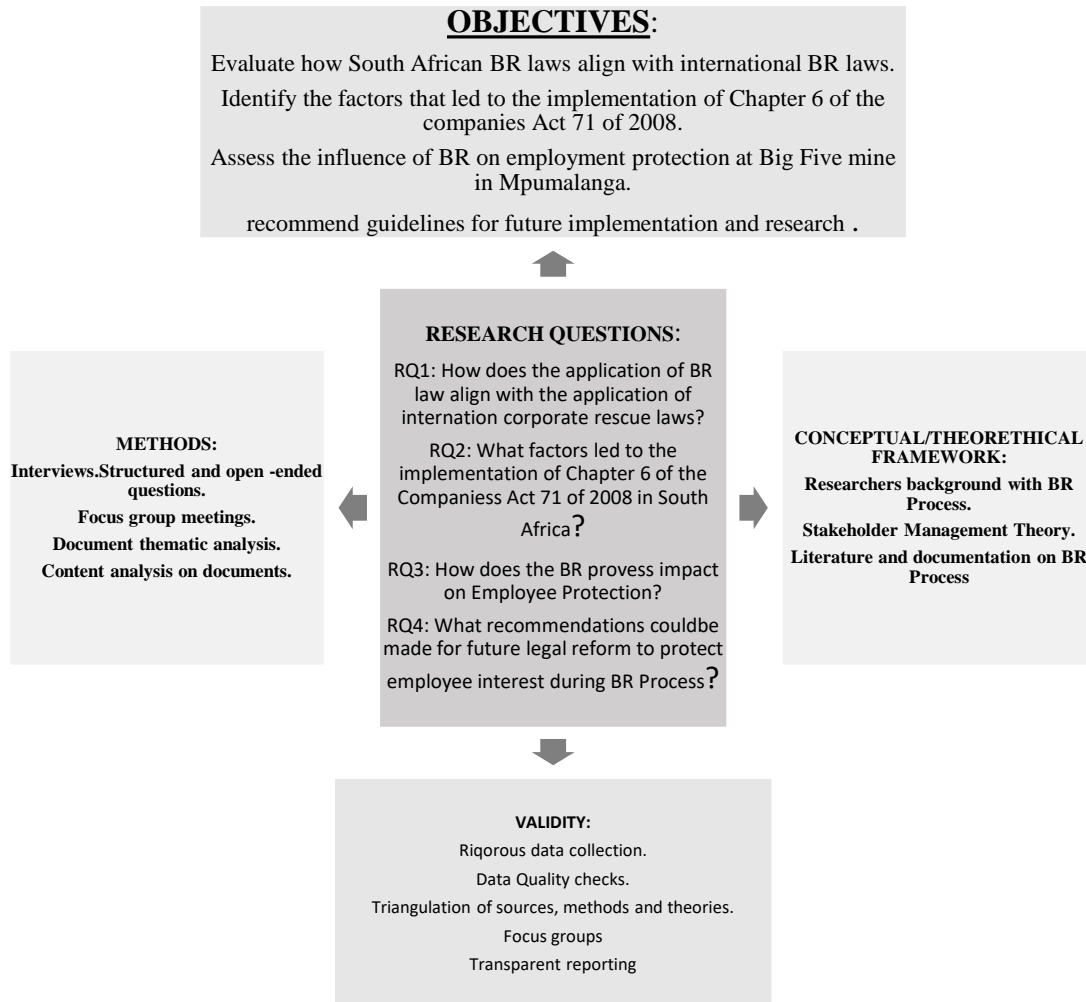
The research topic and question are closely related, although the research topic will often be broader (Braun & Clarke, 2013). Even though the Business Rescue Procedure was the focus of this study, the precise research question that was addressed by the information gathered from in-person interviews was: How does the Business Rescue Legislation influence job security for employees? The case study focused on the economic implications of a specific rescue statute. The study evaluated this legislation's influence on employees'

job security at the Big Five mine in the Mpumalanga region of Southern Africa. Employees are vital to any business, as a company cannot function without them. In the business world and scholarly research, the employee is recognised as a critical stakeholder that contributes significantly to a business's ultimate success or demise. This research study offered an understanding of the factors that influence job security in this procedure. The study aimed to pinpoint issues, determine whether the laws are a factor in South Africa's high unemployment rate, and offer suggestions for preventing future job losses.

Researchers are expected to have a deep understanding of their conviction of the characteristics and essence of things as they are experienced. Academic writing demands a structured approach to justify and validate facts, theories, and opinions as they are presented to produce an intellectual argument. A Postgraduate student in general management and business must demonstrate a worthy academic view underpinned by knowledge generation. They must articulate what they theorize and what steps they will take to obtain and test this knowledge. Understanding the problem and explaining the steps to solving the problem are the essential elements of a research paradigm (Rehman & Alharthi, 2016 ). Qualitative research starts from a fundamentally different paradigm than the beliefs underpinning quantitative analysis. According to Rehman and Alharthi (2016), a paradigm is best described as a primary belief system built upon a theoretical framework with expectations regarding the” ontology, epistemology, methodology and approach” used. A synopsis of this approach describes how the researcher understands, studies, and explains the world's reality.

In Chapter Three, the research method and data collection are described by explaining what was done and how it was done, allowing readers to evaluate reliability and validity. The researcher attempted to provide a complete description of the study's design, including the overall population size and the elements that influenced the decision on the final research sample size. The ethical considerations were addressed, and the chapter ended with a detailed discussion of the data collection process and analysis.

Figure 3 explains the research design below. Each chapter of this research dealt with one aspect of this model. Chapter Three describes the Methodology of the current study:

**Figure 3****Research Design Model for Current Study (interactive design)**

*Note:* Consult the interactive design displayed in Figure 3 above. The author's mindmap serves as a visual depiction of the research design for this study. It was modified based on the principles of the *Research Onion Design* by Saunders et al., 2015.

The study's objectives establish its focus, which in turn directs the choice of the theoretical or conceptual framework. The framework needed to be in line with the objective to give the evaluation a logical and cogent structure (Lester, 2019). In order to answer the study question or topic, the objective aids in identifying the ideas and concepts that are most pertinent; these theories and ideas serve as the framework's cornerstone, offering a solid basis for the research. The objectives specify the conceptual parameters of the research, hence affecting the extent of the conceptual/theoretical framework (Braun & Clarke, 2013). The framework must be broad enough to encompass the key concepts and theories relevant to the objectives but narrow enough to maintain focus. The objectives also influence the methodology. The methodology is closely tied to the theoretical/conceptual framework. The framework guides the selection of research methods and data analysis techniques to ensure alignment with the study's purpose. The objective provides context for the contextual or theoretical framework, ensuring that the framework is applied appropriately to the specific research context.

Furthermore, the objective ensures clarity and coherence in the theoretical or conceptual framework by providing a clear direction and purpose. The objectives also shape the methodology. The theoretical and conceptual frameworks are intimately related to the method. The framework directs the choice of research methodologies and data analysis strategies to guarantee conformity with the objectives of the study (Creswell,

2013). The objective ensures the effective application of theoretical and contextual frameworks to the specific study context. Additionally, by giving this study a defined direction and aim, the objective guarantees coherence and clarity in the theoretical and conceptual framework (De Vos et al., 2011).

The arrows in the above graphic also illustrate the role of the four questions and their dynamic relationship with the techniques and validity. According to Connelly (2016), well-crafted questions guarantee that the objective of the study is unambiguous, precise, and comprehensible, all of which contribute to its validity. The research questions presented in Figure 3 addressed a notable void in the current body of literature on company rescue, guaranteeing the significance and influence of the study's findings. Research questions that are devoid of bias and presumptions also guarantee validity. The validity of the research was increased by ensuring the research questions were in line with the study's methodology and design, which helped to guarantee that the techniques used for data collecting and analysis were suitable. The interactive model also demonstrates how methodical and exacting approaches to data collection contribute to accurate, trustworthy, and comprehensive data. Various techniques, including document analysis and interviews, increase validity by offering a deeper comprehension (Saunders et al., 2015). By identifying and resolving such problems beforehand, the pilot interview helped grow the study's validity. Transparency and verification are made possible by transparent documentation of methods and procedures, increasing validity (Flick, 2015). Researchers can improve the validity of their findings and guarantee that their



conclusions are correct and applicable by employing suitable and rigorous methodologies (Silverman et al., 2013).

### **Method and Methodology**

The study employed a qualitative research approach, utilising face-to-face interviews and focus group meetings to collect data from participants (Saunders et al., 2015). The time horizon of the study was cross-sectional. The qualitative case study method guided the researcher in deciding what type of data would best answer the research question and how much data would be needed, and it identified the data collection tool most appropriate for informing the study. (Braun & Clarke, 2013) . The collection tools for this study were face-to-face interviews and two focus group meetings. The interviews and focus group meetings were semi-structured, allowing for in-depth exploration of participants' experiences and perspectives. Additionally, available documentation related to the research topic was collected and analysed. The data collected from the interviews, focus groups, and documentation were subjected to thematic analysis, a systematic process of identifying, coding, and categorizing patterns and themes (Bowen, 2009). The analysis enabled the identification of recurring ideas, concepts, and experiences, which were then interpreted and reported to address the research questions and objectives. According to Silverman (2016), a research methodology is a technique that is prepared or organized methodically to address a specific problem. Many phases and strategies were employed throughout the data-collecting and analysis process, including initial data-gathering interviews, thematic analysis, and coding (Flick, 2015). A frequency study was conducted on the qualitative research content. The qualitative design aimed to uncover the underlying

reasons behind the patterns seen by the researcher, particularly those that are not immediately apparent or unexpected. Qualitative research often involves a combination of both inductive and deductive reasoning. Deductive reasoning was used to identify pre-developed themes in the qualitative document analysis. Inductive reasoning refined the codes and themes as they were analysed. Braun and Clarke (2013) define qualitative research as the “study of the nature of phenomena.” Still, the novice researcher found a more sensible explanation: qualitative research includes data in “words” form rather than data in numerical form.

### **Research approach and design**

A qualitative case study design forced the researcher to choose between two objectives. They were to understand individual participants' perspectives and experiences related to a phenomenon or a group of participants' views and experiences related to the investigated phenomenon. Case boundaries formed a critical feature of the case study. Due to the use of various data-gathering techniques, such as observations, interviews, and artifacts or documents, small sample sizes were the norm. When a researcher determines that the "how" or "why" questions are the primary research issues, they should use a case study design (Yin, 2018). When the researcher is powerless over occurrences or behaviors, a case study design is a viable option. The case study is also appropriate where the study focuses on a present-day or modern phenomenon (as opposed to a wholly historical phenomenon). According to Yin (2018), the case study recognised the five conventional concerns, which allowed for thorough investigation to be done. Furthermore, it is important for the researcher to avoid conflating a case study design with well-known case studies,

case studies used for instructional purposes, or even case records. If deemed necessary, the researcher should formulate a comprehensive conclusion and diligently regulate the amount of labour needed. Finally, it is crucial to comprehend the comparative advantages.

The demands associated with case studies made for a very challenging process, although the traditional view was that it is a “soft” form of research. Compared to other social science endeavours, the case study holds the distinction of being one of the most demanding methods available. (Yin, 2018). To meet this obstacle, the researcher had to articulate their commitment to a well-defined methodological approach. Following the conventional route, the current study started by reviewing the literature to determine if there was a gap indicating the need for the study and define which research questions would be answered by doing the survey. The nature of the subject of the study involved extensive fieldwork before the literature review was undertaken (Yin, 2018). The fieldwork came about because the researcher was involved in the Business Rescue procedure from inception and became familiar with the employees and their uncertain position during this procedure.

In the chosen field of business studies, as in many other areas, such as psychology, sociology, education, nursing, and social work, case studies are a standard research method (Yin, 2018). Regardless of the field of interest studied, case study methodology was indicated where the desire exists to understand complex social phenomena. In the case of the Big Five Mine in Mpumalanga, large-scale job losses occurred, and the researcher wanted to evaluate the influence of this law and how this procedure contributed to the eventual job losses. Additionally, the evaluation included the experience of the

mineworkers and how they understood job security, as well as the impact government legislation has on one of the basic requirements for human dignity, namely the ability to take care of yourself and your immediate family. According to Maslow's Hierarchy of Needs, the basic needs of a human being are food, water, warmth, and rest (Mc Leod, 2007). The basic needs of the extended families cannot be met when the breadwinner cannot find a job or earn an income. The government is interested in providing for its citizens; therefore, the policymakers are worried about the dearth of jobs in South Africa, where an average of eight people must frequently rely on one source of income (King IV Report, 2016). Therefore, this case study contributed to understanding how job retention could improve according to the employee's perspective.

**Table 3***The methodological characteristics of a case study*

<b>Results</b>	<b>Descriptions</b>
First Result	Applying the case study approach is recommended in any subject of study where there is a need to comprehend intricate social phenomena.
Second Result	The preceding elaboration of theoretical propositions to direct design, data collection, and analysis is advantageous for case studies—second Result.
Third Result	A case study needs data to converge triangularly and draw from a variety of sources of evidence—the third outcome.

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Source: Adapted from *Case study research and applications*, Yin, 2018.

In the academic sphere, case studies are often criticized for an apparent lack of ability to generalize from them. Addressing this concern, Yin (2018) states that case study generalization must be approached from a different perspective. They asserted that the case

study is generalisable to theoretical propositions. This case study aimed to do a “generalising” rather than a “particularizing “analysis. (Lipset et al. 1956)

A qualitative approach to research ensures that rich and exploratory data are used. Qualitative studies have been gaining popularity (Denzin & Lincoln, 1998) . Qualitative research is considered a valid form of research that focuses on human experiences as documented in spoken and written records without the need to be compared to quantitative approaches. Qualitative research seeks to uncover the underlying reasons behind observable patterns, focusing on hidden or unexpected patterns. The study gathered empirical evidence to evaluate whether workers felt protected during Business Rescue Proceedings and how the procedure influenced their employment protection. The research explored the relationship between the workers and management and what they experienced as contributing factors to losing their jobs. Many different approaches were considered, as the business rescue procedure has been a popular field of study in the past decade (Loubser,2007; Pretorius & Rosslyn-Smith,2014; Rajaram,2016). The studies were mainly concerned with legal aspects and did not always follow a theory-based approach. Desktop studies on legal procedures were often implemented(Pretorius,2014). Existing South African studies lacked evidence from employee interviews. A research gap was discovered throughout the literature assessment, highlighting the necessity to evaluate employees' perspectives on how business rescue affects their employment security.

### **Research Theory**

Stakeholder theory has long been linked to strategy and is often used in business research. The theory examined in the present study was Stakeholder Management Theory

(SHMT). This theory is a perspective on capitalism that highlights the significance of interwoven relationships among an organization's consumers, suppliers, employees, investors, communities, and other stakeholders. This theory proposes that a firm should be interested in all its stakeholders and should exist to create value for every stakeholder, not just for the shareholders (Freeman & Mcvea, 2018). In the last decade, this theory has become a central consideration in business studies and served as a platform for developing business studies, as featured on this website:([http://stakeholdertheory.org/?page\\_id=300](http://stakeholdertheory.org/?page_id=300)).

Stakeholders are crucial in the business's recovery process. Chapter 6 of the Companies Act in South Africa does not define stakeholders. The stakeholders are only referenced once in the Act's purpose, which aims to provide a balanced consideration of all stakeholders' interests during the business rescue process. The study followed a critical approach to the Stakeholder Management theory (Freeman & Mcvea, 2018). Case studies are well suited to build upon existing ideas. The case study method could prove equally capable of producing new theories or challenging existing views. A sturdy knowledge of the case study method guided the selection of a suitable theory for the current research project. A critical approach to this theory guided the student toward questioning the structures favoured by those in power. A question of particular interest to the researcher was how the activities of people are ingrained in hegemonic structures that replicate existing designs of power—neo-Marxists named the origin of the notion of ideological critique. For case study researchers, it became a matter of discerning which relationships are “ideologically frozen “and whether that relationship of “dependence “could be transformed only through critique. The researcher can thus conclude that the critical

approach is controlled by the human desire to promote liberation (Denzin & Lincoln, 2018). Habermas (1987) referred to this as “self-reflection.”

The explorative nature of this case study design assisted with developing a deep and meaningful insight into a topic the researcher wants to investigate. The researcher deemed the explorative nature of the study to be most suitable for merging with the case study design. In order to navigate the ongoing experience of the employee as a stakeholder in the company rescue process, the researcher included descriptive phenomenology, even though exploratory research mandates the necessity to generate a more comprehensive insight into an unknown topic. The aggregate delivered by a case study promotes comprehension.

### **Population and Sample**

The sampling method used for the current study was “purposive sampling.” The population of the study was 180 people, constituting the whole population” (Thornhill et al., 2009). They were employees at Big Five Mine at the time of the mine applying for Business Rescue. ” Employees attended the First Business Rescue Meeting as stakeholders of the company. The representative sample was chosen from all the employees of the targeted population and not only the attendees of the business rescue meeting. Homogenous sampling was used to sample the employees based on the experience the participants have had dealing with business rescue. The researcher considered previous literature and guidance from existing studies to collect a sensible sample size. Researchers sometimes need to meet the requirements of their institution and manage the practicalities of both resources and time constraints. Therefore, the pragmatic need to present at least the



expected upper limit of the sample size *a priori*, even when unable to make a detailed forecast of the point of saturation, led to the decision to select a purposive sample of 31 Participants (Sim et al., 2018). It cannot be known beforehand precisely how many interviews will be needed to reach information saturation (Sim et al., 2018).

A pilot interview provided positive feedback. Twenty-five separate interviews were carried out. The remaining individuals were interviewed during the focus group sessions. After the eighteenth iteration, most of the codes were created, and the final seven interviews did not provide any substantial new information, suggesting that data saturation had been achieved. All 25 interviews were conducted for multiple reasons. The first step was to confirm saturation. By continuing data collection, it was confirmed that saturation had indeed been reached, and no new themes or insights emerged. The second reason was to improve the data quality. Conducting all 25 interviews guaranteed that the data collected was thorough and detailed, establishing a solid basis for analysis and interpretation. The third reason was to maintain methodological integrity. Halting data collecting before reaching the predetermined number of interviews could raise concerns regarding the research's scientific rigour and consistency. Ending data collecting prematurely may result in premature closure, which could ignore important nuances or subtleties in the data essential for comprehending the research topic. Despite reaching data saturation at interview 18, it was considered methodologically prudent to conduct all 25 interviews to confirm the saturation point, improve data quality, uphold methodological integrity, and prevent premature closure. This ensured a comprehensive and robust data set, providing a solid foundation for thematic analysis and interpretation.

A common criticism of qualitative research is that insufficient justification is provided for a sample size (Boddy, 2016) . Answering the question: "What sample size is required?" the researcher needed to examine the elements that could impact the answer. These elements encompass the necessity to address the research's goal, the selection of the population and sample size, and the awareness of the risk associated with choosing an inappropriate sample. Malterud et al. (2015) presented another reason for opting for a smaller sample size. They describe "information power" as a practical guiding concept. If a sample has "information power," they argue that a smaller selection will be adequate.

Qualitative research typically considers sample size determined by "saturation" as the standard in the scientific community (Charmaz, 2014). Saturation was first introduced in grounded theory, a qualitative research method that emphasises theory creation based on a thorough evaluation of data. The concept is linked to conceptual sampling. Nelson (2017) presents a contrasting perspective. He presents five abstract criteria for evaluating the reliability and validity of emerging ideas. Theoretical conceptions need to be supported by a varied confirmation derived from the evidence. The notion should be integrated into a network of related concepts, and the researcher must show this interconnection. The idea must have nuance, resonate with existing literature, and be testable for external validity. Qualitative research rigour is currently a topic of significant interest. However, according to George and Bennet (2005), some researchers fail to report the sample size and struggle to provide adequate justification for it across many subject domains (George & Bennett, 2005).

Quantitative samples need to be larger, and quantitative studies might use Yamane's formula to determine sample size. As demonstrated below, using this formula, the need for a larger sample would satisfy the criteria for a quantitative study:

Yamane's formula,  $n = N / (1 + N(e)^2)$ , calculates the sample size (n) needed from a known population (N) to achieve a specified level of precision (e). This formula is a scientific method for estimating sample size (Yamane, 1967). Given a population of 180 persons, the formula to calculate n is:  $n = 180 / (1 + (180 * 0.052^2))$

$n = 124.14$ . A quantitative survey would have needed 125 respondents to be considered representative. The researcher determined that the quantity was unsuitable for qualitative investigation due to limited resources and time restrictions. Unlike quantitative studies, qualitative research is more attuned to data saturation requirements than a predetermined sample size (Boddy, 2016). Understanding that qualitative research does not require a statistically reasonable quantity of participants does not dismiss the importance of saturation when determining a qualitative sample (Mason, 2010). Following the principles from existing literature, involving an adequate number of participants is essential to ensure that the findings are statistically significant for the overall population (Mujere, 2016). According to Emmel(2013), the quantity of examples is not as substantial as what you do with them.

**Table 4***The rule of thumb for sample size*

<b>Author(s)</b>	<b>Recommendation</b>
Adler and Adler (2012).	Suggest a "wide range of between twelve and sixty, with the mean being thirty-three." (p10)
Creswell (2013)	Suggests four to five cases per study for case research, two or three for narrative research, and twenty to thirty informants for a grounded theory study.
Marshall, Cardon, Poddar and Fontenot (2013)	For grounded theory research, aim for 20 to 30 interviews, while for individual case studies, aim for 15 to 30.
Ritchie et al. (2014).	Suggest a 50-person maximum for studies, including interviews, because larger studies may result in less-than-ideal data collection and processing. (p.118)

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Corbin and Strauss (2015).	For grounded theory
	investigations, suggest
	conducting at least five one-hour
	interviews to achieve theoretical
	saturation.

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*Note.* Adapted from *Can sample size in qualitative research be determined a priori?* Sim et al., 2018. Adapted p.27.

## **Data Collection**

### **Interviews**

The study utilised face-to-face interviews, as well as two focus group meetings, to collect data. The study used semi-structured interviews with the sampled participants. Twenty-five participants were interviewed face-to-face at the site of the Big Five Mine. Final data was collected between October and December 2021. The interview data collection method yielded comprehensive and detailed data to address the research objectives. The interview process is described by Silverman et al. (2013) as talks between two or more individuals to attain a specific goal. Interviews may also occur in person or over the phone (Silverman, Kurtz, & Draper, 2013). Case study researchers rely upon interview data as essential sources to gather evidence. The data is beneficial in suggesting explanations of the “how’s” and “why’s” of critical events, as well as providing insight into the reflections of participants' relativist perspectives (Yin, 2018). Following these guidelines, the in-person interviews took place at the Big Five Mine location. COVID-19 restrictions were still in place at the time of the interviews. (October to December 2021).

The researcher provided a tent with open sides to give participants privacy while following health procedures. Per health regulations, each participant wore a facial mask, necessitating the need to verify reactions since facial tics were not discernible. Each interviewee completed an informed consent form and was briefed on the procedure. The interviews were recorded, and the researcher took detailed field notes. This research was built on the foundation of the information gathered from in-depth conversations with various individuals. The interviews elicit the participant's perspectives on the matter at hand to understand their opinions better.

As per the literature, the case study relied upon interview data as an essential source to gather evidence. Discussions have strengths and weaknesses. Interview questions focused directly on the topic chosen for the case study, which was a particular strength of this case study method. Interviews gather data that provides explanations and expand on the personal views of the participant. These include how the participant notices or understands something using their visual senses or spatial perception, but interviews are also prone to several weaknesses. These include response bias. Bias due to poorly articulated questions might also present problems. Another significant weakness is reflexivity, where an interviewee responds in a way they perceive the interviewer expects them to answer. The interviewee thus gives answers as the interviewer desires. A responsible case study researcher must be mindful of the strengths and weaknesses when conducting interviews and, where necessary, take steps to eliminate these problems as far as possible.

## **Focus groups**

The reason for the focus group meeting method to be used in this study is that given that the focus group has primarily taken over the moderator's role in directing the session, participants may feel more comfortable expressing themselves, and there is less possibility of abuse or the development of a power dynamic. Participants' opinions are, therefore, more likely to be disclosed than in a formal interview (Bryman et al., 2014). Zoom meetings were utilised for two focus group meetings. The choice of Zoom meetings was taken as conducting interviews required a significant investment of money and time (Lester, 2019). All participants were available for the Zoom meeting, but it would not have been possible to schedule a meeting for everyone to attend in person. Participants received the transcript of the meeting, and their confirmation of the data's accuracy contributed to the data's reliability.

## **Documents**

Several documents were chosen for the document analysis. After careful screening, 23 documents were subjected to the same process followed for the data collected from face-to-face interviews. The following documents for the period between 2015 and 2020 were considered: newspaper articles explicitly dealing with the business rescue process at Big Five Mine in Mpumalanga. These were included to provide context, public opinion, and external perspectives. Business Rescue Reports on The Big Five Mine were included as these reports offered expert opinions, analysis, and recommendations. Sometimes, these reports were dated several months apart but contained identical reports to previous ones. The documents were scanned, and

duplications were avoided. Creditors committee reports and minutes of the creditor's meetings were included as they revealed stakeholders' concerns, negotiations, and the decision-making process. Reports from the Big Five Mine management were available and included to supply internal information, strategies, and perspectives.

Some documents were removed because they contained sensitive or secret information, such as worker injuries and personal details. Excessive or repetitive papers were omitted. For example, several reports have the same material. Documents that were ambiguous or lacked a clear connection to the research issue were not included. Documents from sources with potential biases or conflicts of interest, such as reports from parties with a vested interest, were excluded from the eligible documentation list. In order to achieve data saturation, the researcher was left with 23 documents to examine. The selection of documents was based on their alignment with the study aims and topic, as well as their relevance, credibility, dependability, representativeness, and comprehensiveness (Bowen, 2009).

The qualitative content analysis used a deductive approach that applied pre-established themes to identify patterns and meanings in the data. While qualitative research is often associated with inductive reasoning, where themes and patterns emerge from data, deductive reasoning can also be used in qualitative studies. However, it is important to note that qualitative research often involves a combination of both inductive and deductive reasoning. While starting with a deductive approach in content analysis, it might become necessary to use inductive reasoning to refine codes and themes.



In order to enhance the limited understanding of the company rescue process, a total of 15 scholarly papers from South Africa were utilised to expand upon the current information. These articles were thoroughly examined and analysed in the literature study. Most of the available articles, comprising 15 research papers, primarily examined the company rescue process, while five studies specifically focused on the business rescue practitioners. Five more research examined the perspectives of firm owners, while two studies specifically explored the experiences of creditors during this process. Please refer to Table Five for more details.

**Table 5***Existing Studies on Business Rescue*

Abbreviation used in the table: BR -Business Rescue

<b>Investigation on:</b>	<b>Author</b>	<b>Year</b>
<b>BR Process</b>	Museta	2012
<b>BR Process</b>	Du Preez	2012
<b>BR Process</b>	Pretorius and Du Preez	2013
<b>BR Process</b>	Pretorius and Holthauzen	2013
<b>BR Process</b>	Levenstein and Becker	2014
<b>BR Process</b>	Gribnitz and Appelbaum	2014
<b>BR Process</b>	Sher	2014
<b>BR Process</b>	Rosslyn-Smith and Pretorius	2018
<b>BR Process</b>	Naidoo, Patel and Padia	2018
<b>BR Process</b>	Rajaram, Singh and Sewpersadh	2018
<b>BR Process</b>	Xaba	2018
<b>BR Process</b>	Verdoes and Verweij	2018
<b>BR Process</b>	Lusinga and Fairhurst	2020
<b>BR Process</b>	Rosslyn-Smith	2020
<b>BR Practitioners:</b>	Pretorius	2014
<b>BR Practitioner</b>	Prior	2014
<b>BR Practitioner</b>	Kaudeer	2016

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<b>BR Practitioner</b>	Naidoo	2016
<b>BR Practitioner</b>	Conradie and Lamprecht	2018
<b>Business Owners</b>	Rashid, Edmondson and Leonard	2013
<b>Business Owners</b>	Makhalemele	2016
<b>Business Owners</b>	Kranabetter and Niessen	2016
<b>Business Owner</b>	Fairhurst	2017
<b>Business Owner</b>	Burke-le Roux and Pretorius	2017
<b>Creditors</b>	De Abreu	2018
<b>Creditors</b>	Van Zyl	2018
<b>Employees</b>	Goncalves	2020

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Source: Adapted from (Goncalves, 2020).

When the study started in 2019, no studies that concentrated on the employee perspective could be found. Another data search in 2020 produced one result. A master's degree study was published by GIBS (Goncalves, 2020). While Goncalves (2020) looked into the employees' organizational commitment during the Business Rescue process, this study used the same methods to interview employees. The researcher had to be aware of research bias because she had known the participants for more than five years and might have become sympathetic to their plight. Although this could not be described as "backyard" research, as the investigation is not in the industry or area where the researcher is employed, the familiarity had to be carefully managed to avoid influencing research findings. The researcher were reminded that case study evidence can be

discovered from many potential sources, but each case study must have at least two diverse sources (Yin, 2018). Each source is associated with an array of data and evidence. To construct reliability and internal and external validity, the researcher utilising the case study method must familiarise themselves with available or new data by referring to the six data sources described by Yin (2018).

These six familiar sources are documents about the subject being studied, records available from archives, new evidence collected from interviews, observations made directly by the researcher and those made by participants and being shared with the observer, as well as any physical objects that are produced and forms part of the history of the case study and can assist in answering the research questions. The research results from documents, archival records, and personal interviews were evaluated for this study. The selection and justification of the sample collection for both interviews and documentation are discussed in this section. The Microsoft Office program subjected Both interviews and documentation to the same analysis process. As case studies require more than one source of evidence, the documents and interviews were used as additional data sources. Very few aspects of our lives will go undocumented in the age of social media. Written data, visual data, and physical materials all reveal different parts of our lives. Document analysis is no different from other analytical procedures in qualitative research in that the method calls for data to be investigated and elucidated in a way that will elicit meaning and understanding while simultaneously developing practical knowledge (Corbin & Strauss, 2008). Documents gathered for analysis include newspaper articles, letters, memoranda, press releases, and judgments from the South

African courts that may be considered public records. Prior literature was considered and incorporated into the written report.

Literature that could assist in answering the research question was gathered with the assistance of Science Direct, Google, Scopus, and Google Scholar. The researcher manually searched journals and reviewed reference lists to find more papers. The databases indicated contained several high-quality peer-reviewed journals from around the world. This search approach mostly retrieved qualitative research on the South African context.

### **Interview guide**

The interviews were semi-structured and conducted using an interview guide that was developed by the researcher with the help of the research supervisor. The interview guide was approved by the UNICAF doctoral team. Please see Appendix H for the complete interview guide. The method utilised was in accordance with the research design. After each interview, a debriefing took place, where the researcher sought confirmation of the accuracy of the field notes. After transcription, the participants were again provided with feedback, and all acknowledged the accuracy of the findings. Interviews were planned to be restricted to one-hour slots, but this was not strictly enforced as many personal and vulnerable details were shared with the researcher, and the need to handle the conversation carefully placed strain on the projected time limit. Interviews were the research instrument utilised for this research study. The interviews comprised semi-structured and open-ended questions. Interview questions evolved after extensive research on the subject, with no set of available questions fully addressing the needs of the current study. The questions were

approved by the research supervisor and UREC (Unicaf Research Ethical Committee). A series of inquiries was created for both in-person interviews and the focus group sessions that took place. Questions that were asked to support the main research question were:

Question 1(Dealing with demographics).

Question 2 attempts to establish what job security meant to each interviewee.

"What personal aspects become most important to you during the Business Rescue process?" is the third question. These answers were required to comprehend the phenomenological side of the employees' experiences during Business Rescue.

Question 4: When compared to when you worked, and the mine was working normally, which interpersonal factors become more essential to you and your coworkers throughout the Business Rescue Process? This question set out to understand the phenomenon of losing your job security. The researcher gave prompts for each question in an attempt to order answers along initial themes. Still, the questions were kept fairly open-ended to facilitate a rich and detailed description.

Question 5: What organisational factors became most important to you during the process?

Question 6: During the Business Rescue Process, how would you characterize your role?

This open-ended question allowed for rich and detailed discourse.

Question 7: If future workers and union representatives end up in Business Rescue, what guidance would you give them?

The complete interview guide can be viewed as Appendix H of this paper.

This interview process did not merely serve as an instrument to acquire graphic descriptions of experiences; it also allowed the researcher to contemplate such explanations, as De Vos et al. (2011) advised. Following each interview, the researcher gave each participant a verbal rundown of the topics covered. This approach gave the participant and researcher time to consider and confirm the information gathered.

The Microsoft Office application was utilized to transcribe the audio recordings of the interviews into an electronic format. With the aid of this application, all audio recordings and transcripts of interviews used in the research were coded and examined. The Microsoft Office suite was the most cost-effective program available to the researcher. A lot of time and effort were needed to arrive at meaningful conclusions. The first few rounds of reading the data familiarised the researcher with the available data. The researcher took field notes, which assisted in the accurate data recollection during analysis—structural coding assisted in further identifying themes.

Structural coding is a first-round coding method where data is coded according to the research questions or topics. This coding method enables the researcher to take large volumes of data and structure them into smaller pieces for further analysis. Structural coding was beneficial to the researcher when specific questions and topics were evaluated, but also when multiple participants were interviewed. The structural coding followed a specific process. The first step was to make a list of all topics or research questions that data needed to be organised into. Then, each subject was turned into a code. The researcher then read through the interviews again, with the goal of applying the codes to sections relevant to the research objectives. Each topic or research question was analysed in this

manner. After structural coding, the Microsoft Program was again beneficial in creating graphs to demonstrate the themes that the researcher identified.

### **Data Analysis**

Integrating findings from multiple data sources is a common practice in qualitative research, known as data triangulation. The approach assisted with enhanced credibility as well as increased validity. The approach also provided a more comprehensive understanding of the research data. Integrating the findings from multiple data sources achieved a richer, more thorough understanding of the research topic. Braun and Clarke (2013) acknowledge the growing demand for precise instructions on the practical aspects of conducting qualitative analysis. A lack of clear focus on conscientious and pertinent thematic analysis may jeopardise the research study's credibility, as Braun and Clarke (2013) advised. They stress the significance of recognising themes and patterns in qualitative data.

The Researcher recognised various approaches to thematic analysis but adhered to Braun and Clarke's (2013) six-step framework in this research. The six steps recommend that the researcher know the data intimately before commencing the first coding. They advised the researcher to do the first coding soon after the interviews to ensure that the interviews are still fresh in the researcher's mind. The researcher is then advised to look for emerging themes and reconsider these themes at appropriate times. When the themes are established, the final step should be to report the findings in a written report.

The Researcher found it necessary to move between the steps, and the order was not necessarily always linear. Sometimes, the data necessitated the need to move backward



and forward between the steps, especially when the data were more complex. Qualitative data analysis demands that the researcher get to know the data intimately; thus, it was necessary to read the transcripts several times. The entire body of data was highly familiar to the researcher before moving on to the next steps. Making notes and writing down small synopsis of first impressions were helpful. The researcher proceeded to the following stage, which involved purposefully and methodically organizing the material, after which they felt comfortable knowing the data intimately. In the second phase, data were organised in a meaningful way. Open coding was used. This meant that the researcher developed codes while working through the six-step process (Braun & Clarke, 2013). The codes were altered as necessary. In stage three, the researcher initiated a search for distinct themes. Braun and Clarke (2013) stated that themes cannot be defined by rigid and inflexible standards. They clarified that a theme is characterised by its significance and relevance within the dataset. When dealing with smaller datasets, a more significant proportion of the data may coincide in both coding and recognising themes. In this step, the themes were categorised into more important themes that directly addressed a specific aspect of the study topic.

The fourth step recommended reviewing and reconsidering the themes. Data for each theme was carefully considered to determine whether the data supports the theme. According to Maguire and Delahunt (2017), a theme should be evaluated by asking whether it makes sense and helps the data. The Researcher should not try to fit too much into a theme, and when the researcher finds that the theme overlaps, they should consider whether it presents as two separate themes. The Researcher should also look for subthemes

and any themes in the data that might have been overlooked. In the semi-final step, themes should be defined. Braun and Clarke (2013) explain that the “essence” of the theme should be identified in this stage. The endpoint of this research was writing a dissertation. Analysing qualitative data presents challenges to novice researchers, but applying Braun & Clarke’s (2013) thematic analysis framework and using Microsoft Office to follow these steps provided helpful guidance.

### **Microsoft Excel to analyse and code data**

After careful consideration by the researcher and being mindful of the cost of the research, the researcher decided to use the Microsoft Excel Programme to help code the raw data. Excellent programs are available for purchase, but Microsoft Excel can be successfully implemented to code data. As the researcher was already familiar with the program, it allowed for reading and re-reading the data and familiarising the researcher with the data (Bree & Gallagher, 2016). Qualitative data such as interviews, focus groups, and text needed to be evaluated to produce reliable data. Valid data can only be generated if all the necessary steps to ensure reliability are followed rigorously. Data needed to be created and analysed in a way that would be able to stand up to the scrutiny of peer review. Data collected by interviews (audio or written) could only be analysed after all data was transcribed into an electronic text format. The data generated by the interviews were transcribed into electronic format via a licensed Microsoft Office program. All the answers were organised per question. Following this, all data were migrated to Microsoft Excel, generating a single Column. Each cell was then reviewed with the view of assigning the comment to a thematic area. It was an essential step to determine where a comment fits.

After each step, a new Microsoft Excel sheet was opened. This ensured that no data were lost in the coding process, as each sheet was saved and easily accessible to the researcher.

The next step was to select themes. The thematic analysis offers a flexible approach that is accessible to a novice researcher. This flexible approach associated with thematic analysis means that there are many different ways to interpret meaning from the data set. After selecting themes, the themes occurring most frequently were identified. A pivot table was incorporated to summarise themes. A value was assigned to themes to identify recurring themes. The multiple data sheets ensured that the researcher could always go back a step to previous data that might become needed in the next step. Ultimately the steps were repeated numerous times to generate the most used critical points related to each theme. Each comment in the data set was assigned to the identified theme. The focus group data and the interview data were compared in the same manner.

Using the many features that Microsoft Office offers, such as graphs, colour, and sorting, did not demand an advanced mastery of the software. The Thematic analysis did have some disadvantages, precisely because of the flexibility of the approach. It meant there were many ways to interpret meaning from the data set, a prospect that was daunting to a novice researcher. The new researcher found the possibility of making a judgement error regarding which data is essential to the study was a very intimidating task. A potential drawback was that theme analysis, which aimed to identify patterns throughout a dataset, may have resulted in the omission of specific occurrences inside individual interviews.

## **Ethical Assurances**

This research study adhered to the strict code of ethics prescribed by Unicaf University. The Unicaf Research Ethical Committee (UREC) granted ethical clearance in October 2021. Before collecting data, two information sessions were held where all participants were informed of the process. Subsequently, the researcher and the Gatekeeper met with each participant and obtained informed consent. At this meeting, the Researcher ensured that the process was explained to each participant. The informed consent form was read and presented in a language and at a level acceptable to the participant. The interviewee was given careful explanations on how completely voluntary the procedure is and how they can discontinue at any point. The researcher also explained that participants would remain anonymous and that confidentiality would be protected. The participants were reminded that they would be audio recorded and that this audio would be transcribed.

The audio was kept safe and only available to the researcher and the university; no other parties had any access to the information. Participants were assured that there were no right or wrong answers, that all information was valuable, and that the researcher appreciated sharing all information. Participants were interviewed on different days but were aware that their colleagues were taking part in the interviews. The Gatekeeper discussed the group meetings with them. It ensured that they understood that by attending the meeting, their colleagues would be aware of their participation. Their information would only be shared with the researcher and included in the study submitted to the university. At this juncture, participants were informed that the research had significant importance to the researcher; however, they were given the freedom to withdraw their

participation at any given moment without experiencing any negative consequences or being obligated to provide justifications.

### **The Role of the Researcher**

The researcher has been engaged with this group of individuals since the inception of the project several years ago. The researcher was working for a corporation that was a creditor of Big Five Mine. The researcher participated in the initial creditors' meeting, which must occur within ten days of a company submitting the necessary documentation to enter Business Rescue. The researcher found the process academically engaging. The legislation was in the fifth year of implementation when Big Five Mine entered Business Rescue Proceedings. The Researcher encountered this proceeding in four other cases, all in her capacity as a bookkeeper for a company. Realising that the case at the mine was complex, the researcher followed every step of the proceedings as they dragged into the third year. The researcher applied to UNICAF University as a doctoral student, proposing to study this process. At the time, the researcher observed that optimal insight into the problem might be gained by concentrating on a particular case. The researcher withdrew from the role in the company that obliged her to attend these meetings, and the company agreed to relinquish its monetary claim so that the researcher may investigate the problem without having a vested interest in the eventual outcome. At every meeting, the Researcher disclosed her academic stake in the proceedings. As an accountant, the researcher saw that enterprises facing financial challenges welcomed the implementation of the new Business Rescue legislation. This legislation provided relief from creditors' demands, which sparked academic interest.

## **Limitations of the research**

Some specific limitations are associated with using qualitative methods to study research problems. The researcher endeavoured to identify limitations to this research throughout this qualitative case study and attempted to summarise possible limitations in this section. Limitations researchers should be aware of include the possibility of not adhering to the original objective of the study in response to the changing nature of the context under which research is conducted (Bryman, et al., 2014). Different researchers could arrive at different conclusions, even based on the same information, as the conclusion might depend on the personal characteristics of the researcher. The replication of a qualitative study is complicated due to the nature of data collection, which depends on the principle of saturation (Connelly, 2016). Research relying on human participants increases the chance of ethical dilemmas that could undermine a study's overall validity. Qualitative studies do not lend themselves to investigating causality between different research phenomena (Braun & Clarke, 2013). This type of research also makes it difficult to explain the differences in the quality and quantity of information gathered and why a different researcher might arrive at a different, non-consistent conclusion. Furthermore, collecting qualitative data is often time-consuming and expensive (Denzin & Lincoln, 1998). A novice researcher requires a high level of supervision to obtain the targeted information from a participant. Information obtained may also lack consistency and reliability depending on how a researcher poses the question and how a participant responds. The research chair reviewed the research question and provided thoughtful guidance on how the researcher might proceed. A large amount of data cannot be randomised into significant themes for analysis. (Denzin & Lincoln, 1998)

The case study research findings were limited to the perspective and perspectives of employees at a single mine in the Mpumalanga area, considering the cautions highlighted before. Employees are among the many stakeholders in the company rescue process and do not always receive equal consideration, even though they are essential stakeholders in any business, according to Lusinga and Fairhurst (2020). This study did not investigate how Business Rescue Proceedings affected the job security of other stakeholders, including creditors, shareholders, and owners of small businesses who depended on the mine for their survival. Senior management's and shareholders' lack of willingness to disclose publicly critical issues of employment security made it impossible to obtain senior-employee engagement. Interviews were limited to Big Five Mine employees and legal experts familiar with the Business Rescue Process. Still, an analysis of the available documentation and media articles seemed to suggest that the problem with mines going under Business Rescue and people losing their jobs due to restructuring might be a national problem conducive to research being generalisable.

However, limitations in terms of resources and time dictated the research to be conducted as a single case study. Results were analysed using Microsoft Excel and Microsoft Word. A large quantity of the data generated could not be organised into the emerging themes developed. Time constraints limited further manual development of themes. If Software programs analysing qualitative data were to be used, it could uncover additional themes to be developed. Although the researcher's involvement with the Business Rescue Process at Big Five Mine was from the beginning of the process, the research was conducted at a single point in time, as the study did not include any interviews

from before the inception of Business Rescue or any data gathered after the winding down of the process. In the case of Big Five Mine, the process has not yet been concluded. Thus, the scope for a longitudinal study that includes employees and other stakeholders remains an opportunity for future research.

### **Summary**

Chapter Three described the data collection methodology and the steps taken to ensure reliability and validity (Noble & Smith, 2015). The guidelines proposed by Braun & Clarke (2013) guided the thematic analysis. The Microsoft Office program assisted in analysing, coding, and comparing data. The research findings are reported and discussed in Chapter 4, and the conclusions and recommendations in Chapter 5.



## CHAPTER 4. FINDINGS

### Introduction

The study produced insightful data that shed light on the South African employees' experiences with job security during the Business Rescue procedure. Data also shed light on the experience of employees, who are crucial players in the business recovery process. This study was guided by the philosophy of stakeholder management. It is impossible to exaggerate the significance of stakeholders in a business rescue. Keep in mind the early definition of stakeholder theory, which proposes stakeholders to be any individual or group affected by achieving organisational objectives (Freeman, 1984). Directors, management, shareholders, owners, employees, consumers, secured and unsecured creditors, and contractors are among the main stakeholders in an operating business. A business that is placed in business rescue involves more parties. These include the court, the regulator, prospective investors, post-commencement financiers, and the Business Rescue practitioner. (Pretorius, 2018). Furthermore, the investigator collected data regarding the interpersonal elements that affected the employees during their company's Business Rescue. Evidence supported the theory that choices made during corporate rescue operations may have contributed to South Africa's high unemployment rates, which in turn may have affected the GDP and the nation's standing in the international economy.

No two business rescue procedures are precisely the same. Every business has characteristic needs, and although the law remains the same, the process develops around the unique needs of every individual business (Pretorius, 2014). This case study dealt with

the Business Rescue procedure at one mine, the Big Five Mine in Mpumalanga. This mine is part of a larger mining group. A total of 31 participants—25 employees plus a labour union representative, one lawyer, two business rescue practitioners, and one labour consultant—were interviewed for this study. Employees confirmed that they were left unemployed during the process. The focus group included Business Rescue professionals and provided insight into the law and the reasoning behind specific actions that ultimately left some employees jobless. Employees explained their experience with the Business Rescue process and personal and interpersonal experience with this legislation. They discussed the financial and socio-economic consequences of the high unemployment situation in South Africa. The Business Rescue process did not instill confidence, nor does it have a good reputation for saving jobs.

The research findings show that Business Rescue proceedings influence job security, and the execution of this law could be handled differently to prevent future job loss in South Africa; just 12–15% of business rescue cases end in success (Naidoo et al., 2018). Thus, it may be inferred that 85 percent of Business Rescue cases end in failure. Employees who learn more about this approach soon become incredibly anxious about their employment security due to its poor success rate and reputation for failing to secure employment. A complete lack of information leads to people making uninformed decisions about their future. The situation might be remedied by adding more details to the existing literature by studies such as the current one. Understanding the relationship between unemployment and the economy might lead to more informed decisions being made by all stakeholders during the process. The research data results identified a significant need for

employee access to information at every level of the organisation. Employees in administrative positions were marginally better informed about the process than those employed in lower-level positions. Announcements took longer to reach them, and the situation only became clear to them when job losses were imminent. When measured against stakeholder management theory, the evidence supports the hypothesis that corporate responsibility should include treating all stakeholders equally (Reed, 1999). Employees are essential stakeholders in any business and should be given all relevant information about the company and their position in the company.

The research study's conclusions were able to provide context for how workers interpret their level of job security during business rescue operations. The study's findings offered a range of evaluation tools that staff members employed to gauge their familiarity with business rescue techniques. Employment protection was assessed based on five overarching themes derived from an in-depth analysis of interview data and documentation related to the procedures at the Big Five Mine in Mpumalanga. These five developed themes refer to Research Questions 2 and 3, asking what effect the implementation of Chapter 6 of the Companies Act<sup>71</sup> of 2008 has on the protection of employment in South Africa and how the business rescue process impacts employee protection. The themes developed align with the objective of identifying the factors that led to the implementation of this law and assessing how the business rescue law impacts employee protection and the economy. The five major themes developed were the meaning of job security, personal and interpersonal or observational factors that became important to employees during the business rescue process, the legal aspects of business rescue, and how the business rescue

practitioners' actions affected the employees. The last theme revolved around the advice and recommendations given to future employees who found themselves in similar positions.

The first theme was “the meaning of job security.” This theme relates to assessing how the business rescue laws impact employment protection. The second theme, “Personal and interpersonal or observational factors that became important to employees during this process,” aligns with assessing the impact of the business rescue process on employee protection and the economy. The third theme identified was the legal aspects of business rescue. The legal elements also identified the legal aspects that affect employee protection and therefore aligned with the objective to assess the business rescue’s impact on employee protection. They also aligned with the aim of identifying the factors that led to the implementation of this law. The fourth theme dealt with the business rescue practitioner's actions affecting employee protection, as identified in the data analysed from the face-to-face interviews, the focus group meetings, and the document analysis. The final theme evolved from the desire of participants to advise prospective workers who became part of the Business Rescue Process. This theme aligned with the objective of recommending guidelines for future implementation and possible amendments to the business rescue laws.

Artifacts such as existing documentation were explored to research the history of this legislation and the necessity for these laws, as well as evaluate the influence of these laws on the job security of the South African mineworker. The study's conclusions shed important light on how staff members perceived the Business Rescue procedure and how the practitioner's activities affected mine workers' ability to maintain employment. The

study evaluated how each stakeholder category behaved in relation to Freeman's Stakeholder Management Theory to determine how their behaviors affected workers' job security during the Business Rescue Process (Freeman & Mcvea, 2018).

In the fourth quarter of 2021, the unemployment rate in South Africa rose to 35.3%. The current unemployment rate is the highest on record since comparable data collection began in 2008, according to Statistics South Africa in 2022. Unemployed mine workers attribute their inclusion in the high unemployment figures partially to the business rescue process. Consult Figure 2.

### **Trustworthiness of data**

The researcher aimed to establish credibility by triangulating data. By examining data, the researcher can authenticate results covering all data sets and thereby mitigate the influence of any prospective biases that could exist in a single study. Triangulation's value becomes evident when it enables the researcher to protect their data against claims that the study's findings are simply a relic of one single method, a solitary source, or a lone investigator's bias (Patton, 2002). Thus, documents proved their immeasurable value as a second data source (Bowen, 2009). Detailed planning in the initial stages of the process guaranteed reliable results.

O'Leary (2014) advocates a practical 8-step planning process for document analysis. The steps provided allow the researcher to draw up a list of what the researcher wants to investigate. This list might include population, samples, and participants. Then, the researcher is cautioned to pay careful attention to any barriers in the documentation. These might be cultural or linguistic. The following step is to acknowledge and address

document bias. The researcher should also familiarise themselves with the appropriate skills for doing research. Credibility should remain a research priority. The data the researcher is searching for should become familiar and easily identifiable. Ethical considerations should be of utmost concern, and lastly, the researcher should always have a backup plan. (O'Leary, 2014)

Dealing with how many documents the researcher should gather was akin to answering the question of how big a sample must be. There was no clear-cut answer. In quantitative research, Yamane (1967) would be considered, as opposed to qualitative research, where the concept of saturation should be regarded as the critical factor throughout the data collection process. Earlier scholarly works reminded the researcher to prioritise the quality of the documentation over its quantity (Bowen, 2009). Bowen (2009) argued that researchers should consider that documents may not provide precise, accurate, or comprehensive records of events but rather subjective reports from observers. O'Leary (2014) offered some insights into addressing this problem. Following the advice of O'Leary (2014), the researcher gathered the relevant text and developed an organization and management scheme. The researcher then made copies of the originals for annotation. Every attempt was made to assess the authenticity of the documents. The document's agenda, biases, and any background information the researcher could find were evaluated. The content was treated as if it was generated by a participant during an interview (O'Leary, 2014). The researcher attempted to find answers to the research questions within the text. Of equal importance to content analysis is thematic analysis. Thematic analysis is the process where documents are evaluated in a way that will produce empirical knowledge

and develop understanding. The researcher aimed to uphold neutrality and sensitivity toward pertinent and reliable facts during the evaluation (Bowen, 2009). Continual assessment was conducted to analyse research bias and document bias. The researcher concluded that adhering to the rules of neutrality and sensitivity around information could lead to the benefits of document analysis outweighing any potential drawbacks.

### **Reliability and validity of data**

A research study needs to be trustworthy, which might be achieved through the methods. Being able to interpret data with conviction ensures quality research, according to Connelly (2016), and should be an essential goal of any scientific investigation. Qualitative research should be conducted with an emphasis on integrity and rigour to ensure that the data can be considered trustworthy and that the study is considered credible (Noble & Smith, 2015).

The criteria to ensure legitimacy consist of these four elements: credible, transmittable, confirmable, and dependable (Lincoln & Guba, 1985). Throughout the research study and while collecting data, the researcher strived for credibility and to conform to the expectations of a reliable case study, while also being dependable. Striving for credibility, the researcher concluded the interviews by giving participants a summary. The participants were asked to agree on the accuracy of the outline. Participants were also required to verify if the summary accurately represented their viewpoints and encounters. Purposive sampling was utilised to select participants depending on their capacity to articulate their experience and their specific comprehension of the business rescue procedures. The research study process was described in detail, and the

confidentiality of each participant was maintained. The researcher aimed to ensure the transferability of the data by providing in-depth descriptions and interpretations of the data; as much detail was included as possible while still protecting confidentiality. Any research study limitations were reported throughout the study. By offering exact statements and transcriptions, the researcher hoped to ensure conformability in that the research findings could be verified. All interview transcripts were stored in a secure location.

### **Interview Questions**

This qualitative study aimed to shed light on the variables influencing job security during the company rescue process by examining how the procedure affected mine workers' employment security. The interview questions were designed to cover the research topics and the study's goal. The history of the Business Rescue Law and the impact of its implementation on South Africa's employment protection are the subjects of the study questions.

Interview questions were created to address Research Question 3: "How does the Business Rescue Process affect employee protection?" in addition to the information gleaned from secondary sources and already-existing paperwork. Research question 4 asked: "What recommendations could be made for future legal reform to protect employee interest under the Business Rescue process?" To address the research topics, an interview guideline (Appendix H) was created to gather insights and information from employees who are crucial stakeholders in any organisation. The participants acquired a distinctive viewpoint by undergoing the Business Rescue process.



### **The Participants of the research study**

An original addition to the body of knowledge already in existence was the information gathered from in-depth interviews conducted with staff members involved in a recent Business Rescue procedure. The findings of this study adds to the body of knowledge in the field of business rescue since a prior study conducted by the University of Pretoria's Business School had to be shelved in 2015 due to findings that the subjects, who were employees, were completely unaware of and "in the dark" about business rescue (Pretorius, 2015). Even some employee representatives who attended creditor meetings were uninformed (Pretorius, 2015). The results from this study could inform Business Rescue Practitioners and business management of appropriate steps that could be taken to ensure employee involvement and cooperation during the process. The research results of this study supported the conclusion that employees are currently better informed and able to express their experience and recommendations for the future application of this law eloquently. However, 92 % (representing 23 of the 25 employee interviews) indicated that they had no prior knowledge of the process until it affected them directly (Refer to Figure 4 on page 166). The sample for participant selection was drawn from a population of 180 employees working in the Big Five Mine. The researcher made a concerted effort to interview a group of employees representing all employment levels at the mine, from general workers to management. The subject was sensitive, and the researcher could not engage with senior management, although some employees interviewed did represent junior management positions.

Below is a table showing the Participants of this study and their role in the organization. A total of 25 employees were interviewed. The Focus group Participants received an individual number for ease of reference but represented two Focus Group meetings and were not interviewed individually but collectively in a group discussion scenario. The aim of these Focus Group discussions, one of which took place as an online meeting, was to interpret and clarify data collected from the employee perspective. These focus group participants ranged in number from 26 to 31, including an employee representative and experts who were acquainted with the business rescue procedure. The UREC-approved focus group interview guide served as the basis for the two focus group interviews. Refer to Appendix H, attached.

**Table 6***Participant Information*

<b>Participant number</b>	<b>Gender</b>	<b>Role within organisation</b>
<b>Participant 1</b>	Female	Control Room Operator
<b>Participant 2</b>	Female	Chemical Processor
<b>Participant 3</b>	Male	Supervisor
<b>Participant 4</b>	Male	Plant Operator
<b>Participant 5</b>	Male	General worker
<b>Participant 6</b>	Male	Identify as miner
<b>Participant 7</b>	Male	Heavy-Duty Machine Operator
<b>Participant 8</b>	Male	Sampler
<b>Participant 9</b>	Male	General worker
<b>Participant 10</b>	Male	Underground operator
<b>Participant 11</b>	Male	Supervisor
<b>Participant 12</b>	Male	Plant Operator
<b>Participant 13</b>	Male	Community Leader Underground miner
<b>Participant 14</b>	Male	Heavy Duty Truck operator
<b>Participant 15</b>	Male	Carpenter
<b>Participant 16</b>	Male	Rock Drill Operator
<b>Participant 17</b>	Male	Shift manager
<b>Participant 18</b>	Male	Rock Drill Operator
<b>Participant 19</b>	Male	Sampler

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<b>Participant 20</b>	Male	Plant Operator
<b>Participant 21</b>	Male	Lab Assistant
<b>Participant 22</b>	Female	Admin Assistant
<b>Participant 23</b>	Male	Ticket clerk (admin)
<b>Participant 24</b>	Female	Salary Clerk
<b>Participant 25</b>	Male	Union Rep and Safety Officer
<b>Participant 26 (Focus Group)</b>	Male	Lawyer
<b>Participant 27 (Focus Group)</b>	Male	Business Rescue Practitioner
<b>Participant 28 (Focus Group)</b>	Male	Business Rescue Practitioner
<b>Participant 29 (Focus Group )</b>	Male	Supervisor
<b>Participant 30 (Focus Group)</b>	Male	Union Representative and Employee Elected Leader
<b>Participant 31 (Focus Group)</b>	Male	Labour Consultant

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Source: Study results

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## **Results**

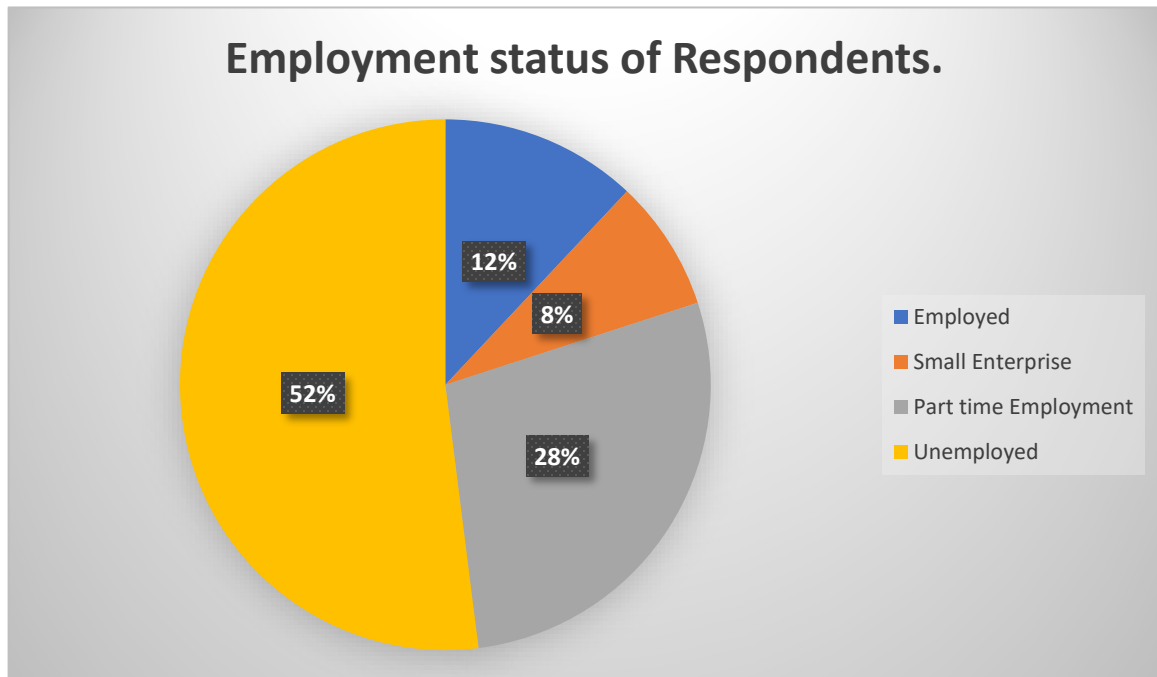
### **Interview Data analysis results**

#### **Employment status**

The research study found that initiating the Business Rescue Procedure affects personal and interpersonal aspects and work security, which was consistently referred to as job security during the interview.

Figures 4 to 9 display graphs representing responses on the five main themes derived from the face-to-face interview data. The replies were shown as percentages out of a total of 25. The six additional participants were members of the Focus Group and were not employed by the Big Five Mine. Their responses were shown separately from those of the 25 employees.

The graph below illustrates the current employment situation of 25 interviewees.

**Figure 4***Current Employment Status of Participants*

Source: Field data

This figure does not represent the overall number of participants; instead, it depicts the current employment situation of twenty-five employees. The overall number of participants was 31, with 6 of them being experts who possess considerable understanding of the business rescue approach. However, their work status is not depicted in the graph. Big Five Mine employed the 25 individuals indicated in the graph.

-52% of Participants are unemployed,

- 12% of Participants are employed'

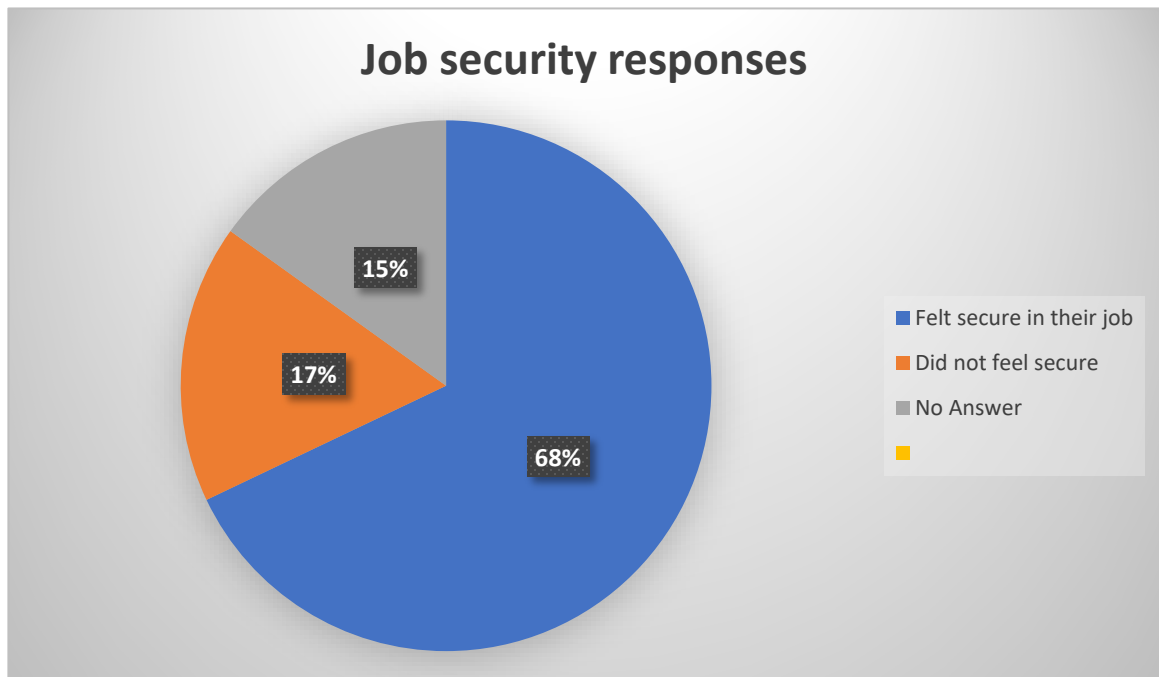
-8% of Participants have formed small business enterprises.

-28% of Participants did some part-time jobs in the last six months.

### ***Job Security***

**Figure 5**

*Employment security.*



Source: Field data

72% of the participants, 18 out of 25, indicated feeling secure in their employment prior to the Business Rescue event. Their job seemed secure. 17 % of participants did not think that the job was permanent, but they did not express a feeling that the job was temporary, given the high unemployment rate in South Africa; they were realistic with their expectations of a job lasting till retirement. Participants seemed to work to ensure their security but showed no sign of stopping till retirement.

16% of participants, which is 4 out of 25 employee interviews, did not provide an answer to the question about job security. When the Business Rescue Process commenced, some employees were caught off guard by the prospect of losing their employment. The participants' loss of job security prompted them to reflect on the business rescue process's observational, interpersonal, and personal components.

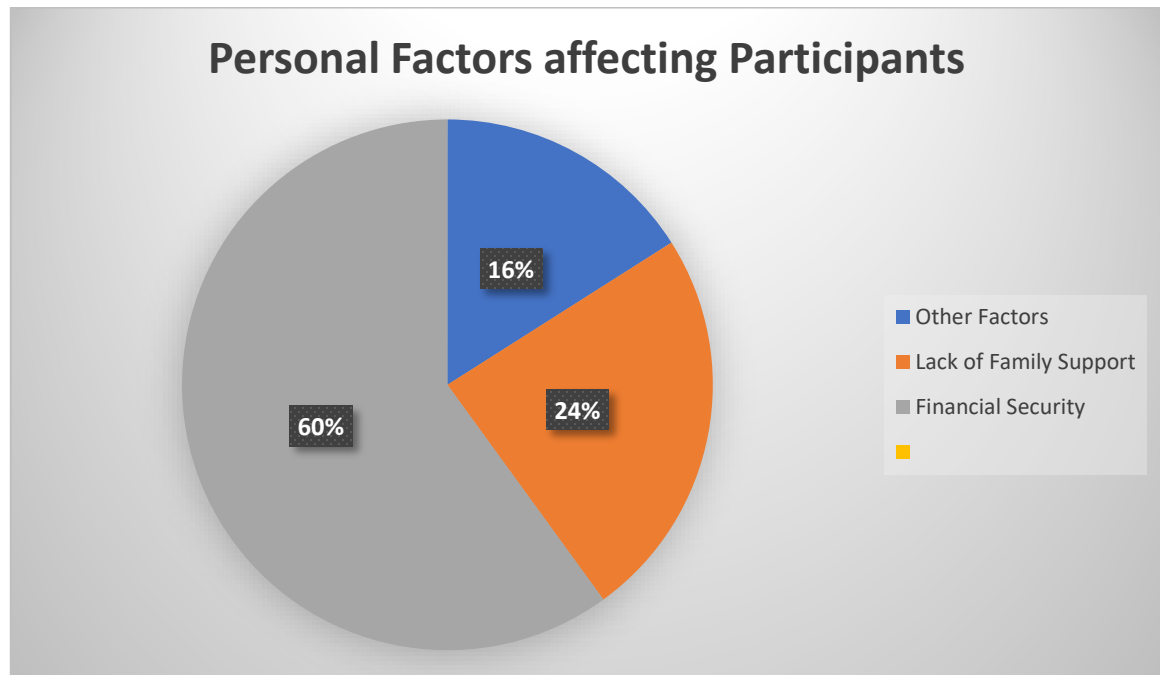
Participant 25's belief that they had a substantial amount of work years left until retirement reflects the typical answer given by interviewees. To answer the interview question on job security, they responded: “ Job security meant I would have a job to look after my family for all the years. I will work at the mine until retirement.”



Personal, interpersonal, and observational factors experienced during the Business Rescue Process.

**Figure 6**

*Personal Factors*



Source: Field data

The research indicates that the Business Rescue procedure can affect employees' perceptions of job security. The employee identified personal traits and other factors that heightened uncertainty during the operation, impacting their sense of security.

- 60 %, representing 15 of the 25 employee Participants, expressed feelings of how the loss of employment security was the primary cause of their financial insecurity.

- 24% of employees, representing 6 of the measured 25 Participants, expressed a lack of family support after becoming unemployed.

16 % of participants, representing 4 of the 25 employees, expressed different concerns, such as being the head of a household with no income. Participants emphasised the need to have a job and be gainfully employed. Participants depend on a position to provide for their family, and some Participants reported a lack of family support during the process. Individual responses explained feelings of being suicidal and a total loss of future plans. More such responses were recorded where employees lost familial support when they lost financial security. Fathers lamented that they could not provide for their families due to unemployment. Reports of suicide and divorce supported the theme of the importance of family support due to the lack of family support. An excellent example to support this theme is the response of Participant 4. They described their feelings of hopelessness, becoming an alcoholic, and feeling unwelcome in their own home.

Participant 4:” When my income dried up, I felt unwelcome in my own house, as I had nothing to contribute....I became an alcoholic.”

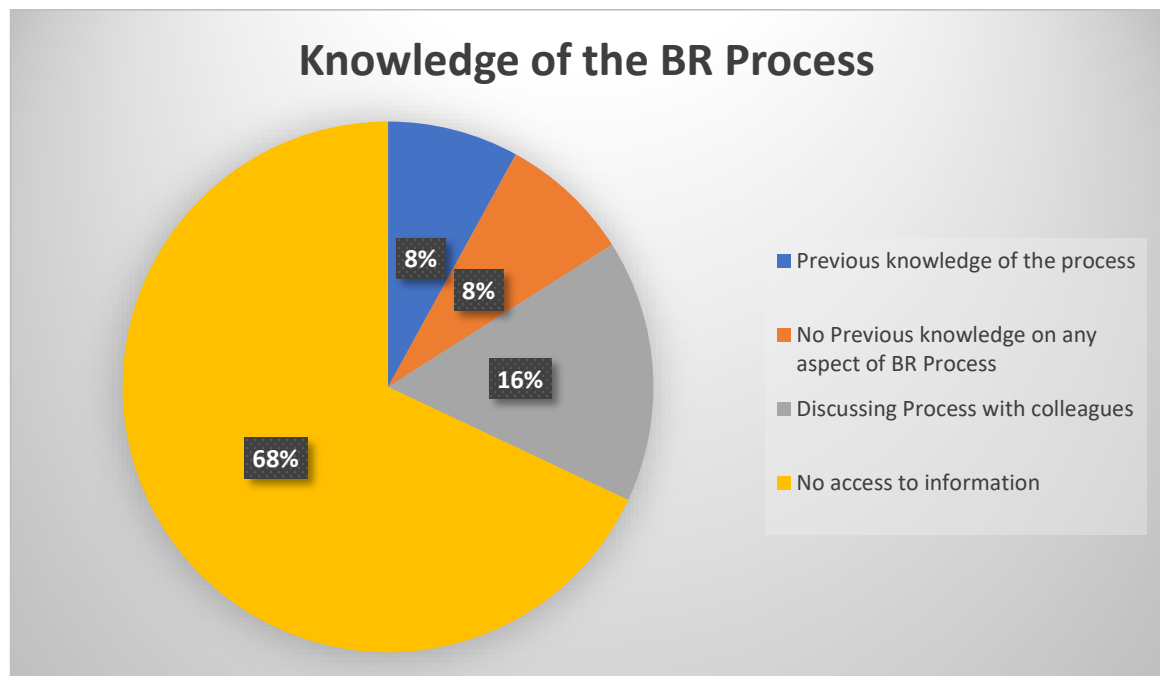
### Interpersonal factors

When asked about the interpersonal factors that affect participants, a significant theme identified in the interviews was the high levels of uncertainty surrounding the business rescue process. 92%, thus 23 of the 25 employees, describe a lack of knowledge and the anticipation of a negative outcome of the process as well as the length of time, as factors contributing to high-stress levels surrounding the Business Rescue Procedure. As mentioned, 6 Participants in the research study had a high level of knowledge of the Business Rescue Process. Still, their responses were reported in a separate section on the Focus Group Results.

### Knowledge of Business Rescue Process

**Figure 7**

*Knowledge of Business Rescue Process*



Source: Field data

The participants attributed the high stress levels surrounding the Business Rescue Procedure to a lack of understanding, uncertainty about the process's result, and the procedure's duration. They were initially introduced to the term "business rescue" during the initial employee meeting that the business rescue practitioner called. Participant 2's response is a fair representation of the response received on the question of knowledge about the process.

Participant 2 said, "I do not know business rescue. Until it happened, I did not know such a thing existed. " Participants did not anticipate the procedure to lead to loss of employment as they interpreted the words "Business Rescue" to mean that the mine would be rescued by following the process and, therefore, their jobs would be rescued. The responses support the conclusion that the word "rescue" in the title of the procedure creates an expectation of their employment being secure.

- 8% of Participants, representing 2 of the 25 employee interviews, had prior knowledge of the Business Rescue Process.
- Participant 12 remarked:" I did hear about business rescue previously as Mister M(The name has been redacted to maintain confidentiality.) spoke to miners about business rescue. He said that the job was not going to end."
- Another 8%, representing 2 of the 25 employee participants, directly mentioned their complete lack of information, as their finances did not allow for access to internet services. The sub-theme of "no access to information" was identified whilst analysing interpersonal factors that became important to employees during the Business Rescue

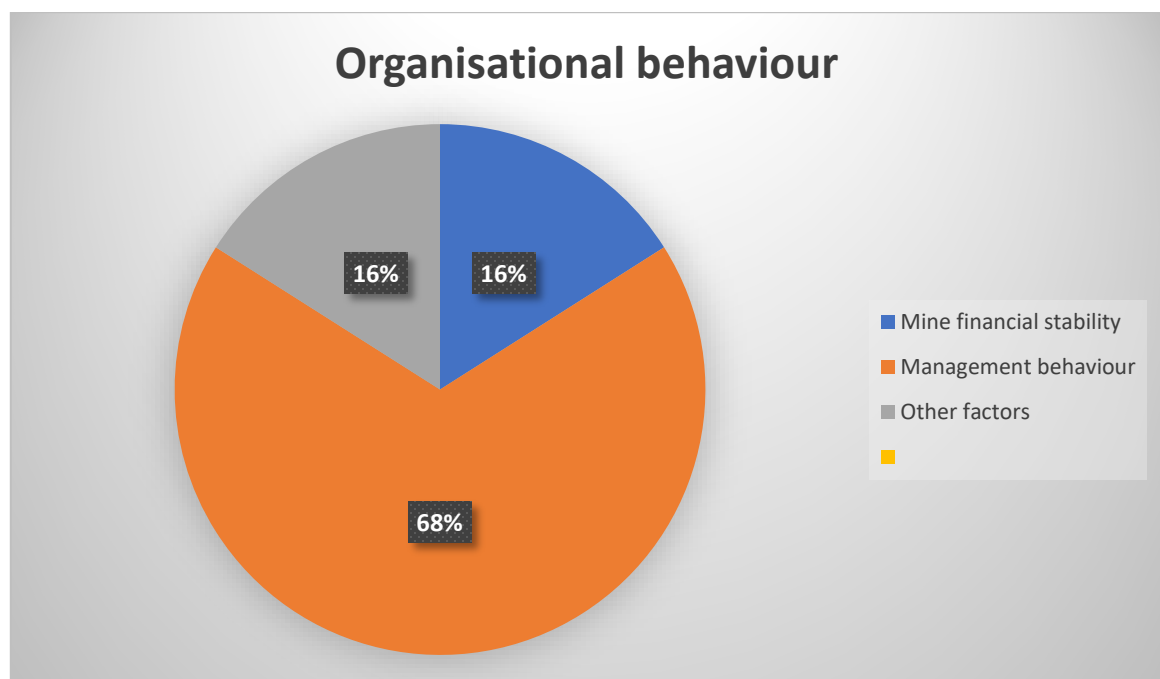
Process. Refer to the response of Participant 16.” I cannot buy data when my family needs food.”

16 %, representing 4 of the 25 employee participants interviewed, reported discussing the process and hopes of finding new employment with their colleagues and speculating about the process outcome. They depended mainly on their colleagues to access any information on the process.

### **Organisational behaviour**

**Figure 8**

*Organisational behaviour*



Source: Fieldwork data

Throughout the Business Rescue Process, employees highlighted a variety of crucial organizational variables that affected their ability to keep their jobs. The mine's financial status and managerial approach were identified as crucial factors influencing the employees' perception of continuous security. They observed different behaviours from management and the organisation, contributing to their uncertainty about future employment.

- 16% of Participants representing 5 of the data set of 25 employees interviewed referred to the mine's longevity and financial position. They refer to publicly available information that led them to believe that the mine still had a product to support another fifteen years of mining and could produce for another fifteen years. They also refer to the mine newsletter, a line of communication between management and employees. This newsletter informed them that the targets set for production were met monthly. Therefore, they had no reason to believe the mine would not be able to support their employment for a long time. One Participant stated outright that the mine was not bankrupt.
- Referring to the response of Participant 2: "I believe they could afford to support us financially..., the mine was rich...I knew we were making target every month."
- 80% of interviewees, representing 20 of the 25-employee sample, did not express any thoughts on the financial position of the mine.

The interviewee data supports the emerging discovery that employees' commitment to their employment stopped when the mine did not pay them. They only stopped working

when they received no pay, although they remained working for reduced pay in the months before all financial activity stopped. Employees stopped going to work when they realised that they would not be reimbursed and would no longer be able to provide for their families. Participant 5 said: “We stopped working when we were not paid.”

The mine still owed money to workers, and they cited this obligation as the reason for them not moving away and seeking alternative employment. They were also continuously assured that the work would resume soon.

80% of participants, 20 individuals out of 25 employees interviewed, reported that both the business rescue practitioner and mine management consistently reassured them that work would resume shortly.

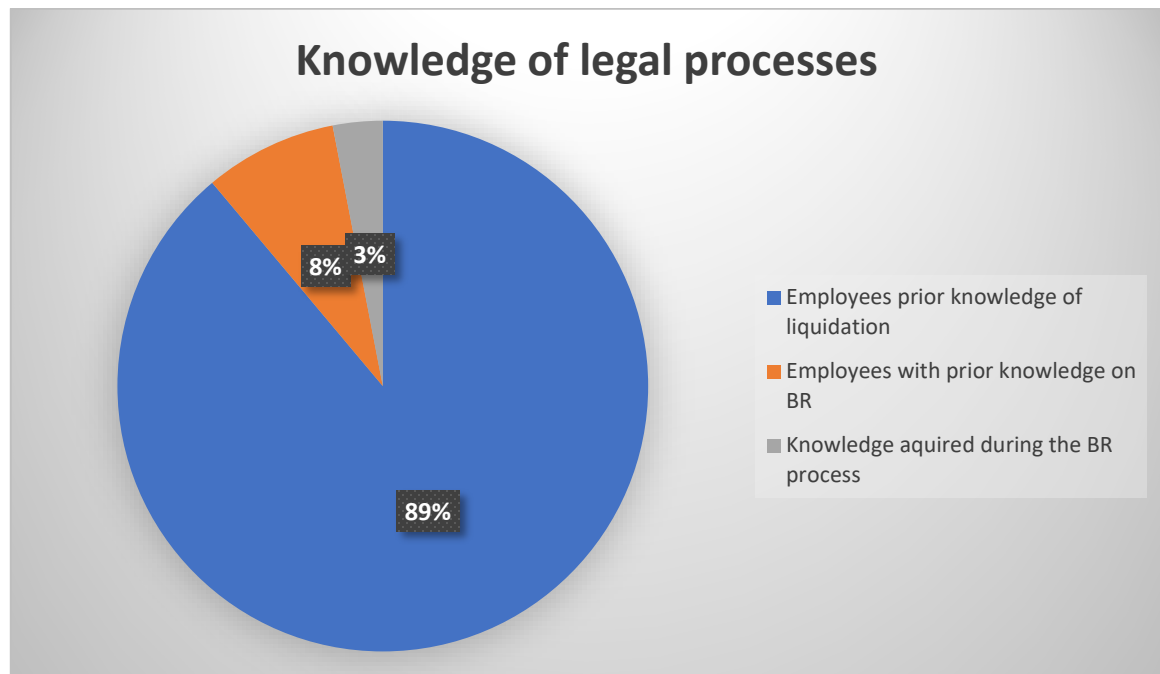
- 68% of Participants, 17 out of 25 interviewers, attributed their current insecure status to management. The growing sub-theme was that Business Rescue revealed the deficiencies of management. The administration was accused of not ensuring communication. The recorded remarks refer to management’s perceived incompetence, lack of accountability, lack of communication, shirking of responsibilities, efficiency, and ability to provide future employment. Several participants referred to management as not communicating with employees.
- Participant 25 summed up the general feelings of interviewed employees. ” We were disgusted with management.”
- 12% of participants, representing 3 of the 25 employee participants interviewed, refer to mine management’s perceived lack of empathy with the mineworkers' plight. The Business Rescue Practitioner was presented to the staff by the mine management, and

- they were then referred to the latter with any questions. Management was also perceived as not feeling the financial repercussions of the mine going into Business Rescue. One Participant remarked that the closure did not affect management's lifestyle.
- Participant 15:” The mine management was still being paid, and the mine closure did not affect management’s lifestyle, only employees'.”
  - Employees felt that employers should show solidarity with their workers. They believed employers viewed workers as vehicles to generate income in the capitalist system. The responses recorded above include workers experiencing difficulty understanding the Business Rescue Process's legal repercussions and how this affected their employment security. They expected more information and support from management.

### Legal Aspects of Business Rescue

**Figure 9**

*Knowledge of legal processes*



Source: Fieldwork data



A recurring subject in the interviews, Focus Group discussion, and the papers examined for this study were the legal ramifications of a corporation experiencing financial difficulties. This section presents the findings from the interview data collected from the 25 employees interviewed, with results from the Focus group and documents to be discussed in different sections.

- 88 % of the sample, which accounts for 22 of the 25 employees interviewed, stated that they had previous information on liquidation. Prior to the implementation of Business Rescue, liquidation was the prevailing system utilised in South Africa. The system is widely recognised, and the majority of individuals in South Africa are aware of the system and its accompanying implications.
- 8% of the employees interviewed, thus two of the 25 employees, had prior knowledge of the process.
- Therefore, the employees had scarce knowledge of the subject, which was in sharp contrast to the focus group, which had extensive knowledge of the subject. One employee's knowledge was attained from the information the mine manager shared.

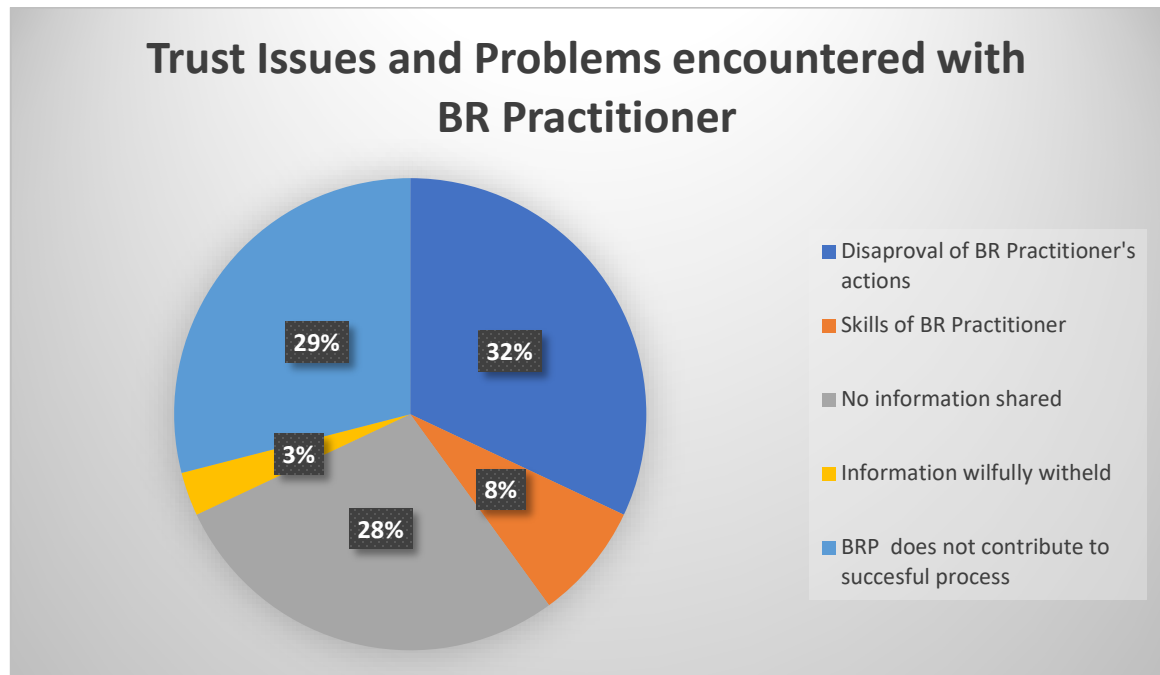
The aforementioned data results demonstrated that participants in one-on-one interviews were not well-versed in the legal aspects of Business Rescue law. On the other hand, the second focus group, which included representatives of the workforce as well as specialists dealing with this issue, was knowledgeable about and thoughtful about the legal implications of this process. The document review shed further light on the legal steps needed when businesses enter the Business Rescue Process. 4% of the sample, representing one person (Participant 3) of 25 employees interviewed, said that they did not immediately

know what the process meant but that they are the type of person who educate themselves by “reading a lot on the internet” and also attended every meeting to broaden their knowledge. Because of this acquired knowledge, they feel they know enough about the process to share their expertise with colleagues if asked to do so. Participant Three said: “I was very strict about attending meetings. I am the type of person who educates myself.”

### The actions of the Business Rescue Practitioner

**Figure 10**

*Trust and issue with Business Rescue Practitioner*



Source: Fieldwork data

How the business rescue practitioner's actions affected the mine workers' job security emerged as a clear pattern in the research data.

- - Twenty-three out of twenty-five, or 92 percent of the total, expressed their opinions about their interactions with the business rescue practitioner throughout the process. 3% of Participants, representing 1 of the sample size of 25 (Participant 6), did not comment directly on the Practitioners' actions.
- 28% of Participants, representing 7 of the sample size of 25 employees, reported the apparent lack of information sharing from the side of the Business Rescue Practitioner.
- 12% of participants, representing 3 of the 25 employees interviewed, believed that the practitioner sided with management during the process and did not show that he had the employees' best interests at heart. Participant 3: "I believe the Business Rescue Practitioner, who works for mine management, is dishonest, which is why I believe the mine will never reopen."
- 3% of Participants, representing 1 of the sample of 25 employees, stated that they believe that information was wilfully being withheld from employees.
- 32%, representing 8 of the 25 employee participants, reported on issues with the perceived skills of the practitioner. According to these Participants, the selection of a Business Rescue Practitioner needs to be based on their particular expertise in the industry they are assigned to "rescue." "Skills and understanding about the firm one wishes to rescue should be taken into consideration when selecting a Business Rescue Practitioner." Participant 3.
- 20 % of Participants, representing 5 of the sample of 25, reported that they feel the process is not working.

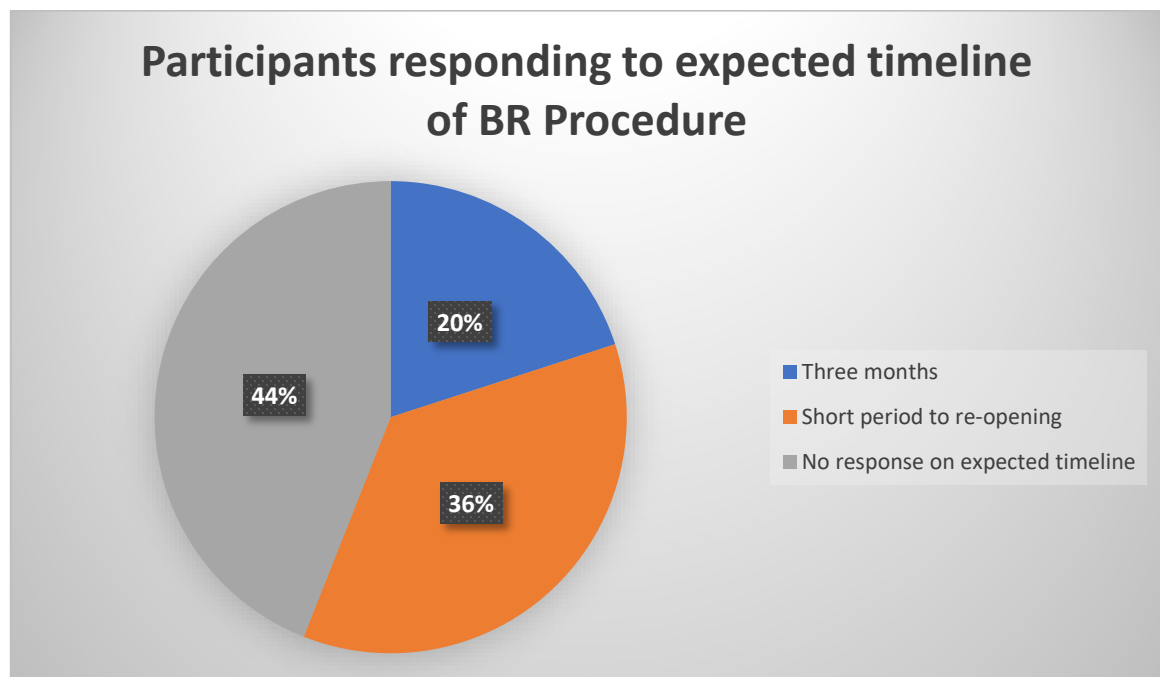
Participant 19 mentioned that “legislation should make provision for jail sentences for business rescue practitioners to hold them accountable.” This Participant also expresses the view that laws for South Africa should be made in South Africa. Their responses revealed a sense of disapproval towards the Business Rescue Practitioner and beliefs that the Practitioner was chosen by management, with no input from staff members. Some of the answers received to the interview questions show that Participants believe that the Practitioner does not have their best interest at heart. The results indicated that the Practitioner was not trusted to secure employment or lessen the procedure's impact on the employees' financial security. Employees reported that their economic security and employment security disappeared. During the interviews, employees displayed a general working knowledge of South African Labour law. Employees suggested they should be protected by law outside of becoming creditors as their investment in the mine was their labour and financial security. They felt this was a more personal involvement than merely supplying credit to a company. The participants thought that the practitioner should be chosen based on their mining skills. As indicated by Figure 10, the Participants expressed feelings of distrust and non-accountability. Participant 19's response powerfully demonstrates the general perception employees share on the conduct of Business Rescue Practitioners. He stated that “legislation should make provision for jail sentences for business rescue practitioners to hold them accountable.” Participant Nineteen also mentioned that laws for South Africa should be made in South Africa. This is not an outlier opinion, as the same sentiment was repeated by the Focus Group, compromising employee representatives in different wording. The timeline to complete the process was frustrating

for the Participants. This theme's subsection addressed the timeframe that the Business Rescue Practitioner suggested, which hasn't been followed because the process was now in the sixth year of its operation. During their six-year engagement with the business rescue process, employees claimed to have only had two meetings with the Business Rescue practitioner. Participants were promised a speedy resolution at both meetings with the Practitioner, and subsequent correspondence did not allude to the process dragging on for many years.

### **Timeline for completion of the process**

**Figure 11**

*Participants reporting on the Business Rescue Practitioner's response to the timeline for the Business Rescue procedure.*



Source: Fieldwork

The Business Rescue Practitioner notified the employees at Big Five Mine that the Business Rescue Process must be completed within the three-month period specified by the law. Due to their lack of prior experience, they accepted the Business Rescue Practitioner as a reliable source of information regarding the timeframe of the procedure. They were unaware that the deadline might be extended by utilising specific legislative provisions that provide an extension of the period. The interviewed personnel appeared to lack awareness of the potential for delaying the process.

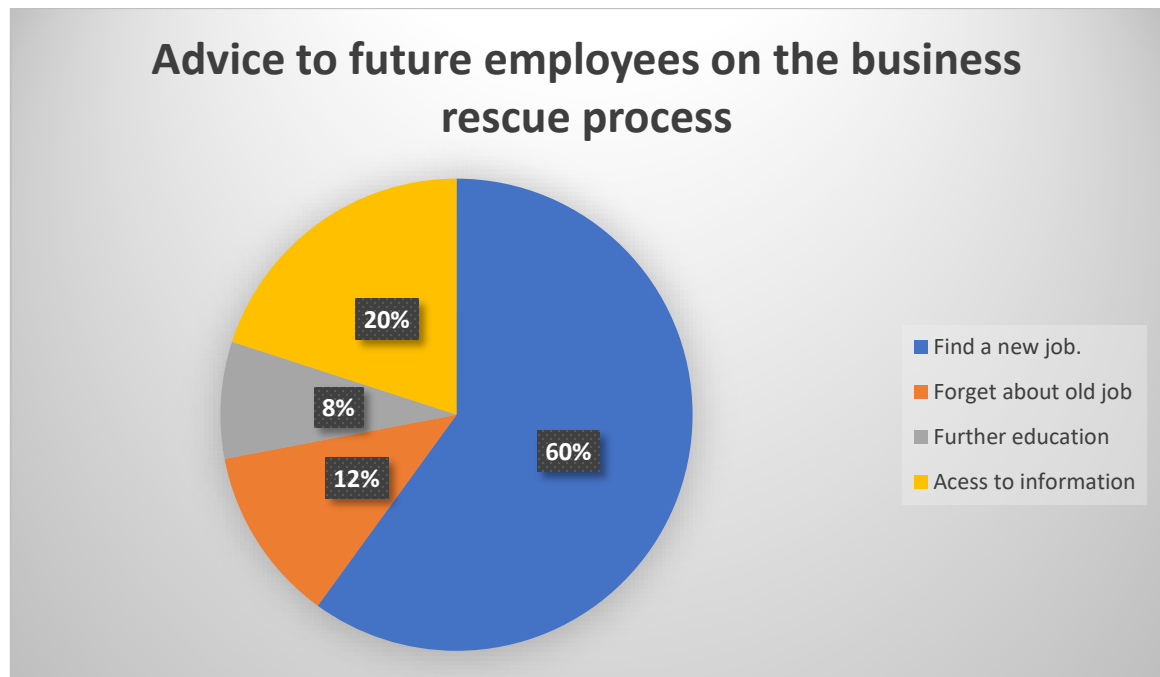
- - Five out of the twenty five participants, or twenty percent of the total employee interviews , said that the Business Rescue Practitioner had given them assurances that the procedure would only take three months.
- 36 % of Participants, representing 9 of the 25 employee participants interviewed, did not mention a specific timeline but just stated that the Business Rescue Practitioner said the mine would re-open “soon.”
- 44 % of Participants, representing 11 of the 25 employee participants, did not discuss the expected procedure timeline.

As shown in the above results obtained and illustrated in Figure 11, Participant 9 stated that the practitioner said it was a” temporary” problem. Participant 5 explained that according to South African law, an unemployment insurance fund could be accessed for three months. The Business Rescue Practitioner reassured them that the Business Rescue Process should not extend beyond three months; thus, they did not report feeling worried about losing their job after that time. Participant 14 explained the miners' position as believing they would get their jobs back after three months and that the Labour Law

provides unemployment insurance for three months, so they thought the problem would be resolved without too much hardship. Their reasoning for not relocating and looking for another job was that it would not have been economically viable to relocate for such a short period. One participant expressed that the participants believed that the government should put a time limit on the experience.”

***Advice to future employees.***

The study's conclusions highlighted how important it is for staff members to comprehend the Business Rescue procedure and be informed of their options for employment. Ninety-two percent (92%) of employees, representing 23 of the 25 participants interviewed, offered advice to future employees. These were developed into two sub-themes that were “the importance of acquiring a new job” and the importance of having access to information.

**Figure 12***Advice to future employees in Business Rescue*

Source: Fieldwork

**Find a new job and get an education:**

- 60% of the interviewed employees, representing 15 of the sample of 25, advised on the importance of a job to experience a sense of self-worth and security. Their advice centered around getting a new job as soon as possible and not waiting for your job to be rescued by the Business Rescue process.
- 12 % of participants, representing 3 of the sample of 25 employees interviewed, advised employees to forget about their old jobs. Participants believed that since their experience does not support the notion that employment will be rescued, employees



- who find themselves in a business rescue procedure should not wait for the business rescue to secure employment.
- 12 % of participants, representing 3 of the total sample of 25 face-to-face interviews, advised that you must not expect to work at the same place forever.
  - 8% of Participants, representing 2 of the 25 interviewees, advised on the importance of further education.
  - 16% of Participants, representing 4 of the sample of 25 employee interviews, offered advice on securing some form of self-employment while still getting an income from their permanent employer.
  - 8 % of employee participants, representing 2 of the 25 (Participants 10 and 25), advise that employees must treat their jobs respectfully and with appreciation, as they recognise that many people in South Africa are looking for employment.

### **The importance of information**

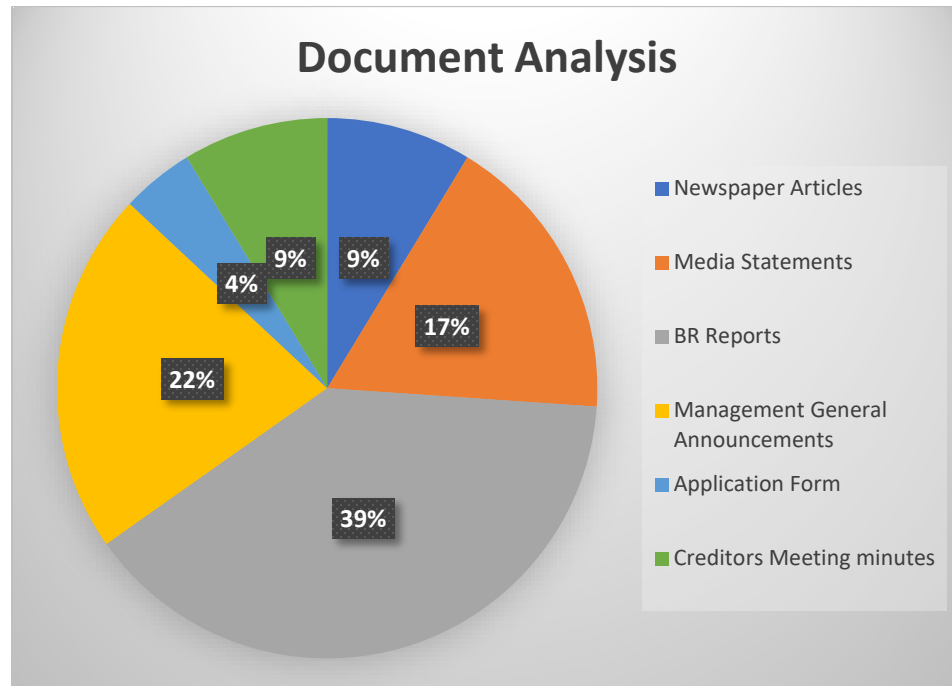
Employees emphasised the importance of future employees getting access to information. In an uncertain situation where they were unsure of their employment status and amid a process they did not understand nor had any previous knowledge of, information took on a special significance to them. They felt it was important to warn future employees to gain as much information as they possibly could about the process.

- 20% of employee Participants, representing 5 out of the sample of 25, were concerned with advising on the importance of accessing information. They recommend that prospective workers educate themselves while still working and try to learn as much as possible about the circumstances and the Business Rescue procedure. They advise

against depending on information from Business Rescue Practitioners. They were informed that a monthly update should be provided by the Business Rescue Practitioner. They recognized that they were now in the role of a creditor as a result of the business rescue procedure. One Participant explained the dilemma of having no money to keep up with information. Information supplied electronically needs data on a device to access the reports. Participant 1 explained that they could not afford to spend money on data with more pressing issues, such as feeding their family, requiring all the funds available. As a result, they depend on their former coworkers to keep them updated on the status of the Business Rescue procedure. Participant 3 felt union representatives should receive formal training to give employees feedback and information as needed.

### **Document data analysis**

A number of documents were examined to ascertain the procedures followed for the Business Rescue process. Newspaper articles provided context, public opinion, and external perspectives. Business Rescue Practitioners report offered expert opinions, analysis, and recommendations. Creditor committee reports and minutes of creditors meetings revealed stakeholder concerns, negotiations, and the decision-making processes. Reports from Management supplied internal information, strategies, and perspectives. These reports were analysed using a deductive approach to analyse the data using pre-established themes. The pre-established themes were used as a lens to interpret and code data , which helped to identify patterns and meanings in the data that aligned with the research objectives.

**Figure 13***Documents analysed*

Source: Fieldwork

Figure 14 shows the documents that were analysed:

Newspaper articles: 2

Media Statements: 4

Business Rescue Reports: 9

Management 's Reports: 5

Application Form to the High Court of South Africa: Form COR123:1

Creditors Meeting: 2

**Table 7***Frequency Table on Document Content Analysis*

Research Questions	Theme	Sub-theme	Frequency
RQ 1: How does the Business Rescue Law's application compare to International Corporate Rescue Laws?	No theme developed. The literature review answered this question.		2
RQ2: What effect did the implementation of Chapter 6 of the Companies Act 71 of 2008 have on the protection of employment in South Africa?	Business Rescue Legal Aspects		28
RQ3: How does the Business Rescue	The meaning of job security.	Job security or employment continuation	52

Process impact  Employee Protection?	Personal and  interpersonal or  observational  factors that became  important to  employees during  the process.        The Actions of the  Business Rescue  Practitioner	The importance of  knowledge and  information  Organisational behaviour    Time limit on procedure  Remuneration of the  Business Rescue  Practitioner	49    48    41  25   39
RQ4: What  recommendations could be  made for future legal  reform to protect employee  interest under the business  Rescue Process?	Advice to future  employees	New job    Accept Training	7    3

**Figure 14**

*The occurrence rate of themes in document analysis*

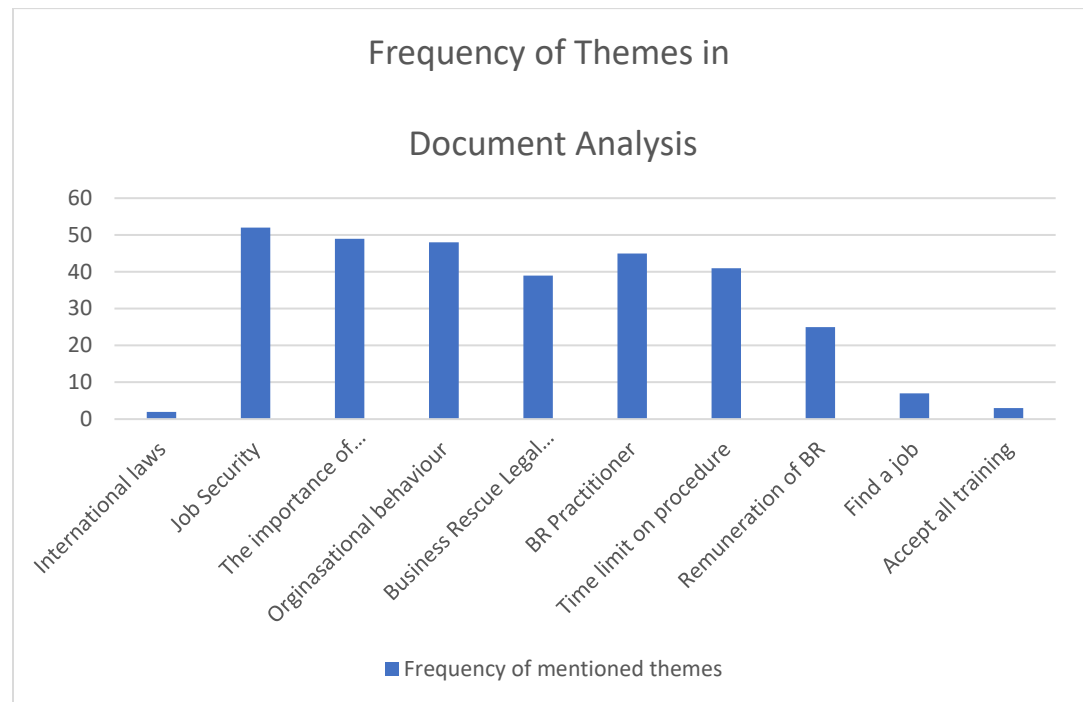


Figure 14 is a visual representation of the theme's frequency of occurrence, as shown in Table 7.

The documents form part of the documents collected over the timespan of the Business Rescue Procedure at Big Five Mine. A selection of 23 significant documents was analysed.

The one official document that was analysed is Form CoR123,1. This form is the official form that needs to be filed with the High Court of South Africa to start the business rescue procedure. The internet provides access to Form Cor123.1, which can be readily obtained by downloading. Therefore, the information is publicly available:

Form CoR123,1 was aligned with two of the significant themes initially developed from the analysis of the data. These were the knowledge available on business rescue's legal aspects and the business rescue practitioner's duties and responsibilities.

The Business Rescue legal process is detailed on the first page in a side column of this form. This document is being provided in accordance with sections 129 and 131 of the Companies Act of 2008 and rule 123 of the Companies Regulations of 2011. According to the form, a corporate resolution to apply for Business Rescue proceedings is null and void until this notice is filed with the court. The initial notification was distributed to all Big Five Mine stakeholders and is among the papers examined in the current investigation. This form was not familiar to employees. None of the employees interviewed had ever seen this form before, as evidenced by the interview data analysis.

**Theme: Legal Aspects of Form COR 123.1**

The CoR123.1 (Notice of Beginning of Business Rescue Proceeding) form is a legal document that requires publication to all parties involved within five business days after filing or five business days after the court order if the process was not voluntary. The Business Rescue legal process is detailed on the first page in a side column of this form. This document is being provided in accordance with sections 129 and 131 of the Companies Act of 2008 and rule 123 of the Companies Regulations of 2011. According to the form, a corporate resolution to apply for Business Rescue proceedings is null and void until it is filed with this notice. The initial notification was distributed to all Big Five Mine stakeholders and is among the papers examined in the current investigation.

### Sub Theme: Knowledge of the legal aspects of business Rescue Procedure

**Figure 15**

*Knowledge on Form Cor 123.1 versus Knowledge of Liquidation*



Source: Fieldwork

Knowledge of the legal aspects was a sub-theme of the factors that became important to employees during the process. The simple graph in Figure 14 demonstrates the difference in knowledge employees possessed on Form Cor123.1 versus the knowledge available to them about the availability of a liquidation process. The form was not familiar to employees. 96% of participants, representing 24 face-to-face interviewees, said they had never seen this document. Participants reported their prior knowledge of liquidation as a solution when a company faces financial difficulties (see Figure 15 above). They explained that although they knew about liquidation, they felt that “liquidation was used as a scare



tactic by the business rescue practitioner. Participant 5 phrased it as follows:” The narrative around the problem was that everybody will lose their jobs if the mine is liquidated.” The Business Rescue Practitioner claimed that liquidation would lower the mine's worth, according to the same Participant.

### **Theme: Business Rescue protecting employment**

Documentation analysis showed that Business Rescue if undertaken early, can save many jobs. In 2015, 1398 successful rescues resulted in a projected total of 10865 jobs saved (Pretorius, 2015). Since each employee in South Africa provides support for four to six others, Business Rescue impacted almost 40,000 individuals in 2015. From the available documentation, e.g., the report of the business rescue practitioner, the expectation was to provide employment. Still, it became unsustainable when the Department of Mineral and Energy deemed the activities at the mine unsafe, and all economic activities at Big Five Mine came to a standstill. The rest of the mining group could not sustain all the employees. The business Rescue Practitioner explained the situation in a letter to all the employees. They were able to show these letters to their creditors, but eventually, they could not pay their service providers. Even more jobs were lost, even though the practitioners kept the mine in business rescue and stated in their reports that they believed the mine could still be rescued.

### **Theme: Business Rescue Practitioners' Actions**

The form further specifies that upon filing this notification, the corporation must designate a Business Rescue Practitioner within five business days. This statute also created a legal mechanism for any party who was impacted to overturn the decision. The

Business Rescue Practitioner claimed that liquidation would lower the mine's worth, according to the same Participant. From the documents studied, the following procedure is identified:

Five days after business rescue operations start, the business rescue practitioner is assigned. Within 25 days of being appointed as a Business Rescue Practitioner, the most crucial responsibility of the role is to create and release a business rescue plan. During the focus group discussion, a Business Rescue Practitioner clarified that the Business Rescue procedure provides protection in the form of a moratorium and that sureties and guarantees exist against the company under Business Rescue. Further to that explanation, information gathered from the document analysis explains that any sureties and guarantees signed by people or entities outside the company do not fall under the protection of the moratorium.

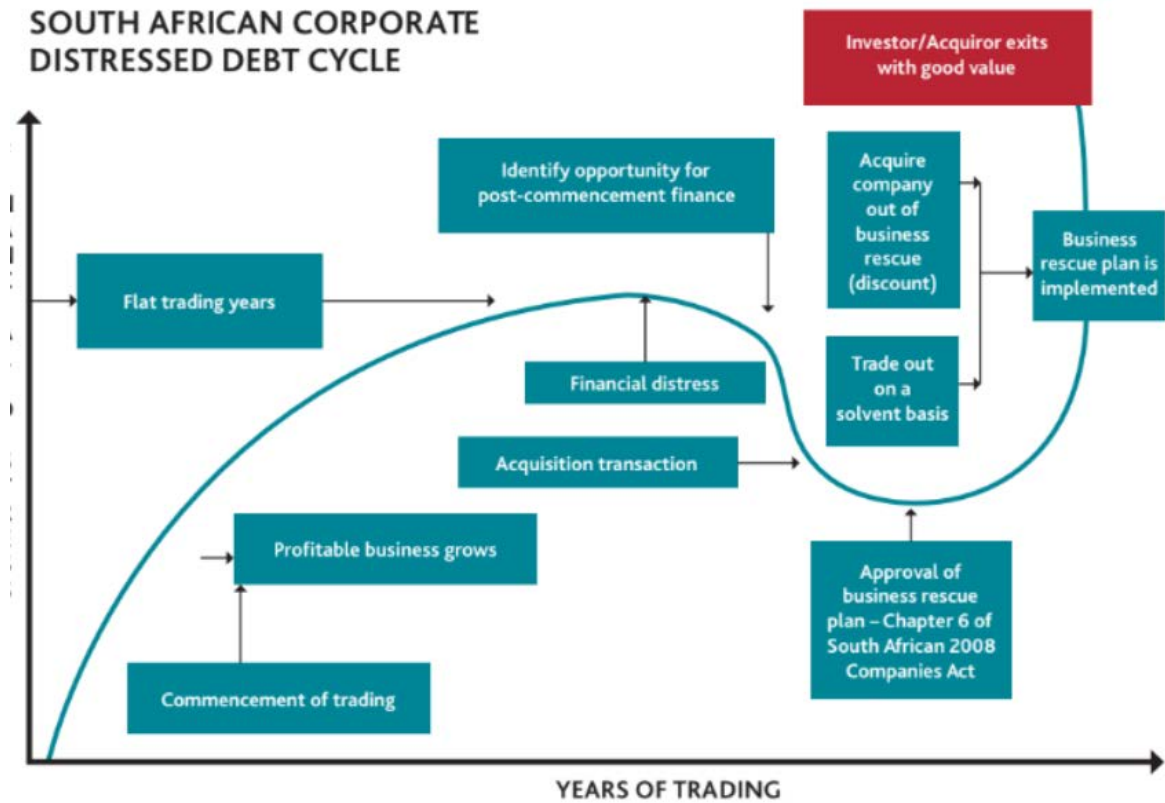
The documents analysed showed that the business rescue practitioner abided by the law, as evidenced by nine monthly business rescue reports, citing the reasons for the rescue delay and the communications between the business rescue practitioner and the creditors.

### **Corporate financial distress cycle**

From the Management reports made available to the miners, it became clear that management attempted to explain the reasons for going into business rescue. Still, no evidence was identified to show the process of selecting a business rescue practitioner.

The low success rate of business rescue, as demonstrated by an article on corporate distress debt cycles, did not align with the optimistic view of the management of the distressed company. The evidence does not suggest an honest attempt to explain

the bleak outcome of business rescue to employees. The management reports confirm the sub-theme of the importance of information. The success stories of the business rescue procedures are those of companies that investors successfully bought by providing post-commission finance and implementing a business rescue plan. Initially, management and business rescue practitioners reported a ready availability of post-commencement finance, essential for a business rescue operation. The finances were not secured, and the company's distressed cycle continued. See below for an explanation of the South African corporate Distressed Debt Cycle:

**Figure 16***South African Corporate Distresses Debt Cycle*

Source: Levenstein (2016).

### **Memorandum to Employees**

A memorandum received from the Dept of Mineral and Energy addresses affected families in their position as creditors for the company. Therefore, this document served to further enlighten the theme of the roles and responsibilities of the business rescue practitioner. The directive is part of the documents studied but cannot be included as an appendix, as it contains identifying information about the Big Five Mine procedure (Such as the actual name of the mine that is being withheld for security reasons on advice from

the student's supervisor and the university's ethics committee). The memorandum will form part of the original supporting documents for this study. This memorandum advises that the department is keen to see the conclusion of the current proceedings. The memorandum said that the Department of Mineral Resources and Energy would respect the Business Rescue proceedings and not impede them while continuing to interact with the impacted personnel. The Business Rescue Practitioner assumes responsibility for the Business Rescue processes through the Business Rescue proceedings. He takes leadership of the company that needs to be rescued.

### **Creditors' Minutes of the meetings**

Documentation available on the creditor's meetings adds to different aspects of the five themes developed. The creditor's meetings are significant because employees of the Big Five Mine attended these meetings.

### **Job Security**

The meeting acknowledged the employees in their capacity as creditors. Plans to re-open the mine and provide employment to displaced workers were discussed. No job security was promised, as it was acknowledged that the employees lost their jobs during the business rescue process and will have to re-apply for any positions that may become available during the restructuring process.

### **Business Rescue Practitioners**

The creditors' meetings conveyed disapproval of the actions taken by the company rescue practitioners. A standard critique was that the practitioners lacked

familiarity with the industry they were operating in. The creditor's meetings also expressed dissatisfaction with the limited access to information, alleging that the business rescue practitioner failed to provide the required information. The company rescue practitioners were also said to have shown bias towards certain creditors over others. The business rescue practitioners were also responsible for the delay in the conclusion of the procedure. These findings aligned with the results obtained from the in-person interviews. The documentation regarding the creditor's meeting also indicated that the level of trust between them and the business rescue practitioner had been completely severed.

### **Managerial behaviour**

The sole mention of managerial behaviour during the creditors meeting pertained to the managers' choice of a business rescue practitioner, which was met with disapproval.

### **Timeline**

The minutes of the creditor's meeting mentioned a three-month deadline for implementing business rescue proceedings in accordance with the business rescue laws. They doubted the feasibility of the timeframe but also expressed discontent with the duration of the procedure.

### **Focus Group Data**

The Focus Group discussions offered valuable perspectives on different facets of the company rescue legislation. They highlighted the role of the business rescue

practitioner and clarified some concerns that were brought up during the in-person interviews. The material obtained from the focus group mainly pertains to the legal dimensions of corporate rescue, the extended durations involved, and the matter of job stability. Given that the focus group participants were predominantly professionals in their respective fields, they possessed extensive knowledge and expertise in the company rescue process. In order to protect the identity of the participants in this study, their exact experiences cannot be shared. However, it is worth noting that they together possess over 50 years of industry knowledge. The group consisted of two business rescue practitioners, one practising lawyer, a labour consultant, a union representative, and a worker representative.

### **Legal aspects**

The Focus Group interview supplied more clarity on the legal process. The focus group participants were numbered for clarity and to show their occupation in Table 1, but they were not interviewed face to face. Logistic and financial constraints prevented the group from meeting in person. At the time of the meeting, COVID-19 restrictions were still in place. Thirty-three percent (33%) of the Second Focus Group, representing two Participants of this sample of six (Participants 27 and 28), but 6% of the total participant group of 31, both have extensive knowledge of the Business Rescue procedure in general and did explain in detail what the legal process entails and how it might have impacted on the employees.

The process is structured so that employees will receive a Section 189 notice if they need to be retrenched. This notice forms part of the Labour law and informs employees

that they might be dismissed for operational requirements. The Business Rescue Practitioner clarified that no employee would lose any of the rights granted to them by the Labour Act of South Africa and that labour law supersedes business rescue. The extent of layoffs will be limited to what the circumstances warrant. In the case of the Big Five Mine, all employees, except for a few administration staff, were retrenched, as the mine had stopped producing, and there was no income to pay workers.

Some workers were still owed salaries, pension payments, or overtime money, and they became creditors to the mine. Further investigation into available documentation and literature reveals a similar situation at various mines in South Africa. Seven representatives of the employees who had already been interviewed for the first focus group discussed how, despite their right to file a complaint against their employer with the Commission for Conciliation, Mediation, and Arbitration (CCMA), they were informed that the CCMA could not get involved until the Business Rescue procedure was finished. The employee representative brought up the possibility that there is a legal provision that ignores the impacted workers' job security, given the length of time the process has been going on for over six years.

Participant 25, representing 16 % of the Second Focus Group of five people and 3% of the total participant group of 31, also expressed frustration at this aspect of the law that prefers Business Rescue laws, which they perceived to mean that the government will not interfere in a private company's business. Employees selected Participant 25 as their spokesperson for media presentations. Participants in the Focus Group meeting were asked to provide an explanation. Participant FG number 28 explained that two meetings were



held with employees per the legislation's provisions. Thereafter, when the Business Rescue process is accepted, employees become the company's creditors. After the retrenchments, employees' further involvement as stakeholders depended on them attending the creditor's meeting. Employees suggested they should be protected by law outside of becoming creditors as their investment in the mine was their labour and financial security. They felt that this was a more personal involvement than merely supplying credit to a company.

### **Timeline**

Documentation and the answers from the Business Rescue Practitioners taking part in the Focus Group discussion verify the anticipated schedule. Three months is the recommended timeframe for business rescue, but as the focus group's business rescue practitioners noted, this is not realistic nor feasible when a sizable staff is involved or when challenges arise in securing investors. In the event that an appropriate investor cannot be located, no Business Rescue Procedure can succeed. Often, creditors derail the process, but in the case of the Big Five Mine, two different investors got involved in lengthy court proceedings, which delayed the process by several years. The Business Rescue Practitioner stated that Practitioners have no jurisdiction over court proceedings between stakeholders and explained that the legal proceedings would prevent the practitioner from concluding the process. The employees, in their position as creditor of the company, are allowed access to creditors meetings, but they find that they have little say as their voting right is proportionate to the amount owed to them. Bigger creditors essentially controlled the process. The employees at Big Five Mine were frustrated that the process took many years and is still not concluded. They expressed the opinion that the information given to them

was misleading, as the business rescue Practitioner assured them at the first meeting of creditors that the process should last three months. One of the practitioners in the focus group explained that although the law states that the process should take three months, specific clauses allowed for the process to be extended to longer periods. The creditors need to vote on agreeing to this.

### **Job security**

The business rescue experts assert that implementing Business Rescue measures in the early stages can effectively preserve a significant number of employment positions.

This was corroborated by the literature. According to Pretorius (2015), there were 1398 successful rescues in 2015, which led to an estimated total of 10865 jobs rescued. Due to the fact that each employee in South Africa provides support for four to six additional individuals, the implementation of Business Rescue had an effect on around 40,000 people in 2015.

The data provided by the focus group participants and supported by the existing research do not encompass ongoing business rescue processes. The measurement of business rescue procedure statistics occurs only at the conclusion of the procedure, either when the company successfully exits business rescue or when it is ultimately liquidated. It is possible that many individuals, including those employed at the Big Five Mine, have already experienced job losses. Nevertheless, these employment losses have not been formally recorded due to the continuing corporate rescue procedure. The business rescue practitioners have affirmed that the primary aim of the business rescue procedure is to

salvage a company. Consequently, given its precarious financial condition, the company may see job cuts due to its inability to maintain employment.

### **Evaluation of Findings**

Several possibilities exist for the overwhelming negative feelings of job security reported in the findings. While evidence supports the suggestion that an employee's position is not as secure as the provision in the laws might have foreseen, many employees express the opinion that while they consider the law to be perfect, they feel that the execution of legal processes left them vulnerable. It seems possible that the results are due to all the employees losing their jobs as the mine was closed but not liquidated. The fact that all economic activity came to a standstill indicates that the business was not rescued, yet the process is ongoing. Many employees feel anchored to the area due to the possibility of being re-employed if the mine is eventually re-opened. The people who did not accept retrenchment are still owed money and were hoping that this would give them an advantage when the process is successfully concluded.

The literature review covered stakeholder management theory in the second chapter of this study (Reed, 1999). Freeman and Mcvea (2018) argued that the Stakeholder Management theory puts forward the case for all stakeholders being treated as having equal importance. The results of the current study noted that employees reported no stakeholder involvement. They said they had not received communication, and management is not accessible. The results must be interpreted cautiously because the business rescue practitioners reported contrary information but cited a lack of union involvement or interest as the reason for delayed communication sharing. The Companies Act allows employees

to be considered equal stakeholders. However, participants did not see this benefit based on their comments. Loubser (2005) mentioned that some scholars felt employees were protected excessively by the legislation and that this protection might hamper the successful rescuing of a company. The researcher's position is that the study's results confirm the importance of the employee as a stakeholder, as the employee's experience clearly stated a need for more involvement in the process. Reed (1999) asserts that all stakeholders must be treated as equally important. Still, a potential problem encountered in analysing field data was that the law makes provision for employees to be treated as critical stakeholders. However, the manner of implementation of this law confronted employees with a society that still does not treat all citizens equally (Francis & Webster, 2019). The South African Paradox is that half of Southern Africa lives in poverty, with unemployment hovering around 30%, whilst it has one of the most progressive constitutions in the world.

The findings of the research underlined the importance of communication while analyzing the data and making reference to the crucial element of the theoretical framework. The current research study's findings are noteworthy in at least two aspects: Economic factors influencing equality and power distribution. Francis and Webster (2019) argue that the high level of inequality is due to insufficient attention given to the power balance distribution in a capitalist society. Current statistics report that only limited success has been achieved in promoting Black South Africans to upper echelons of management. Of the eight South African-based mining companies included in an index of the top 40 stocks traded in Johannesburg, only one, Exxaro Resources Ltd, has a black CEO

(Statistics South Africa, 2021). Power produces inequality (Francis & Webster, 2019). This observation supports the critical theorist position (Kincheloe et al., 2018). They confirmed the critical theorist's argument that economic factors are out of necessity, one of the most vital factors that need to be considered in society but could not be separated from any form of oppression. The problem is a complex one. Critical theorists argued that human beings need both labour and communication to earn a living (Habermas, 1984; 1987). This was confirmed by 20% of Participants, as reported in Chapter 4. One of the world's most unequal cultures is South Africa; therefore, managers there need to create legal procedures that are true to the company's mission. (King III Report, 2009). Reed's stakeholder management theory (1999) presents a moral obligation to consider potential stakeholders' ethical claims despite not being obliged to act on ethical norms not provided for in legitimate law.

### **Summary**

These research results further supported previous literature findings that the business rescue regime helps rescue a distressed company (Loubser, 2010). However, the success rate is low (CIPC, 2020). Some jobs were saved, but it became clear that policymakers could address several shortcomings that may be responsible for the lack of success. This result was consistent with findings from previous studies (Goncalves, 2020). Firms are a fundamental part of a healthy economic society and the leading employment suppliers in a democratic society.

The results suggested that employees (essential stakeholders in any business) were not afforded equal status to other stakeholders. Finch (2009) called employees the “lost

souls of insolvency laws. Generally, it was reported that management and shareholders were not in the same financial dilemma and did not find themselves unemployed. Treating employees fairly in a financially troubled firm is one of the main objectives of a successful business rescue process (Cassim et al., 2018). The study was motivated by a desire to explore whether employment security is negatively affected by the Business Rescue Laws. The study also tested the Stakeholder Management Theory (Freeman & Mcvea, 2018) . Chapter Two pointed out how modern companies should adhere to principles of fairness as described in the Stakeholder Manager theory's principles. Nonetheless, it was determined that there are numerous definitions for the term "stakeholder" (Botha, 2015). A plausible explanation involves the stakeholder, which encompasses any group or people directly or indirectly impacting the attainment of the organization's goals. At the same time, another definition states that the theory includes a wide range of interests (Qin et al., 2021). Although the description may differ, the importance of the notion should never be neglected. This study concluded that in agreement with the Stakeholder Management theory, every employee's interest should receive as much emphasis as those of the shareholder, although financially, the shareholders will be in a stronger position than the employee. The evidence of this case study does not support the idea that employees in this case study receive treatment comparable to the experience of the significant shareholders in the company. The researcher had to actively guard against any research bias, as the research was also influenced by the researcher's desire to correct a perceived imbalance toward employees' rights and needs. Former employees who used to belong to management refused interviews, and most who found alternative employment had no

desire to be further reminded of the period when they were involved with the business rescue process. One Participant was re-employed at another mine belonging to the same shareholders. They explained that they felt their job security depended on their silence and would not further communicate with the researchers. Any participant has the right to withdraw at any stage of the research and ask for all data they supplied to be deleted from the study. Adhering to anonymity and ethical research did not reassure this participant, and the researcher did not utilise any of their information.

The exploratory study's findings corroborate the claim that the implementation of the Business Rescue Process has an impact on job security. The survey showed the extent of desperation that workers feel when a Business Rescue attempt fails. A rescue attempt that seems to be failing causes deep distress to the extent that more than one person commits suicide, as reported by Participant 4. The employees' stated negative emotions, including perplexity, anger, and anxiety, were made worse by the fact that they were unaware they would lose their jobs until they attended the first staff meeting that the business rescue practitioner arranged. They were also frustrated by the apparent lack of power any employee receives by law. The literature review has shown that employees are afforded great ability by South African legislation (Loubser, 2005). Still, the employees at Big Five Mine's experience differed from the expectations created by legislation

Further findings reveal that many skilled workers are now lost to the economy due to the Business Rescue process not being concluded. De Abreu (2018) attested to the fact that employment losses follow a botched Business Rescue operation. These skills are then lost to the economy, as formal employment is scarce in South Africa. Unemployed people

cannot always use the skills they learned in a traditional career to make a living. The research results showed that unemployed people first try to find alternate employment and then turn to different entrepreneurial options, such as selling fruits, raising chickens, or buying a vehicle to supply taxi services to their community. Others turn to subsistence farming.

Throughout the Business Rescue process, participants' feelings about employee participation were regularly recorded. The Business Rescue practitioner's conduct furthers the impression that employee reps are not engaged participants. Records and information at hand attested to the fact that workers do not have any say or voting rights when a company is having trouble deciding whether to go through business rescue procedures. Only employees who were due remuneration could vote at the first creditors' meeting. Their status is thus changed from employee to creditor. The first creditors meeting is generally well attended, as the process has just started, and employees hope to gain information on their future employment protection. Employees could only participate in the meeting as a creditor.

Trade unions' active participation was a source of concern. Practitioners have previously expressed that trade unions and employee representatives create chaos in the media, but their involvement with employees is minimal (Jombe & Pretorius, 2022). De Abreu(2018) also reported that trade unions and business rescue practitioners do not have a good relationship. The elected employee representative in Big Five Mine was very active on media platforms. (Participant 25). His life was in danger during different stages of the procedure, but none of the threats came from Business Rescue practitioners. The



experience does confer with the view that media involvement is not conducive to functional rescue, as the negative press might influence potential investors to turn away from the prospect of rescuing a company (Pretorius, 2013). Employees disagree with the view of Practitioners. Participants reported that a lack of information prevented them from actively participating, and they appreciated their representative making their plight known in the media. His continued involvement also rendered positive results for the trade unions in that a few years into the process, Business practitioners in the Big Five Mine process obtained e-mail addresses for all employee representatives, and all correspondence was thereafter shared with them. The Business Rescue law mandates this action and should be part of the process from the onset.

These outcomes supported Pretorius's (2014) findings about the crucial role the business rescue practitioner plays during this process. At least initially, the Business Rescue Practitioner should collaborate closely with the management of the troubled firm because they may not possess an extensive understanding of the industry the business they are attempting to save operates. Naidoo et al. (2018), Pretorius & Rosslyn-Smith (2014), and Bradstreet (2011) agree on the need for excellent and ethical cooperation between management and the business Rescue Practitioner. While Bradstreet (2011) argued that in certain situations, the Business Rescue Practitioner is required to act forcefully in order to correct the past mistakes of management, Pretorius (2015) cautioned that some Business Rescue Practitioners are very concerned with wresting power away from the current administration because they were the ones who created the firm's current financial problems. The critical role the Business Rescue practitioner performed in the employment

security of employees was an unexpected result that developed as a theme in this research, as the researcher foresaw criticism of the legislation but not of the Practitioner. Litigation stopped the Business Rescue Practitioner in the Big Five Mine case from carrying out the Business Rescue Plan. Plans for business rescue are necessary for a business to be successfully rescued.(Naidoo et al., 2018). Academics and business rescue practitioners continue to disagree over what makes a good business rescue plan. According to Pretorius & Rosslyn-Smith (2014), an operationally feasible, transparent, and objective business rescue plan is essential. According to Levenstein (2015), the parameters assigned to the Business Rescue Plan should formalize the structure and substance of the plan. One could argue that the strategies aren't standardized because each corporate rescue effort is unique, necessitating flexibility. Businesses do, after all, have particular factors to consider. As a result, the Business Rescue Practitioner must be given the leeway required for each situation. (Jijana et al.,2015).

Because of this, it is crucial that business rescue professionals be able to create business rescue programs that are tailored to the needs of the debtor. In the current case study, the creditors and other stakeholders initially adopted the Business Rescue Plans, and the Practitioners continued to supply monthly updates. Still, these were not accessible to the employees of the Big Five mine. Following significant back-and-forth, the Practitioner's monthly report—which was now shared with all stakeholders each month—explained that they will be able to carry out the Business Rescue plan only when all ownership and potential owner litigation has been resolved. This further contributed to

employees being left to wait for the outcome, dealing with financial insecurity and unemployment.

The study's findings corroborated those of Lusinga and Fairhurst (2020), who concluded that it is still unknown how stakeholders will function under Business Rescue. Levenstein (2015) concluded that because stockholders "are on the outside looking in," their involvement in a business rescue procedure is limited. Therefore, not all stakeholders are treated equally. (Loubser, 2010). They argued that employers were bestowed more rights than shareholders, leaving shareholders powerless. Current research findings supported the conclusion that Labour laws sufficiently protect South African Employees (Etukapan, 2012). Still, the Business Rescue Procedure allows some procedures to take precedence over any claim that might arise from employees rendering services to a firm (Loubser, 2005). Loubser concluded that achieving a balance between protecting employees' interests and encouraging a successful business rescue is a complex endeavour, as stated in this study's literature review, and the analysis of the gathered data seems to suggest that South African legislation might have to be reviewed by policymakers, to make provisions for peculiarities in the law. Aggressive retrenchment of employees is frequently the first step in evaluating a business rescue plan. The study's findings supported earlier research showing that substantial criticism of the Business Rescue regime often stems from a high degree of staff reduction (Johnston et al., 2020). Business rescue plans provoke and endorse retrenchment, seemingly in defiance of the secondary aim of the Act, which is to decrease unemployment by saving companies for the economy. These results conflicted with those of Rajaram et al. (2018), who contended that rescue companies find it

challenging to lay off workers due to existing labor rules.(Rajaram et al., 2018). Loubser (2010) said that companies going under should be seen as a natural process for renewal of the economy, and not all companies can be saved. Therefore, if it is decided to close the business and cut staff, labor rules shouldn't hinder a successful business rescue procedure. The current study's findings are that South Africa may be a long way off from finding the balance between unemployment protection laws and the need to protect a robust business environment, as was the aim of Business Rescue laws. South Africa has a 35 percent unemployment rate; thus, laws that contribute to this high (and rising) number must be closely examined (Stats SA, 2020). This statement is supported by the poor performance of Business Rescue Procedures in the last ten years (Stats SA, 2020). Jobs were not saved because Business Rescue often proved a percussor to businesses' winding up and liquidation. The Business Rescue Practitioners' assertion that business rescue is focused on job preservation is not well-supported by the available data, despite the fact that the law appears to be the most employee-friendly option.

The literature review answered the question of whether South African law was needed and why it was based on international law. It became clear that the worldwide recession of 2000 did not leave the South African economy unscathed. Job losses were at an all-time high, and politicians were scrambling for a way to revive the economy. Introducing business rescue laws seemed like a sensible way to afford companies that face temporary financial problems a way to save the company and jobs. A good option was provided by going in a direction that seemed to have its origins in "Chapter 11" of the United States Constitution. However, many academics have argued that the law should be

adopted to address South Africa's circumstances (Loubser, 2013). The research supports the findings of Naidoo et al. (2018), who found that the South African Business Rescue framework contains a number of unique requirements that may be responsible for the procedure's poor success rate. The main problem might be the excessive power given to a solitary stockholder or employee, as Loubser (2005) stated.

Giving up managerial control of the company to a business rescue practitioner who was not familiar with the failing company's operations was another issue that arose. Thirdly, a company rescue strategy was being implemented in spite of additional legal problems. These statements are supported by Levenstein(2015). They postulate that the augmented workers' rights, as enshrined in the Act, may cause skepticism of the favorable chances for a successful rescue. Stakeholders with a majority voting right might not support the process. Xaba (2018) proposes that there are shortcomings in specific laws and regulations that need to be fixed. These loopholes must be analysed further to gain insight into the current regime. Naidoo et al. ( 2018) offer the opinion that these revelations must be comprehended from the position of business rescue practitioners since they are responsible for rescues and should be able to provide a better perspective on the subject. (Pretorius, 2014)

The research study found that not many employees were familiar with this procedure. Research data from this study suggest that workers become more familiar with this procedure once they find themselves part of it. Still, very few, if any, were aware that the law empowered them to instigate it (Burke-le Roux & Pretorius, 2017). A former study involving employees' experience with Business Rescue had to be abandoned when it was

found that employees had no knowledge of business rescue procedures (Pretorius, 2015). This study aimed to provide a novel perspective on employees' experiences and mental processes in business rescue operations. The present study's findings indicated that workers in the South African setting require more access to knowledge and training. While Labour laws are some of the most modern in the international context, and labour is protected adequately by statute, the inequality in education and all levels of society opens the law up to possibilities of abuse (Botha, 2015). By offering an account from the "employee-as-a-stakeholder-" perspective, the research study's findings sought to answer the research question and serve as a beginning point for future studies on business rescue. The research aimed to determine how Business Rescue influences job security in the mining sector at Big Five Mine, South Africa. The study revealed that the majority of job positions are not safeguarded throughout corporate rescue measures, and the duration for completion did not reach anticipated standards. The ambiguity regarding the duration required to complete the process hindered individuals from seeking alternative employment opportunities.

Nonetheless, prior research has demonstrated that the quantity of jobs preserved during Business Rescue is more noteworthy than the number of jobs lost during a company's liquidation. (Pretorius, 2015). Business Rescue affects employee behaviours as the adverse effects impact their family lives and well-being. Skilled workers leave the region, and some relocate abroad in an attempt to salvage a living when they lose their jobs during the business rescue process. The country finds itself poorer as the government cannot collect taxes from unemployed people (Jombe & Pretorius, 2022). The concerns addressed in the interviews were that people no longer have money to afford transport, and

some children do not attend school as their parents cannot afford their tuition. Although the government does support primary education, the reality is that schools are affected by parents having no income, and children are sometimes kept from school because a parent cannot afford school uniforms, transport to school, or minimal school fees.

This study agreed that jobs could be saved when Business Rescue is successfully implemented (Pretorius, 2015). According to the literature, it is critical to define exactly what constitutes a successful business rescue. Researchers like Pretorius (2015) and Conradie and Lamprecht (2018) claim that South Africa cannot unquestioningly depend on business rescue success guidelines established by outside experts. Pretorius (2018) revealed that an evaluation of business rescue events needs to be investigated to propose a viable framework for assessing business rescue events. Liquidation as an alternative offers no employment retention. The results of the current study's findings showed that workers' common lack of understanding of business rescue methods caused friction with business rescue practitioners. The degree of stress experienced by the employees was a startling finding in the current study, deserving of its own independent theme. They attributed the lengthy Business Rescue procedure to the Business Rescue Practitioner's perceived incompetence. It was found that overall, Business Rescue presents a chance to save a company, but the process needs to respect all stakeholders. Job losses must be reduced to a minimum as employees experience uncertainty and financial suffering if a competent Practitioner does not handle the process. A practitioner needs to enlist the help of an experienced individual who knows the business industry they are trying to save (Pretorius, 2013). Ultimately, the loss of jobs is a severe blow to small companies relying on the

employees of the mine for income. Schools suffer when parents lose their income, transport businesses associated with employees traveling go out of business, and the government loses revenue when the taxpayer is lost due to having no income. Many mining towns in South Africa become ghost towns when a mine goes out of business (Jombe & Pretorius, 2022) . The Business Rescue law is meant to protect the economy, and every job that is lost affects the entire country adversely.

As noted in earlier studies(Jombe & Pretorius, 2022;Naidoo, Patel, & Padia, 2018 ; Rajaram, Singh, & Sewpersadh, 2018; Jijana, Chetty, & Karodia, 2015; Bezuidenhout , 2012) the business rescue procedure are frequently abused. Business rescue frameworks are often perceived as being debtor-friendly or even designing a too-low threshold for initiating the process, thereby allowing the process to be abused by overprotecting debtors and leaving employees in a precarious position of being protected by labour law but still unable to receive any employment protection. After analyzing the study's findings and the researched literature, a number of recommendations that can be implemented to stop the misuse of rescue procedures were found. Levenstein (2015) pointed out that a court of law ought to review a board's decision to put a business into business rescue. The findings of this study supported Levenstein's (2015) argument that independent approval of the choice of a Business Rescue Practitioner should be required and should not be left to the board of directors or management alone. Similarly, Levenstein (2015) said that prior to consenting to a company being placed in business rescue, an independent auditor should validate the firm's financial standing. This will stop someone from abusing the system by only putting a company into Business Rescue to get debt relief. Naidoo et al. (2018) recommend



thoroughly reviewing the distressed company's financial situation and cautious deliberations to assess whether a company can be rescued. A realistic evaluation of the staff members and the company's financial situation should be part of the process. Because of this, Levenstein (2015) and Pretorius (2018) suggest that a pre-assessment of the likelihood of successfully rescuing a distressed company should be completed by a prospective business rescue practitioner. A business rescue practitioner should only be hired after taking into account how realistic the plan is. These findings indicate a clear need to base the decision of whether a company should enter a business rescue on factual decisions gathered by a professional person before the event. Thus, the opinion offered is that the Business Rescue procedure should be implemented only to restore financially distressed corporations. Furthermore, CIPC must impose a cap on the number of business rescue appointments that a practitioner may accept at any time. The staff complement that is assisting them in a "rescue" could be examined to ascertain this amount, and the system ought to permit a Practitioner to leave a business rescue after being chosen.

The rights of employees and trade unions include significant provisions that are not equaled internationally. Discernable action should be taken against any individual or organisation that abuses the system for personal reasons. For example, the ability of a single employee to start business rescue procedures could be abused, although it is highly improbable that this would happen because the procedure is costly and time-consuming, as it is generally known. (Hofmeyer, 2018). Participation in a rescue procedure is further limited by the cost of the business rescue proceedings during a time when the company is already experiencing extreme financial hardship. Academics such as Pretorius and

Rosslyn-Smith (2014) recommend business rescue and court involvement as a last resort. They suggest that businesses try to settle disputes outside of court in order to avoid the hassles and costs associated with going to court. Finally, Rajaram et al. (2018) determined that understanding and abiding by the requirements of the business rescue legislation is one of the most crucial elements for firm management and staff.

Thus, the results confirmed the need for reform in implementing business rescue proceedings. Employees are often left unemployed, which has severe implications for their families and financial security. Unemployment has many effects on the economy, and measures could be taken to ensure that effective implementation of this legislation saves as many jobs as possible and, therefore, meets the expectations of the policymakers that first implemented this law in 2011.

Chapter Five reflects on the results and conclusions, while recommendations for the future implementation of this legislation are reported. This last chapter includes a brief synopsis of the research's theoretical framework, problem statement, purpose, methodology, limits, and ethical considerations.

## **CHAPTER 5:IMPLICATIONS, RECOMMENDATIONS AND CONCLUSIONS**

### **Introduction**

This study explored the impact of business rescue on mineworkers' employment security, guided by the stakeholder management theory and a qualitative case study design. The evaluative research sought to comprehend the impact of corporate rescue on job stability and the likelihood of this law resulting in job loss and economic repercussions. The cross-sectional study was conducted at a single mine in Mpumalanga, South Africa, with confidentiality and anonymity ensured through measures such as changing the mine's name to protect participant's identities and maintain their safety. The breakdown of the above synopsis is the theoretical framework that follows the Stakeholder management theory, while the research design was a qualitative case study. The problem statement was that the problem was high unemployment figures and employment insecurity during the business rescue. The purpose of the study was to understand the impact of corporate rescue on mineworkers' employment security. Ethical considerations included confidentiality, anonymity, and participant safety.

The current qualitative study addressed four research questions on the history of Chapter Six of the Companies Act 71 of 2008 and the implications of this law for the job security of Big Five Mine employees. Big Five Mine is not the actual name of the mine. The exact name of the mine is being withheld on the advice of the student's Supervisor and the doctoral committee, as the subject is sensitive and security issues exist.

The results of this study support those of earlier research, indicating that the South African Business Rescue system provides a significant economic remedy for the issue of

businesses closing their doors due to financial difficulties (Jombe & Pretorius, 2022). The Business Rescue Acts offers a potential foundation that allows businesses the time and space to reorganize (Matenda et al.,2023). While several issues with the law make it less likely to succeed, it does have the potential to keep people in jobs. Employed people make a significant contribution to the economy of a country. The business student is concerned with the economy and the various influences the country's legislation has on that country's economy. The findings suggest that the regime might be enhanced in certain areas to increase the process's success rate. The nation's economy will gain from any increases in the success rate of the business rescue procedure. The success rate of the process is of significant importance to business students and economists alike, as the outcome impacts the economic welfare of an entire region or country, as discussed in the literature review (Conradie & Lamprecht, 2021). Jobs are lost when a business rescue fails, and the economy suffers (CIPC, 2020). The literature review indicated that the business rescue regime is associated with a stigma in South Africa. Internationally, similar trends were noticed (Tajti, 2017). Despite **UNCITRAL's** (United Nations Commission on International Trade Law, 2005) efforts to address this issue, nations like China and several European countries continue to favour company dissolution over failing business restructuring (McCormack, 2009). McCormack discovered that in the United Kingdom, the focus has consistently been on the process of selling a corporation rather than the process of dissolving it. The global economic recession of 2008 has heightened the awareness of business bankruptcy and the need for further changes in practice and legislation. In South Africa, this need led to the

implementation of the current restructuring laws, better known as “Business Rescue Laws” (Loubser,2013).

The study evaluated, in particular, the employees' perspective of the effects of this legislation on continued employment security, which is influenced by the conceptual framework of stakeholder management theory (Reed, 1999). This study's main goal was to fill in the knowledge gap about the employee's experience with the Business Rescue procedure—the knowledge gap was identified in the literature review. The literature review showed that employees are unfamiliar with the process (Berry, 2012) . The current study's findings align with those of previous studies, concluding that the experience and expectations of employees were not adequately managed. According to Winer (2016), a company in financial hardship can reduce mistrust and ease employee concerns by improving communication between management and staff. The results of the current study supported the above finding, as one of the main criticisms directed at the process from employees was the lack of communication they experienced, leading to a lack of feelings of employment security. Data from in-depth interviews were analysed, and documents referring to the Business Rescue Procedure at Big Five Mine supplied secondary data to this study. The implications presented in this section are informed by a comprehensive analysis of data from face-to-face interviews, focus groups, and content analysis of documents, which was conducted deductively using pre-identified themes as codes to categorise and quantify the data, providing a rich understanding of the phenomena under investigation.

## **Theoretical Implications**

The study emphasised the necessity of implementing stakeholder management theory in all workplaces, as it revealed that employees feel excluded and have limited access to information during the business recovery process. The current study was based on the theoretical framework of Stakeholder Management Theory and aimed to investigate the idea that employees encounter discrepancies in the implementation of Business Rescue Law, which may lead to a sense of job insecurity among these employees. A noteworthy theoretical inference is that the African Philosophy of "Ubuntu," which conveys the idea of valuing humanity towards others, can be perceived as the application of Stakeholder Theory in the African continent. This is because stakeholder management theory advocates for equal treatment of all stakeholders. The present study assessed the implementation of this technique throughout business rescue operations and determined that it was not carried out. There are still many unanswered questions about the conduct of the management during the process. However, the study results supported the idea that management could be improved by adhering to the principles of stakeholder management theory, as Freeman described (1984). The conclusion is that values should play an essential part in doing business. Although values differ in different companies, the overall goal should be to treat all stakeholders fairly and assign equal importance to the needs of all stakeholders (King IV Report, 2016). The theory depends on how other groups or individuals affect the business. In addition, the Stakeholder Management Theory articulates how management and the company pay attention to the interests of all stakeholders. The current study's findings show that while the text requires compliance with the law, Business Rescue practitioners did not keep employees informed of all the processes during the Business

Rescue process. The research results indicated that management could benefit from adhering to the principles on which Stakeholder Management Theory hinges. Because their actions could decide whether a company survives the Business Rescue Process, stakeholders play a crucial role in the process. Stakeholder Management Theory is not well covered in turnaround management literature.

The picture that emerges from the analysis is one of work practices that do not adhere to equality principles. What is striking is that management and practitioners failed to communicate the restructuring process successfully to employees who were the first casualties. However, communication did improve in the later stages of the process. Still, as the employees' financial position deteriorated, they could not access this information, as information was made available electronically, and employees could not afford the resources necessary to access the communication. Decision makers should pay attention to Stakeholder Management Theory as an intimate knowledge of this theory might benefit the turnaround process. Recognizing and appreciating the employee as a crucial stakeholder could significantly impact the method and help a business rescue procedure succeed. Each successful rescue will benefit both the regional and national economies.

Until recently, scant information was available on how the employee experiences the Business Rescue Process. As mentioned, previous studies could not be completed because employees could not provide data, and their knowledge of the process was almost non-existent. (Pretorius, 2015). The current study successfully obtained and represented the employees' perspectives regarding their experience throughout the restructuring procedure. Future students will be able to use the present study as a solid foundation to

further engage with employees from all economic sectors about their experiences with the Business Rescue legislation. The current study concurs with previous findings that information on all aspects of the Business Rescue Process needs investigation (Levenstein, 2015). In South Africa in 2022, business rescue is still a relatively new procedure. A decade after the legislation was implemented, there is still a problem with accessing information, as evidenced by current research results. Exploring avenues to make this information available to all stakeholders during the Business Rescue procedure should be prioritised.

Directors, management, shareholders, owners, employees, consumers, creditors (secured and unsecured), and contractors are essential stakeholders in functional enterprises. Additional stakeholders become involved as soon as a distressed business decides to enter into Business Rescue. Companies need to choose a Business Rescue specialist to oversee the procedure. In addition to being a stakeholder, the practitioner will find additional stakeholders, such as prospective purchasers and post-commencement lenders. Although the courts and the regulator are also parties involved in the process, this study focuses on the employees' perspective as stakeholders. Previous research indicated that positive involvement from all stakeholders could increase the survival of an ailing business (Lusinga & Fairhurst, 2020)

Notwithstanding the problems mentioned above, employees of Big Five Mine have become more familiar with the process because they have been involved with the Business Rescue process for more than five years. After completing the current study, the Researcher became aware of two similar studies published in recent years while updating current references. When Gonqalves (2020) released their findings, they focused on the dedication



of the staff members during the company rescue procedure. This business study was conducted by the University of Pretoria's GIBS Business School. An additional study was released in the Journal of Modern Management. The writers of Volume 19 Issue 2 in 2022 are once more from the Department of Business Management at the University of Pretoria (Jombe & Pretorius, 2022). The ongoing interest shown by South Africa's premier Business School indicates a clear need to understand the position of employees as stakeholders in the process and underline the importance of investigating factors contributing to South Africa's high unemployment figures. Interviews with business rescue professionals and other process stakeholders were conducted for both the mentioned studies. The researcher is unaware of any other studies that interviewed the employees directly. This research study delivered an original contribution to existing knowledge, as it investigated the employees' experience with this law and the impact on their employment security by conducting in-depth interviews with employees and framing the study with the theoretical perspective of stakeholder management theory.

## **Research**

### **Implications**

The present study focused on the economy, the legislation regarding company rescue, and the issue of unemployment.. Unemployment is a key factor in determining a country's economic status. In the conclusion of this study, the Researcher would like to consider the impact of labour laws on the South African economy. Big Five Mine is in Mpumalanga, South Africa, a region with high unemployment. Mines used to be the primary employers in Mpumalanga, but in the last decade, many mines have closed down

(Steytler & Powell, 2010). Enhancing productivity is crucial if South Africans wish to maintain their competitiveness in the international market, as the mining industry plays a significant role in the country's economy. As the fourth industrial revolution approaches, South African mines don't seem to be able to sustain good economic growth. (Karolia-Hussain & Fourie, 2021).

Labour unrest and harsh working conditions make mine work less attractive to the youth. Even though employment is essential to a person's ability to support themselves and their families and to meet their fundamental necessities, labour

may also be dangerous, particularly for South African mine workers. Karolia-Hussain and Fourie (2021) recommend stronger laws around The Labour Relations Act and

Occupational Health and safety risks to counteract this effect. The current study's results imply that improved regulation of the law's implementation is necessary to prevent non-adherence rather than supporting the notion that stricter rules are necessary. Participants

felt the law was perfect, but its implementation left them powerless to fight against management decisions, as the Department of Labour did not wish to interfere with the

business rescue process. According to the Republic of South Africa's 1996 constitution, everyone has the right to fair labour practices. Given the current economic conditions,

job losses seriously threaten the nation's standing internationally. Low-skilled

employees will probably lose their jobs; these individuals will mostly come from

historically marginalized communities. On top of all these factors, the mining sector

expects to reduce its workforce even more due to machines becoming available to

replace an unstable labour force. Unemployment is a socio-economic problem affecting

the country's credit rating and government resources. Every job loss diminishes the

taxpayers' basis, thus placing a more considerable burden on government resources. Even though the country may show industrial growth, the job opportunities do not grow proportionally. Lack of employment opportunities has the effect that regions like Mpumalanga become impoverished regions, where businesses do not want to invest due to the lack of infrastructure and diminished wealth eroding the consumer base. Entire mining towns have become desolate. With no customers, businesses and banks had to close down, leading to further job losses and the impoverishment of regions. Poor consumers had to travel further to buy essentials, putting a lot of strain on already scarce resources. The decay is especially prevalent around previous mining towns. To manage the numerous positions that are being lost, the report suggests that corporations form partnerships with other relevant parties. Revisiting the legislation, it is of the utmost importance to the business community that no laws allow or contribute to the abuse of labour (Karolia - Hussain & Fourie, 2021). Legislation that does not make it easier to navigate labor laws and prevent employees from being the first casualties during a restructuring event, such as Business Rescue, needs to be strongly monitored. The South African workforce is protected by legislation covering numerous aspects of labour relations. The study's participants concur that the labor laws adequately protect them, but there is still much space for improvement in the way that business rescues are carried out, which might lessen participants' feelings of vulnerability in the event that they lose their jobs; this finding implies that although the constitution protects South African workers, they feel unprotected in a business milieu where a legal process takes preference over the enactment of their rights as labourer's. Unemployment figures continue to rise in South

Africa, with Mpumalanga showing an unemployment rate of 54 % in the first quarter of 2023 (Stats South Africa , 2023) . Aside from legal and moral arguments, economic rationale is essential for broader compliance with labour law, particularly by employers of unskilled labour forces. The South African economy's increasing appetite for highly skilled labour due to mechanisation and industrial processes that aim to compete in the international market means that lower-skilled employees bear the brunt of unemployment. Thus, further to the implication of the suggestion that labour should be trained at every opportunity, this requirement should become mandatory for all employers. Unemployment and the resulting pressure could be alleviated by upskilling labour with some of the profits of a going concern. Legislation regulating employment has both positive and negative economic effects. From a micro-level perspective, labour-related laws protect workers and increase their bargaining power. At the macro level, labour-related regulations bear costs that could affect efficiency and aggregate economic variables. This protection may also have financial implications affecting employers' incentives to grow and generate employment. Although this study mainly highlighted the adverse effects of not having adequate employee protection, the positive aspects warrant a discussion. Labour and labour laws introduce equality into the market, enabling the employee to benefit the local economy. Mines in South Africa have a very negative connection to complying with regulations regarding health and safety. Big Five Mine, the subject of the current study, has been closed due to safety concerns. Subsequent investigations have revealed some negligence on the mines' part. Paradoxically, because the mine was forced to close due to concerns for the employees' health and safety, many

found themselves unemployed as the mine could no longer operate and, with no income, could not pay its employees.

The implication of enforcing this law had unintended consequences for the economy. No sane person could argue that health and safety compliance should be ignored. These laws came about for a very valid reason, but enforcing these laws and abiding by them has become costly. It is worth investigating in the future whether reducing the cost of reforms could be a sufficient incentive for employers to comply with regulations. The literature study discusses the hidden cost of the business rescue procedure, which is another effect of these regulations on the economy. Many small businesses could no longer remain open as they were wholly reliant on the mine workers as their clientele. When the mine workers no longer had an income, small furniture shops, food stores, school clothing supplies, and cell phone businesses had to close down. Even some branches of larger furniture companies and commercial banks had to close as their services were no longer needed in the mining area. These businesses closing down meant more job losses and fewer taxes being paid. It is worth investigating the business rescue law from all aspects to help determine if it contributes to unemployment, as it was not the effect the government intended when promulgating this law.

This study supports the argument that business rescue contributes to unemployment as the labour market cost is normally the first to fall under the scrutiny of the Practitioner. Savings on the employees' salaries are a consideration that is legally allowed to save a firm, but preserving employment should be a priority considering the negative implications on the national budget. In South Africa, one pay check is enough to

support at least eight people. The economy is unable to bear the expense of unemployment. With business rescue operations having a low success rate, it is worth considering the recommendations to make changes to this law that would benefit the country's economy.

A review of earlier research supports a few suggestions that can be implemented to stop the misuse of rescue procedures (Levenstein, 2015). The conceding of management to a Business rescue practitioner is a sore point that participants in this study raised, and the concern is confirmed (Pretorius & Rosslyn-Smith, 2014). Rajaram et al. 's (2018) research highlighted the significance of knowledge by emphasizing that businesses must comprehend and abide by the terms of business rescue regulations. According to Xaba (2018), specific ambiguous terms in the regulation and certain definitions lack clear and specific phrasing—words like "realistic hope of salvaging the company" could have various meanings for different stakeholders.

The study's findings helped clarify how employees perceived and understood job security and how the Business Rescue Procedure affected it. The definition of “employee” is essential to the conclusion of this study. South African legislation has expanded the definition of an employee to more than what common law defined as employees. The Labour Relations Act describes in section 213 an employee as any person who works for another and receives remuneration.

Data suggest that employees associated job security with being paid on time (Abri et al., 2022). Perceiving the business that they are employed by to be prosperous and meeting the targets for production as they were set by management also provided a sense

of job security. The study developed distinct themes around the organizational, interpersonal, and personal behaviors that employees found significant during the Business Rescue Process. The management's actions were criticized. Their behaviour was primarily described as distant since employees could not engage with management. Thus, regular engagement with management was identified as a factor contributing to workers' sense of employment security. Abri et al. (2022) mentioned similar results. Management is often a problematic issue for Business Rescue Practitioners.

On the one hand, management's expertise may be invaluable to a Practitioner needing to rescue a business they are not familiar with in an unfamiliar industry. On the other hand, management might be responsible for the current dilemma the company finds itself in and, therefore, needs to be removed as soon as possible. (Pretorius, 2013) In the present case study, participants reported that they viewed management as part of the problem they face and are said to feel resentment for the fact that management is still receiving a salary while under business rescue and after their employment has already been terminated. Another significant result supported by research data was that uncertainty around the timeline of this procedure contributed to a lack of employment security. Results backed by interview data were a need for training and information. Lastly, the research findings corroborate the legislator's recommendation that in contrast to the existing system, which requires the practitioner to hold a professional license and be appointed by the Intellectual Property Commission and Regulator Companies, a Business Rescue Practitioner should be a member of a governing body established explicitly for Business Rescue (Jombe & Pretorius, 2022). The results of this research indicate that employees

would prefer the appointment of a Practitioner to be done by an independent Governing body and not be left to the management of the board of the ailing company.’

In addition to the data gathered from employees, two focus group discussions were held to provide feedback and clarity on the law's details as it impacted employment security. One focus group consisted of employee representatives. The same questions as per the interview guide (view Appendix H) were discussed in this focus group. The second focus group consisted of professional people plus employee representatives. The focus group interview was also guided by interview questions approved by the supervisor and UREC (Unicaf Research Ethical Committee). These research interviews were aimed at providing guidance and clarity on the legal aspects of this research.

This study evaluated the disparity between the policymakers' intention for this legislation and the implementation thereof, as evidenced by the results of this study's fieldwork. This study found that a multi-interest stakeholder approach, where all stakeholder interest is afforded equal importance, will benefit a country where employees find their welfare is protected by law, but the country's overall unemployment status does not improve. This study supports the findings of Lusinga and Fairhurst (2020) that stakeholders' roles in Business Rescue are not yet clearly identified. A discussion of the topics that emerged from the fieldwork data analysis is provided below. By creating a space where individuals might join the conversation at any time without worrying about consequences, the researcher hoped to preserve the anonymity of study participants.



## **Thematic results**

The researchers' thematic analysis yielded key findings that will be used to elucidate the implications, results, and conclusions emanating from the integration of field data and document analysis results, thereby providing a rich understanding of the phenomenon under investigation. The five themes that were developed are: "The significance of job security," factors of a personal, interpersonal, or observational nature that gained significance for employees throughout the process, the legal dimensions of Business Rescue, the conduct of the business rescue practitioner and guidance for prospective workers who may become involved in the business rescue process.

### **The meaning of job security**

The study results revealed that employee well-being is critical to the economy and financial stability (Theme: job security), highlighting the importance of job security in the business rescue process. Statistics South Africa shows that the high unemployment rates are a cause for concern, which has been investigated by previous scholars (Francis & Webster, 2019). The South African legislation concerned with employment security forms part of one of the most progressive constitutions in the world. The Republic of South Africa's Labour Relations Act, Section 23, is the ultimate legal guideline pertaining to employment in the country. (The 1995 Labour Relations Act, 66) The right of employees to fair labor practices is protected by this Act. Employees were interviewed as part of the current study to find out how the Business Rescue Act affected their job security. Results from the interview data suggest that employees define employment protection as the sense of security they experience, thinking they will be working for the same business until

retirement. This outlook is not realistic measured against the high failure rate of Business Rescue since its implementation in 2011 (CIPC, 2015).

Another factor influencing feelings of employment security was the reassurance they experienced by being paid on time every month. They felt they fulfilled their side of the bargain by ensuring that the mine reached its monthly production targets. Many participants reported that they felt secure while their job seemed stable. Maslow's hierarchy of needs identifies basic needs such as food and rest (Pichere & Cadiat, 2015). These translate into money and equate with the ability to earn a living wage. If a person has a job that pays their rent, food, and clothing, the job meets their basic needs. Being unemployed is thus not having your basic human needs met, which might explain the hopelessness and suicidal thoughts experienced by unemployed participants.

South African labour laws take precedence over other laws in South Africa, but the interview data revealed inconsistencies in applying these laws. Labour in South Africa can negotiate about continued employment when they feel that they are losing their jobs unfairly or unnecessarily. Although labour can approach the CCMA (Commission for Conciliation, Mediation, and Arbitration), the mine workers' sense of employment security was further eroded by the CCMA decision that the organisation cannot interfere where a Business Rescue proceeding is still active. This decision became apparent by reviewing documentation sent by a government department (Department of Mineral and Energy Resources) to the employee representatives, confirming that the government would not interfere with the proceedings as they involved a private company. South Africa is an essentially capitalist society (Francis & Webster, 2019). Interview participants confirm that

they sell their labour to those who can afford to pay them. They feel that government should intervene when it becomes apparent that their labour is still affordable, but they are not getting paid. Research results indicated that employees understand the term “Business Rescue” to imply a company still has money to operate, whereas, in the event of a liquidation, it is general knowledge that there is no money to continue the operation.

Although many state entities, such as South African Airways, have entered Business Rescue, the employees felt that it was evidence that nationalising mines would not lead to a better outcome for them regarding job security. They pointed to the lack of success in these proceedings as the reason for the rising unemployment rates. Employees were also dissatisfied with their classification as a creditor in this process. They feel that employees as stakeholders should be getting preferential treatment in this process. Academics contended that because the law does not allow shareholders to start the Business Rescue process, employees are treated better than shareholders (Xaba, 2018). They acknowledge that achieving a balance between protecting employee interest and encouraging a successful Business Rescue is a complex undertaking (Loubser, 2005). While current research agrees with Loubser (2005), the fieldwork results suggest that this legislation does not balance all stakeholder interests. Allowing separate legal proceedings between stakeholders deferred the conclusion, keeping the mine out of operation. Therefore, the protracted court proceedings allowed no economic activity, thereby resulting in many employees losing their jobs. In the case of Big Five Mine, different investors are disputing legal ownership of debts and mining rights, thereby effectively halting the Business Rescue procedure until legal proceedings can settle the dispute.

One participant expressed the view that he could see that no court order will be treated as final, as both parties involved are continuously granted the right to appeal. Documentation and interview evidence point to a democratic process in action, with the unemployed employees suffering as a result of these legal actions while the mine's legal ownership must be transferred to an investor in accordance with the Business Rescue plan that the creditors approved following the mine's entry into Business Rescue. The research's implications highlight a legal gap since the law is silent on the question of how long a business rescue procedure can last before the liquidation process has to be initiated. The Business Rescue Practitioner is still conducting business in compliance with the letter of the law, which requires that monthly reports be written up and sent to all relevant parties. Every report expresses that the practitioners still believe that the mine can be rescued or, as an alternative outcome is contemplated, deliver a better result to creditors than what can be reasonably expected from a liquidation.

## **Conclusion**

The study demonstrates that job security is a vital aspect of employee well-being, and its impact extends beyond individual employees to the broader economy and financial stability. The employee has numerous obstacles to overcome as a stakeholder in the business rescue process. Employees view the process as a period of upheaval and uncertainty, knowing that job losses are a possibility. While decisions for the company's future are made to save as many jobs as possible, they operate within the knowledge that the primary goal of a practitioner is to save the company. Although CIPC reported in 2015 that 10865 jobs were saved due to the Business Rescue Procedure, this data could be

obscured, as acknowledged by CIPC, in that successes are more likely to be reported than failures. Also, the data includes only the processes that have been completed and not those that are in progress. If CIPC included the number of job losses at the mines still under Business Rescue, the statistics may shift considerably.

### **Personal and interpersonal or observational factors that became important to employees during Business Rescue Procedure**

The findings indicated that personal and interpersonal factors, such as trust and communication, play a crucial role in shaping employee experiences during business rescue. By providing the employee's perspective, the researcher wishes to understand better the impact of this legislation on the employment security of the mineworker. An alternative method to Business Rescue may be offered from the employee's perspective once the current study data is included in the body of existing knowledge. Many personal, interpersonal, and organisational factors became essential to the employee during the Business Rescue procedure.

### **Sub-theme: The importance of knowledge and information**

This research refers to the critical theory, which argues that education and participatory democracy can only be obtained with a communication strategy (Fuchs & Mosco, 2012). An unrestricted mass media landscape is necessary for a free society. Within capitalist societies, such as those seen in the United States, United Kingdom, and South Africa, communication serves as a means of engagement that may be utilized to educate laborers and business owners facing financial issues. Where companies do not invest in education and communication to all stakeholders but rather reserve these for shareholders

and management, suspicion of domination and feelings of uncertainty about employment may follow. Critical Theory examines every idea and action that rationalise or enable power or abuse (Fuchs, 2015). A shared worry in the models of the United States of America and the United Kingdom appears to be the abuse of authority. Branston, Cowling, and Sugden (2006), for example, explore redesigning company laws based on wider membership and creating more democratic reforms. Thus, referring to critical theory, this study concurs that an educated and participatory society offers employment security to all workers. In contrast to South Africa, where the system is still in its infancy, the United Kingdom and the United States of America have developed their systems and have greater access to knowledge. The United Kingdom provides grants to its unemployed, but in South Africa, the financial support is only available for three months. The unemployment statistics indicate that these unemployed workers enter an uncertain future with little or no prospect of future employment (Statistics South Africa, 2022). As the taxpayer base diminishes with each person losing formal jobs in South Africa, the whole of society can benefit when communication and education are used as a starting point to negate the adverse effects of unemployment.

This result implies that communication during the Business Rescue procedure could lead to improved feelings of security as far as employees are concerned. This outcome is in line with what the literature study found (Fuchs & Mosco, 2012). The study's findings suggest that improved communication would make staff members more knowledgeable and, as a result, better equipped to voice any issues they may have about the Business Rescue methods. Their willing participation in the current study indicates a

vast improvement in knowledge since the first attempt at interviewing employees. As noted earlier in this study, as recently as in 2015, a study had to be abandoned when employees were found to be utterly ignorant of Business Rescue Proceedings (Pretorius, 2015). Information via mass communication, such as the Internet, did make certain information more accessible, although participants relayed that they do not always have access to the Internet or cell phones, as these things are expensive and they are already struggling to put food on the table.

Notwithstanding the aforementioned problems, the length of the process that is the object of this case study might have contributed to employees being better able to familiarise themselves with the process as more and more studies contributed to the knowledge available on the subject of Business Rescue, for instance, the comprehensive work of Levenstein (2018). The employees might not find these scholarly works very accessible. Still, mainstream media carried extensive reports referencing these works to inform their readers, although employees reported reliance on former colleagues as their primary source of information. Some of the participants were better informed than others, and they mainly contributed their knowledge to their ability to attend the Business Rescue Meetings. They shared information they gathered from the meetings with their colleagues. The more extensive knowledge being made available at these meetings indicates the practitioner's willingness to share information with all stakeholders.

This study would recommend sharing information according to the law's provisions. The general concern amongst participants about the lack of communication is similar to the results in previous literature (Ito & Brotheridge, 2007). Still, from the

document analysis and literature review, it became clear that all stakeholders are generally not well informed about the process. According to research by the University of Pretoria, most company owners and entrepreneurs were not aware that Business Rescue was a possibility (Pretorius, 2015). Participants reported that they did not know about Business Rescue; some read about it, and some only heard about it. Sixty percent of Participants in that study confirmed that they were unaware of Business Rescue in any business. This result agrees with a report on the Business Rescue procedure published in 2015 (CIPC, 2015).

The general lack of information might be due to the alternative to Business Rescue, liquidation, being the most well-known option traditionally available to South Africans. The current research results confirm that ignorance about the process is still prevalent, as 92% of Participants reported having no prior knowledge of the procedure. The result demonstrates the need for South African citizens to become familiar with the process as an alternative for liquidating a business (Martin, 2005). The implication is that better information might lead to more companies being successfully rescued as the legislation becomes embedded in the corporate rescue culture. The South African courts and the public should become more familiar with this law as time progresses and education on the procedure is offered to employees. The law stipulates that labor regulations must be posted on workplace posters in South Africa and that Department of Labor personnel must regularly examine workplaces to verify that all companies are complying with the law. Participants of this study referred to these rules and suggested that the exact measurements should be applied to familiarise the workforce with their rights during Business Rescue.



Guidelines from the South African Government's Labour Dept suggest training for employees who will lose their jobs due to Business rescue. Still, it is not law and therefore not enforceable (Companies Act 71 of 2008, 2009). Often, when it becomes necessary to contemplate reductions, the company has no funds available to offer training. These results were expected as literature on the state of employment indicates that retrenchment is a definite possibility when a business enters Business Rescue Proceedings (CIPC, 2015). It would be foolish to deny that the longevity of your work directly affects your chances, given that unemployment is a severe problem in South Africa, where the government consistently announces higher unemployment rates in all of its quarterly interval reports (Statistics South Africa, 2022). This result implies that an employer should accept the responsibility to train its workforce and that these skills should be transferrable to other industries, giving employees a better chance to survive any reduction in the workforce. Businesses have a moral duty to be socially responsible, thus including the obligation to train and improve workers' skills (King IV Report, 2016). Participants confirmed this need by advising future employees to accept any offers for training and education, as they felt knowledge would provide improved employment security.

All employees who become unemployed (including those who do so as a result of the Business Rescue Procedure) are subject to the Supreme Labour Law and are eligible to claim unemployment compensation for three months (Labour Relations Act 66, 1995). Participants reported the difficulty of servicing their debt and how their inability to pay it negatively influenced other businesses depending on them for trade. A recent study discusses how South Africa has many "ghost towns" (Johnston, Shields, & Suziedelyte,

2020). These towns used to be thriving communities relying on the operation of the mines to support many local businesses and schools. As the mines close down or trade is halted because of Business Rescue activities, schools and companies have to close down as all economic activities are seized (Jombe & Pretorius, 2022). Employees advised future employees to accept retrenchment packages when offered because they feel that the income of a retrenchment package is secured as opposed to waiting for the eventual payout when the Business Rescue procedure is concluded. Employees feel that the income from a retrenchment package could supply funding for an entrepreneurial venture, such as buying a vehicle to be used as a taxi service. As long as the business rescue process is not successfully completed, no creditor (including employees as creditors) will get any payment from the rescue process (Levenstein, 2015). The implication is that the Business Rescue Procedure is a forerunner of economic hardship and uncertain employment opportunities as people waited for the mine to resume operations again. Employees reported that as long as the rescue process continued, they still felt that there was a chance that they might be re-employed. This hope kept their employment opportunities at a minimum, as these employees did not want to move away from the mine and thereby lost their chance of employment in a position they were skilled in and familiar with. Future workers are advised by research participants to accept their loss and hunt for other employment opportunities.

### **Sub-theme: Organisational behavior**

Throughout the study, the theory of Stakeholder management was measured against the study's results (Freeman & Mcvea, 2018) . Theoretical implications are a noteworthy

outcome of this investigation. The report describes how stakeholders, including employees, are impacted by the business rescue program. The knowledge of employees' participation level during business rescue could be compared to the provisions of the Company Act, and corrective actions by all stakeholders involved could be guided by this research result. Stakeholder theory is essential to strategy. The goal of stakeholder theory was to refute the idea that management should only pay attention to stockholders (Freeman & Mcvea, 2018). Whenever a Business Rescue procedure is undertaken, it would benefit all stakeholders if management measures their actions against the principle of Stakeholder Management theory. In his original proposal, Freeman defined stakeholders as people or organizations that may be impacted by the accomplishment of organizational goals (Saunders et al., 2015). According to the stakeholder approach, conducting business involves values (Freeman & Mcvea, 2018). The main idea of stakeholder theory is that enterprises and management should consider the interests of all key stakeholders. Shareholders and management should not be prioritised to the detriment of employees. Business Rescue has been proven successful in saving jobs in some cases (Pretorius, 2015), but this study suggests this is not always the case. Business Rescue should not be implemented when the business is using it as a delaying tactic to liquidate and move assets before the inevitable liquidation (Loubser, 2007). Participants of the study were critical of the management's behaviour, as they felt that management is using the Business Rescue as a delaying tactic to re-organise and restructure without considering their needs or communicating the plans to them. The research results indicate a need for the South African courts and the public to become more familiar with this law. The procedure should

enjoy equal attention in government education on labour laws. As time progresses and education on the process is offered to employees, the general knowledge of the process should improve to a level where employees can make informed decisions and adjust their expectations on what to expect when their employer enters corporate rescue procedures.

## **Conclusion**

The study underscored the significance of personal and interpersonal factors in influencing employee resilience and coping strategies during times of uncertainty, emphasising the need for supportive work environments.

## **The legal aspects of Business Rescue**

The analysis revealed that the legal framework governing business rescue processes has significant implications for employee rights and outcomes. The practical value of this desktop research was to provide an opportunity for the researcher to analyse the impact of company rescue legislation on employment prospects and the South African economy. While business rescue allows for continued employee salary payments, it also provides for staff layoffs in order to maintain the viability of the company. In contrast to liquidation, which results in the instant termination of all employment, a successful rescue will preserve some jobs. A lack of employment opportunities leads to economic suffering. This study provides much-needed background on how implementing Business Rescue laws in South Africa differs from enforcing international corporate rescue laws. Therefore, some of these aspects directly affect the economy and are of interest to the business student. In the future, researchers may use the data collected as a jumping-off point to look into other areas of the Business Rescue Laws and mine worker security. The desktop component of

the current study offered crucial legal data necessary to comprehend how laws affect job security. No business can exist without a proper understanding of the laws and regulations it is required to comply with. Employee rights are covered in detail in Chapter Six of the Companies Act. This Act grants employees the status of "preferred creditor." Zwane (2015). Provision 23 of the Constitution stipulates the significance of safeguarding the rights of employees. The Act does not, however, expressly state that an employee's interests will be safeguarded in the event that a company initiates Business Rescue procedures (Conradie & Lamprecht, 2015). Current employees continue to be employed under the terms of their employment contract during Business Rescue Procedures. However, this clause is negotiable. Both parties must form a joint agreement to accommodate changes that occur throughout the ordinary course of attrition, as stipulated by the Companies Act (Zwane 2015). Caution must be exercised as the rights of employees are vulnerable to abuse. According to some academics, the chances of successfully rescuing a firm may be harmed by the rights of employees under Chapter 6 of the Companies Act, which are out of proportion to the rights afforded to other creditors during Business Rescue procedures (Zwane, 2015 and Loubser, 2005). The economic objective of these laws is to preserve the company from liquidation. Some contend that the plethora of legal rights afforded to employees may impede efforts to rescue a company properly (Loubser, 2010). One employee may file a Business Rescue application; the courts will not tolerate misuse of this privilege, but it is a possibility. The unintended consequence of this provision may be that an employee applies for the process to cause aggravation and damage to a company's reputation (Joubert, 2018). A dangerous balance is sought when a business

must rigorously abide by labor rules while also attempting to meet the needs of its creditors and suppliers (Loubser, 2005). During the process, employee rights should be respected while striving to maintain a successful Business Rescue procedure, which must remain a priority.

The literature review in chapter two dealt extensively with this research question on the history of Business Rescue legislation. Although it was determined that international law serves as the foundation for South African laws, particular emphasis was placed on Chapter 11 of the US Constitution (Dept of Trade and Industry, 2004). Even though this legislation is considered the “benchmark” for modern corporate rescue laws, the law cannot be transferred directly into South African legislation. (Loubser, 2013). Loubser (2013) stated that this model is unsuitable for every country. Research data obtained from participants specifically mentioned that South African legislators should draft South African laws. The critique against Canadian experts being used to prepare the South African legislation was mentioned by Loubser (2013) and Levenstein (2015). An earlier document by Martin (2005) expressed that an insolvency system should arise from a country’s existing cultural conditions and attitudes.

Research participants mentioned that inconsistencies in the application of this law occur because this law is still new in South Africa, having been promulgated in 2011, and judges refer back to liquidation precedent when a dispute arises. The researcher's limited legal training could limit the results for Question One. Since the study requires an essential awareness of the laws governing a business rescue procedure in South Africa, it became imperative to include question one in the research. The Literature review dealt with

scholarly information that is available on the application of this law. Examining multiple court records pertaining to Big Five Mine reinforced the researcher's comprehension of how the Business Rescue Process was implemented. The documentation analysed in the results section explains the application process of this legislation. The Focus Group provided the extra details required to comprehend the legal basis for South African decision-making. The report, which is reflected in this research study, is significant because it adds to the body of knowledge already in existence and provides a fundamental understanding of how this law is applied. This understanding may prove helpful to future business and non-legal students, as well as employees and employee representatives who are curious about the background and practical implications of this legislation.

Although Loubser (2007) stated that there is a consensus that judicial management, the predecessor to the Business Rescue laws, should be replaced, they delivered some powerful arguments as to why Business Rescue should not be considered the automatic choice for replacing this legislation (Loubser, 2007) This researcher has limited legal knowledge and although this is a potential limitation in understanding the impact this legislation has on the South African employee, more recent research seem to agree with the conclusion of this researcher that Business Rescue is not perfect, and the application in South African courts are not consistent, the alternative of liquidation does not offer a better outcome to employee (Joubert et al., 2011; Conradie & Lamprecht, 2015; Burke-le Roux & Pretorius, 2017) After examining the Chapter 11 process in the United States and the United Kingdom, McCormack (2009) came to the conclusion that, in contrast to Chapter 11 (the United States), which is analogous to the liquidation laws in South Africa, private

debt restructuring typically benefits creditors and shareowners alike. Levenstein (2015) recommended that firms strive to re-organize without court involvement to avoid liquidation. The Business Rescue process is costly and time-consuming. This research agrees with these researchers that “corporate governance systems that better align shareholders and managers' interests lead to better corporate performance” (McCormack, 2009). They concluded that the corporate governance systems and mechanisms do not yet function at an optimal level, and their conclusions agree with the current research results, where the view is supported that corporate restructuring cannot focus on shareholders only but must consider all stakeholders. Liquidation's primary function is to secure any amount of money an ailing business can produce to pay off its liabilities, but the procedure leads to certain job losses. The automatic and prompt suspension of all employment is provided by liquidation. There are forty-five days following the date of final liquidation for all work to be completed. In the uncertain economic climate of the recession years of 2008 to 2011, South African policymakers started looking for alternatives to liquidating companies that would rescue the business and save employment. Every statistic that could preserve jobs is vital in a nation like South Africa, where unemployment rates are constantly rising (Loubser, 2013). When Business Rescue was offered as an alternative to liquidation, this legislature made provision for continued employment. Employees would be retained on the same terms and conditions as before, but the right is not absolute, as the Practitioner has the right to negotiate continued employment with diminished benefits if it is a way to save the company and reduce costs. The Act further granted employees certain rights to the proceedings, depending on their outstanding payments. The Labour Act makes



provision for them to be retrenched legally, but they will stop being employees. Therefore, the conclusion is that although employees get preferential treatment, as soon as their jobs are reduced because of cost-cutting exercises, they will only be part of the process in the future, in their capacity as creditors.

Business Rescue has a low success rate, but referring to research on the subject, this might be due to businesses waiting too long to apply for Business Research (Pretorius, 2014). Suppose the firm has remained till it is severely distressed financially. If so, this frequently indicates that, by the time the business reaches a critical point, there is no longer any potential to secure post-commencement financing, which lowers the company's prospects of being saved, and the prospects of job security further decrease (Levenstein, 2015). Some success has been reported with the Business Rescue procedure. This issue has been discussed by Pretorius (2015), who said that successful rescues resulted in 10865 jobs being saved. One may reasonably deduce that the number of jobs added to this figure in the years after 2015, but it is long overdue to do a qualitative study on the number of employment positions rescued as a direct result of company rescue processes. Previous research did not take into consideration procedures that have not been concluded. Many mines are currently still actively under rescue management (CIPC, 2020). Big Five Mine and the other mines in the same group have already left more than 3,000 people unemployed, but the figures do not form part of government reports on job losses as the process is not completed yet.

## Conclusion

The study highlights the importance of a balanced legal approach that protects both business and employee interest, ensuring a fair and equitable outcome in business rescue proceedings. Three mines are still in the Business Rescue process as of 2022, according to additional research into government and media publications, and the process typically takes more than three years to complete (CIPC, 2020). Business rescue practitioners have discovered ways to extend the timelines, most commonly by declaring at the First Creditors meeting that it will not be possible to have the completed plan ready within the 25 days stipulated by law. The industry generally perceives the timelines prescribed by the Act as not being "sensible" (Pretorius, 2015). Practitioners will typically ask creditors to vote for an extension. The implication of the result discussed in the results chapter of the timeline for the procedure not being regulated by legislation is that employees suffer because they expect the process to be completed in a set timeframe, and the fact that CIPC reports many Business Rescue Procedures to be "in progress" yearly indicates that although many factors influence the timeline, guidelines should be implemented to bound all stakeholders to the suggested timelines. Data on the duration of Business Rescue Procedures are obscured by poor and incomplete reporting of status reports submitted to CIPC (Pretorius, 2015). If a company waits too long to apply for Business Rescue, it may not be worth rescuing the economy. In that case, liquidation is the only option, and employees will not be able to remain part of South Africa's valued taxpayer base.

### **The actions of the Business Rescue Practitioners**

The results show that the actions of business rescue practitioners significantly impact employee experience and outcomes, emphasising the need for effective stakeholder management. Practitioners are licensed professionals, but no provision is made in the law for a specific skill set when appointing a practitioner. The Intellectual Property Commission and Regulator Companies issue the practitioner's license (Pretorius, 2015). They will be responsible for turning the business around and guiding it to a successful end. According to data gathered by the Companies and Intellectual Property Commission, there were 384 certified Business Rescue practitioners in South Africa as of July 27, 2022. (Jombe & Pretorius, 2022). The complicated job a Business Rescue Practitioner is tasked with is not adequately defined in the Act (Pretorius, 2013). The directors ought to obtain independent approval before choosing a business rescue practitioner (Levenstein, 2015). This view was shared by the participants in this study. Before opting to apply for Business Rescue, a company should have its affairs examined by an auditor or other qualified experts.

The research findings are consistent with those of Levenstein (2015), Pretorius (2015), and Naidoo et al. (2018). To the degree that they suggested doing an in-depth investigation to choose a suitable candidate for a Business Rescue Practitioner, all of these studies offered recommendations regarding the choice of the Business Rescue Practitioner. The director and management of a failing company shouldn't be left to make the decision. They advise that a qualified applicant must first draft a possible rescue strategy. The candidate's suitability and the likelihood of successfully rescuing a company might be

determined based on the rescue plan that was developed. According to the survey, the employees had a negative impression of their encounter with the business rescue practitioner. One possible reason for the stress between the employees and the Practitioner could be a communication breakdown. Knowing the law gives employees more authority, and many of them have expressed that while they appreciate the legislation's requirements, they believe the Practitioner is not going far enough to meet their legal obligations. It is implied that the work done by Business Rescue Practitioners is looked upon with distrust. Numerous earlier research has focused on business rescue practitioners (Pretorius, 2014). These earlier investigations showed that business rescue practitioners carry out their duties responsibly and follow the law when carrying out a business rescue procedure (Pretorius, 2014). Members of a professional organization and those with experience in law or accounting are appointed as Business Rescue Practitioners. However, they are entrusted with saving a business, not withholding employment; instead, they recognize that workers are significant stakeholders with the abilities required to manage the enterprise they are attempting to preserve (Gonqalves, 2020)

While Pretorius's (2014) study affirmed the significance of a court-appointed business rescue practitioner, the current research backs up the claim that workers lack confidence in the practitioner and asserts that, despite a court order confirming the practitioner's appointment, the business's current management actually selects the practitioner. This is one of the problems that Mpolokeng and the current research results both emphasize and confirm (2020). The participants believe that an impartial body should nominate the Business Rescue practitioner. We'll discuss this outcome in more detail in

the "Advice to future employees." "It is an expensive legal process to remove a Business Rescue Practitioner" (Bezuidenhout, 2012).

Employees typically lack access to the funds required to fire a Business Rescue Practitioner. Creditors of the Big Five Mine requested the appointment of a second Business Rescue Practitioner. One more Practitioner joined the attempts to save the failing company, but the initial Business Rescue practitioners remained in place. The results of the interview data suggest that participants were uncomfortable with management appointing a business rescue practitioner, as they reported that they did not feel that the practitioner was acting in their best interest. They felt the practitioner was only acting in management's best interest, as they were essentially employed by management. This result is consistent with Burke-le Roux & Pretorius (2017) findings. The documentation available on the current case study does not indicate that the practitioner favour the current management that appointed them. However, the length of time needed to conclude the process suggests that current management still has input in the eventual fate of the company.

From documentation studied in pursuit of this investigation, in 2022, several mines in South Africa are under Business Rescue. (CIPC, 2022). Several of these processes are already multi-years in the process. The examined documentation, which can be found in newspapers, journals, and daily news items, reveals the widespread dissatisfaction and criticism of the Business Rescue Practitioner's actions. The results of this study reveal that employees may blame the Business Rescue practitioner as "the face" of the Business Rescue Procedure due to a lack of communication, as the data reviewed for this research

did not support any proof of misbehaviour. They attribute the job losses to the Business Rescue Practitioner's failure to wrap up the Procedure quickly enough.

## **Conclusion**

The study demonstrates that business rescue practitioners play a critical role in shaping employee experiences and outcomes, underscoring the importance of proactive communication, empathy, and stakeholder engagement. The conclusions reached suggested that Business Rescue Practitioners struggle to balance the interests of all parties involved (Lusinga & Fairhurst, 2020). The current research acknowledges this statement, but there are indications that several factors influence the Business Rescue Practitioners' ability to conclude the process in a way that treats all stakeholders' concerns equally. Pretorius and Rosslyn-Smith (2014) stated that the law does allow for some ambiguity in the system. Theoretically, a board may pick and influence a business rescue practitioner under the influence of the firm management, but, in reality, this is not likely to occur since practitioners are chosen from prestigious fields. Pretorius's (2013) suggestion that an entrance exam be introduced to set a professional level is one area where development is needed. In South Africa, there isn't a clear set of requirements for individuals who wish to work as business rescue practitioners. According to Levenstein (2015), South Africa does not have an accrediting program. According to the study's findings, a Business Rescue Practitioner is advised to become a member of a Board of Practitioners, with members chosen based on their backgrounds and areas of expertise. Appointments could be matched to the company's needs, i.e., Practitioners with expert knowledge of the mining industry could be matched to rescue a mining operation.

### **Sub-theme: Time limit of procedure**

The findings raise questions regarding the termination of the Business Rescue Procedure. Although the law provides multiple means to terminate the procedure and acknowledges that a firm cannot stay in rescue indefinitely, it does not establish a specific timeframe for the process (Companies Act 71 of 2008, 2009). The current research results indicate a need for a recommendation to be made to the legislator, suggesting an enforced limit on the length of the procedure. No other country has a specific limit on how long the process can take (McCormack, 2009; Martin, 2005). The reason for not enforcing a time limit is practical. It isn't easy to restructure a large company with several divisions within a set time limit (Anderson, 2008). However, the current study indicates a need to suggest a court-imposed time limitation should be placed on the procedure. A process lasting longer than five years should be forced to look at alternative winding-up procedures. It should be clear in a timespan of no longer than five years whether a company could be rescued or not. Liquidation should be mandatory after five years of uncertainty. It is in the interest of all stakeholders to pursue a swift completion of the process.

Liquidation is part of the natural landscape of an economy and should not always be viewed as the “enemy” as liquidation allows new businesses to enter the economic landscape (Loubser, 2007). This research will recommend that the legislator investigate the time limit to limit the time the procedure is allowed to operate. The report acknowledges that the Business Rescue Practitioner will be under more strain as a result of this action. This could persuade the practitioner to finish the process without taking into account all parties involved (Levenstein, 2015). The ultimate success of a business rescue

method primarily rests on the business rescue practitioner's skill (Mc Kay, 2019). It may not come as a surprise that the results show a greater level of understanding of the actions taken by the Business Rescue Practitioners. Over the course of the procedure's five years, employees who have learned about the Business Rescue Process frequently sent their questions to the Practitioner. To employees, the practitioner was the only link they had with their employer; therefore, the lack of communication also severely impacted their sense of employment security, as reported.

### **Sub-theme: Remuneration of Business Rescue Practitioner**

The legislation provides a maximum monthly payment to the Practitioner based on an hourly rate (Pretorius, 2013). It does not limit the number of days; therefore, there is no cap on the total amount a Practitioner can earn from a single procedure. This research found that employees are concerned with the amount Business Rescue Practitioners can potentially earn during the lifespan of a “rescue procedure.” Workers believe that the amount owed to the practitioner will impact their final payment after the procedure is over. For the business rescue practitioner, business rescue is a profitable process. Business Rescue is quickly developing a negative reputation in South Africa. Attention is drawn to certain business rescue professionals making money off the failing company and unskilled creditors or stakeholders (Prior, 2014 ). The Business Rescue Practitioner invests substantial hours in the process, especially at the start of proceedings. They need to determine whether the business is worth rescuing, and they are primarily aware of putting their professional reputation on the line if they agree to a procedure. The process is expensive, but the practitioner will only accept the assignment if it is worthwhile



financially and if they believe the company can afford its services (Mc Kay, 2019). Participant 25 summed up the Participants' feelings by stating that if a Business Rescue Practitioner can only earn a set amount per procedure, it might be an incentive to wrap up the proceedings in a reasonable timeframe.

Despite their assessment of the law as "excellent," the participants have been less circumspect in their criticism of the Business Rescue Practitioner's actions. Previous studies indicated that Business Rescue Practitioners have a responsible job and adhere to legal prescriptions when conducting a Business Rescue Process (Pretorius, 2014). Business Rescue Practitioners are appointed from a legal or accountancy background and are members of a professional institution. The participants in the interview conveyed apprehension regarding the fact that the Business Rescue practitioners receive payment for their services from an organization that lacks the necessary funds to cover their salary. Workers acknowledge that the Business Rescue Practitioner is providing a professional service and concur that their compensation should reflect this. The participants in the interview conveyed apprehension regarding the fact that the Business Rescue practitioners receive payment for their services from an organization that lacks the necessary funds to cover their salary. Workers acknowledge that the Business Rescue Practitioner is providing a professional service and concur that their compensation should reflect this. However, they feel that the fees being charged are exorbitant, and an upper limit should be placed on the total amount charged for each rescue procedure. These fees are payable before any funds are discharged to creditors (Rajaram, 2016). Setting a payment ceiling for the practitioner could have detrimental effects on the Business Rescue process (Pretorius,

2013). If the compensation for a Business Rescue Practitioner position is less than what one may anticipate from their primary career, there would be no reason for any professional to accept the position.

### **Advice to Future employees**

The study findings offer valuable insights for employees facing business rescue proceedings, highlighting the importance of pro-active coping strategies and support networks. Information on this procedure could benefit all stakeholders. The lack of communication was of great concern to Participants, and 20% of all employees interviewed directly remarked on the lack of information. This result is significant. Although 64% of Participants did not directly comment on the lack of communication, many responses concur with the general scarcity of knowledge employees reported on the business rescue process (See Annexure on interviews). The suggestion for future employees was to appoint a representative who could report back to employees. Employees also said that improved communication would increase their feeling of security. They advise prospective employees to gain as much information as possible. These results are supported by the findings from Rajaram et al. (2018).

Employees advise future employees not to wait around for the conclusion of the Business Rescue Procedure, as they might have to wait years. In the interim years, government support will run out, and they will still need to support their families. The Supreme Labour Law applies to all employees becoming unemployed. For a period of three months, any employee who becomes unemployed (even as a result of the Business Rescue Procedure) may claim unemployment compensation (Labour Relations Act 66 , 1995).

They advise future employees to take any money due to them and start a small business to sustain them while they look for formal employment. They acknowledge that finding new jobs in a town wholly dependent on mining activities for economic survival would not be viable. The results indicated that employees felt they would have a better effect if they took any money immediately when a business offered them the opportunity rather than waiting for Business Rescue to conclude. They realise that they may only receive a small percentage of the money due to them. The Participants feel that this indicates another shortcoming in the Business Rescue Laws, where employees could eventually lose all remuneration due to them when a settlement agreement is reached to rescue the business by only paying a percentage of the amount due to creditors.

## **Conclusion**

This study provided practical advice for employees navigating business rescue processes, emphasising the need for proactive engagement, skill development, and support seeking to mitigate the negative impacts of business rescue. Their advice to future employees included starting a small business with any income they receive when they become unemployed. There is a demand for self-employment, given South Africa's high unemployment rate (Statistics South Africa, 2022). Employees who took the offer early on for voluntary retrenchment reported using the payment they received to start small businesses in the informal sector. One Participant bought a car to start a taxi business, while others began small everyday shops selling fruit and vegetables. At the very least, future employees who find themselves involved in the Business Rescue

Procedure ought to pay attention to the valuable advice provided by the study's participants.

### **Research objectives: Discussions and conclusion**

The first research objectives of this study were to assess the alignment of South African business rescue laws with international corporate laws by analysing existing literature and research. The second objective was to identify factors that led to the implementation of Chapter 6 of the Companies Act 71 of 2008. The third objective was to evaluate the impact the Business Rescue process has on employee protection at Big Five Mine in Mpumalanga, South Africa. Finally, the study aimed to develop recommended guidelines for future implementation and possible amendments to the Business Rescue law.

This research study aimed to understand better the impact of the Business Rescue process on the employment security of mine workers at Big Five Mine. Interviews with employees strive to obtain their input and reflect their point of view to assist in broadening the existing database around employees' experience with Business Rescue and the impact this process had on their employment security. The results are essential to understanding the considerable implications of unemployment for the national budget and the economic climate in which modern businesses operate. Although the researcher is not a trained legal professional, every effort was made to understand where this legislation came from and why it was necessary to understand the law from a business perspective. The literature study included information about the history of this law in nations including Australia, the United Kingdom, and the United States of America.

## **Alignment of South African Legislation with international Corporate Laws**

Objective 1: Assess the alignment of South African Legislation with international corporate laws by analysing existing research and literature

This section conducts a literature-based assessment of the alignment between South African business rescue laws and international corporate laws, aiming to identify areas of convergence and divergence. South Africa required the implementation of business rescue legislation due to the negative consequences of the previous liquidation laws. These laws resulted in the closure of numerous enterprises and the unfortunate loss of jobs, contributing to alarmingly high levels of national unemployment. (Statistics South Africa, 2018). While it is true that no firm sets out with the intention to fail, it is possible for the company to shut down due to short-term financial difficulties. The economy is dependent on trade. Consequently, South Africa established rules similar to international rescue laws in order to boost the economy and save employment chances. The business rescue laws of South Africa were formulated by Canadian specialists, which has been met with disapproval from legal professors in South Africa (Loubser, 2007). Notably, participants in this research study expressed their dissatisfaction with the fact that this regulation was not formulated by professionals who are knowledgeable about the South African culture. "Laws for South Africa should be developed in by South Africa," a participant asserted. This law is equivalent to the most exemplary corporate rescue laws globally and may be accurately considered as an impressive achievement of the democratic government. This law is similar to both the bankruptcy laws outlined in Chapter 11 of the United States Constitution and the Enterprise Act of 2002 in the United Kingdom (Dept of Trade and Industry, 2004). South Africa has adopted a version of Chapter 11 that aligns with the

practices followed by other European countries (Omar, 2007). Legal scholars have warned that while bankruptcy is viewed negatively in South Africa, it does not carry the same stigma in the United States of America (Loubser, 2013). The Companies Act 71 of 2008 brought about the most significant legal reform in South Africa when it established a moratorium on all creditors in the event that a firm has financial difficulties (Levenstein, 2015). This reform has been adopted internationally and meant that the law moved from a creditor-friendly law to an environment that considers all stakeholders. In South Africa, the legislation is still relatively new, and judges might be inclined to refer to the precedent of liquidation laws when deciding on a Business Rescue application. According to Levenstein (2015), there is a dearth of specialist courts, a great deal of litigation, and inconsistent rulings as reasons for the poor success rates of rescue operations. Rajaram, Singh, and Sewpersadh (2018) believe that the Supreme Court of Appeal made some dubious decisions. Concerns were raised by a number of academics about the South African judiciary's competence in handling corporate rescue cases (Rajaram et al., 2018; Jijana, Chetty, & Karodia, 2015; Levenstein, 2015). These academics further agree on a pressing need to establish courts specializing in business rescue procedures and judges assigned for their specialized knowledge of dealing with business rescue issues. These measures could expedite the process in court, as the system typically takes more than three years to complete. Levenstein (2015) has suggested a temporary fix, stating that in order to clear up any ambiguities, petitions should be forwarded to the Supreme Court of Appeal. However, courts may also employ assessors who have the necessary industrial experience. In contrast to the United States of America, where the procedure is linked to relative speed,

South Africa's scenario is different. In the United States, Judges are familiar with the law; typically, a case is resolved within 11 months (Conradie & Lamprecht, 2015). An eleven-month timespan is in stark contrast with the findings of this research, where the period of the “rescue “ is longer than five years, with numerous court processes and judgments further delaying the conclusion of the process.

South African legislation addressed an issue identified in United Kingdom corporate rescue proceedings. In the United Kingdom, an employee cannot initiate compulsory administration proceedings (Wilson & Deniz, 2008). According to South African legislation, an employee who is an "affected" party may request that a company be put into "rescue." However, this provision carries a risk that a single employee initiating this process, for example, after a disagreement with the company, will seriously harm the company's reputation. Loubser (2010) warned that a balance should be achieved between the rights of employees and creating an environment conducive to rescuing a business. The study results suggest that it would be difficult for a single employee to find the resources and finances to instigate the process; although it is legally possible, the financial implications would be a significant burden to carry. The ability to use this option is more advantageous for organized labour groups, who have done so successfully in the past (*Employees of Solar Spectrum Trading v Afgri Operations*, 2012).

## **Conclusion**

This analysis revealed that while South African laws share similarities with international corporate laws, there are areas for improvement to enhance the effectiveness and international alignment of the business rescue process. Legislation is on par with

international legislation and contributes to our understanding of the application of this legislation globally. Australia and the United Kingdom have similar legislation on employee positions in corporate rescue proceedings. South African laws were drafted later and were able to use these two countries as examples, therefore conferring more rights to employees to improve their position and employment security during corporate rescue procedures. This law has been active since 2011, and the present study was conducted ten years into its existence; therefore, ample scope for further investigating all aspects of this law still exists.

### **Contextualising the implementation of Chapter 6: Factors and motivations**

Objective 2: Identify factors that led to the implementation of Chapter 6 of the Companies Act 71 of 2008. This section explores the factors that led to the implementation of Chapter 6 of the Companies Act 71 of 2008, aiming to understand the context and motivation behind the legislative change. The United States of America's corporate restructuring system provided the history and understanding of the origins of corporate Rescue law as addressed in the first research objective summary. In contrast, Research Question 2 explains why this legislation was implemented in South Africa. This question is answered by an extensive literature review that considers the necessity of implementing this legislation in South Africa. Before 2011, South Africa primarily relied on the Companies Act 61 of 1973. A changing economic and business landscape necessitated almost yearly changes to this law. The law was 37 years old and based on Victorian English law (Cassim, et al., 2018). The business landscape in 2008 was bleak. Many companies liquidated, and the resultant job losses created economic hardship.



Employment lost due to companies going out of business has a double impact on the economy; firstly, the taxpayer base is diminished by corporate taxes and, secondly, by individual taxes not paid to the government. A government that does not receive taxes from its taxpayer base cannot render service to its citizens. The post-apartheid administration of South Africa looked for measures to reduce unemployment and provide companies with an option other than liquidation. While business rescue regulations were put in place to give a chance to save both enterprises and jobs, liquidation favoured the creditor.

The rising unemployment figures in South Africa signaled that an urgent response was needed from the government (King III Report, 2009). The King Commission provided guidelines for governance structures and companies' operations in South Africa. These reports led the government to look for alternatives to liquidating companies that would rescue businesses and save employment. The result of these two objectives would positively affect the national economy. While reviewing existing legislation, stakeholders recognised that business rescue would be a superior substitute for liquidation. When a corporation experiences financial difficulties, and its only options are liquidation and judicial management, the economy loses important jobs and resources. In order to provide an adequate substitute, the newly elected democratic government in South Africa conducted extensive research before introducing the Companies Act 71 of 2008. (Levenstein, 2018). Legislators were compelled to review the antiquated liquidation law, which was based on Victorian law, almost monthly, making introducing new laws necessary (Bezuidenhout, 2012). At the time, the new

democratic government sought to redress past societal imbalances and was battling the effects of the previous apartheid regimes that did not provide equal treatment to all citizens (Francis & Webster, 2019). Unemployment figures were high and rising (World Bank, 2008). Companies being liquidated further contributed to unemployment and consequently to a financial loss for the government as the taxpayer base was diminished, and a large part of the unemployed population placed a considerable strain on government resources. Against this background, the Act was drafted (Companies Act 71 of 2008, 2009).

The legislator expressed the objectives of considering the interests of all stakeholders involved in the process. The interest of directors, shareholders, and employees was given equal attention. Although the law does not define stakeholders, it could be considered an outstanding achievement comparable to the finest legislation in the modern world (Conradie & Lamprecht, 2015). The new Companies Act offers alternatives for South African Corporate law that do not necessarily involve closing down a business that experiences temporary difficulties in paying its creditors (Loubser, 2005). The law offers advantages that are not available through liquidation or judicial management legislation. Amongst the numerous benefits this law provides is the added economic incentive of saving a corporate entity, thereby saving jobs and not removing valuable taxpayers from the base of taxpayers available to grow the country's economy (Joubert, 2018).

The goal of Chapter 6, as this law is known among the legal community, is to avoid having a detrimental effect on social and economic matters while it is being liquidated. This law was drafted with the expressed objective of securing and balancing the opposing

interests of the different stakeholders in a corporate entity (Levenstein, 2015). Thus, the law offers several advantages to the failing company and the country's more extensive economy. The tax implications (mentioned in the previous paragraph) are a powerful incentive for the government to keep companies as going concerns and supply employment to all South Africans. This research aimed to identify and address gaps in the legislation that allows for some applications to be interpreted and applied in a way that negatively influences the employment security of the South African mineworker and the results might benefit any employee finding themselves part of a Business Rescue Proceeding.

South Africa's liquidation laws and judicial management legislation favoured creditors above other stakeholders. Business Rescue legislation shifts the focus from the interest of creditors to an attempt to balance all stakeholders' interests. The process has moved from debtor-friendliness to a position that does not automatically denote creditor-unfriendliness (Joubert, 2018). In the current study context, it is essential to recognise that when a company owes its employees money that it cannot pay, they become creditors in the Business Rescue Process. This provision places employees on a lower rank than other stakeholders. Employees are only recognised as unsecured creditors for any wages owed to them prior to the corporation initiating business rescue procedures. Claims not directly related to services rendered as an employee will fall on the lowest ranking, as discussed in Appendix A.

## **Conclusion**

The analysis revealed that a combination of economic, political, and social factors contributed to the implementation of Chapter 6, highlighting the need for ongoing

evaluation and improvement of business rescue laws. This study effectively identified the elements that resulted in the implementation of Chapter 6 of the Companies Act 71 of 2008, thereby accomplishing its second objective of determining the factors that led to the implementation of Chapter 6 of the Companies Act of 2008. It provided insight into the circumstances that compelled the administration to explore other options for the implementation of the Liquidation Act. Several enterprises were dissolved before 2011, resulting in a significant decline in employment and adversely affecting the economic well-being of the firms. Implementing Business Rescue regulations provided a feasible option and effectively preserved a certain number of jobs. However, the outcome fell short of the government's anticipated level of success (Pretorius, 2015).

### **Evaluate the impact of the business rescue process on employee protection**

This section evaluates the impact of business rescue processes on employee protection, aiming to understand the effect on employment security and well-being. The employees at Big Five Mine rendered services to the mine after the mine entered into Business Rescue. When the mine could not compensate them for these services, they became preferred concurrent creditors as stipulated in Section 144(2) of Act 71 of 2008.

The status of workers who are not compensated for their services during the Business Rescue Process is covered by Section 144 (2). According to the language of the Companies Act 71 of 2008, workers are "preferred concurrent creditors for any employment-related payment or expenditures incurred which become due and payable before the initiation of Business Rescue and remains unpaid at commencement thereof" (Jombe & Pretorius, 2022) It is interesting to note that, in contrast to laws in the United

States and the United Kingdom that only grant recognition to creditors, South African legislation allows employees to be recognized as creditors.

The present case study examined how the Business Rescue Process affected Big Five Mine employees' job security. After the Business Rescue Process was put into place, they provided services. When their employer, Big Five Mine, was unable to pay them when their payments were due, the Act's clause stated that their position would transition from employee to "preferred concurrent creditor." Their legal status as employees, as stipulated by the South African Supreme Law on employment, remained intact, notwithstanding this. Section 23 of the Labour Relations Act and the Basic Conditions of Employment Act (BCEA) empowers workers to exercise their rights and guarantees equitable labor practices for all employees in the Republic of South Africa. Three sections of the Act pertained to employee's rights under the legislation. First off, the term "affected persons" includes the employees. Workers who fall under the category of "affected persons" are endowed with a multitude of privileges. The second provision pertains to employees, who are acknowledged as creditors in cases where they were due compensation before starting Business Rescue. It shed light on the situation that forced the government to investigate alternatives for the liquidation Act that was enforced. Many companies were liquidated in the period leading up to 2011 and the resultant loss of employment had a severe impact on the economic welfare of the company. The shortcomings of this legislation were revealed during the examination. Employees who are not creditors are not eligible to vote on the Business Rescue plan. Therefore, an employee is not permitted to take part in the proceedings if they do not have a claim against the corporation for unpaid pay. Because of

this provision, there seems to be a shortcoming in the law. Not allowing employees to vote for the business rescue procedure means they are not granted actual participation; thus, the law falls short of the lofty aim of treating all stakeholders as equal participants in the process. No definition of stakeholders of a company denies the existence of employees as important stakeholders. Still, their participation in a process that will affect their future is rejected if they are considered employees only. The law's only provision is for them to become creditors, and creditors are allowed equal participation. This situation can be remedied by granting the employee a weighted vote in accordance with the number of employees in a company. Veto rights could also be given to employee representatives, which will then grant the employee actual participation in their status as an employee. The last clause is based on the simple fact that the corporation had them on staff during Business Rescue. When liquidation happens, employees are immediately put off work. Despite their desire for the company to reopen so that they can find work, Big Five Mine's employees are powerless to take the corporation to court because it is currently under Business Rescue.

In the case of the Big Five mine, the stumbling blocks are not actions from employees but court procedures instituted by different investors wanting to buy the mine. Various factors keep the court proceeding active and prevent the mine from reopening. The workers accuse the Business Rescue Practitioner of failing to bring the process to a close and believe that the initial rescue plan, which the creditors approved, ought to be legally binding. The employees of Big Five Mine feel powerless to intervene to stop Business Rescue Procedures because they cannot afford to take the matter to court, in contrast to the

power of employees being exercised to the point that some scholars define their rights as excessive (Loubser, 2005). They stated that they have little control over the choices made by the Business Rescue Practitioners. The juxtaposition in these two examples demonstrates that South Africa is a society with problems that cannot be addressed by the best legislators in the world when the individual's specific circumstance is not considered (Matenda et al., 2023). The rescue culture is new in South Africa, and although the law was crafted with sufficient expertise and attention to the best solutions the First World can offer, it cannot be directly translated into law in a developing country.

## **Conclusion**

The findings indicate that business rescue processes have significant implications for employee protection, emphasising the need for proactive measures to mitigate negative consequences and ensure fair treatment of employees. This study successfully evaluated the position of the employee during the business rescue procedure, thereby achieving its third objective and enhancing the existing knowledge with the contribution of data obtained from the face-to-face interview with employees. The legislature of the new Companies Act gave careful thought to preventing a quick loss of jobs. Section 131 of the Act demonstrates respect for the employee's right as a significant stakeholder by enabling employees to request to place a business under supervision. The impact of such great power could be that the law leaves an employer open to abuse (Loubser, 2005). This scenario is plausible when an employee who is, for example, unhappy about wage settlements uses this as grounds for instituting rescue proceedings against the employer. Although the

chances of succeeding with such an application are slim, such an action could seriously harm an employer's reputation.

According to the research findings, employees play a crucial part in the Business Rescue Proceedings but lack the knowledge and authority to exercise their rights fully. As previously mentioned, Section 136 deals with the terms of engagement between employer and employee. Implementing the Business Rescue procedure does not affect employee contracts. They continue to work under the same conditions until the Business Rescue Practitioner meets with staff members to discuss layoffs. The provisions of this article do anticipate that modifications may occur when an agreement is struck between the employer and employees or in the regular course of attrition. The law stipulates that any layoffs must follow the guidelines outlined in sections 189 and 189A of the Labor Relations Act and any other applicable employment-related laws. The letter of the law was followed in the case of Big Five Mine, although the Participants denied ever being consulted about the process. No evidence could be found that the Practitioner did not act lawfully. The discrepancy between the Practitioner's account of what transpired and the employee's recollection of the events might be due to the time-lapse of the interviews occurring almost six years after the procedure was implemented. Although the Labour Relations Act prohibits Practitioners from suspending employee contracts, Business Rescue Practitioners are permitted to retrench employees if a company cannot pay its staff or other operational considerations necessitate it.



### **Advice to Future employees**

The last objective of this study was to recommend steps that future employees could take to lessen the impact of this procedure on their financial stability and future plans. Information on this procedure could benefit all stakeholders. The lack of communication was of great concern to Participants, and 20% of all employees interviewed directly remarked on the lack of information. This result is significant. Although 64% of Participants did not directly comment on the lack of communication, many responses concur with the general scarcity of knowledge employees reported on the business rescue process (See Annexure on interviews). The suggestion for future employees was to appoint a representative who could report back to employees. Employees also said that improved communication would increase their feeling of security. They advise prospective employees to gain as much information as possible. These results are supported by the findings from Rajaram et al. (2018).

Employees advise future employees not to wait around for the conclusion of the Business Rescue Procedure, as they might have to wait years. In the interim years, government support will run out, and they will still need to support their families. The Supreme Labour Law applies to all employees becoming unemployed. For a period of three months, any employee who becomes unemployed (even as a result of the Business Rescue Procedure) may claim unemployment compensation (Labour Relations Act 66 , 1995). They advise future employees to take any money due to them and start a small business to sustain them while they look for formal employment. They acknowledge that finding new jobs in a town wholly dependent on mining activities for economic survival would not be

viable. The results indicated that employees felt they would have a better effect if they took any money immediately when a business offered them the opportunity rather than waiting for Business Rescue to conclude. They realised that they might only receive a small percentage of the money due to them. The Participants felt that this indicated another shortcoming in the Business Rescue Laws, where employees could eventually lose all remuneration due to them when a settlement agreement is reached to rescue the business by only paying a percentage of the amount due to creditors.

## **Conclusion**

This advice from employees to future employees aims to improve the experience of employees during the business rescue process, ensuring better outcomes for all stakeholders, and highlighting the need for ongoing evaluation and improvement of business rescue laws and practices. The study successfully fulfilled its purpose of offering guidance to prospective employees who may encounter the business rescue process. The advice is derived from research data collected from participants in this study, revealing novel insights for employees. It enriches the limited existing knowledge on the subject and provides guidance for future employees and research on strategies to alleviate the adverse economic consequences associated with job losses and the subsequent decline in income.

The advice to future employees included starting a small business with any income they receive when they become unemployed. There is a demand for self-employment, given South Africa's high unemployment rate (Statistics South Africa, 2022). Employees who took the offer early on for voluntary retrenchment reported using the payment they

received to start small businesses in the informal sector. One Participant bought a car to start a taxi business, while others began small everyday shops selling fruit and vegetables. At the very least, future employees who find themselves involved in the Business Rescue Procedure ought to pay attention to the valuable advice provided by the study's participants.

## **Recommendations**

### **Recommendation for application**

The results of this qualitative study could be helpful to all employees who find themselves part of a Business Rescue Process. The legislator could use the suggestion to investigate possible changes in legislation. Business Rescue Practitioners might find the results helpful regarding issues of employment security during the Business Rescue Procedure. Management of businesses considering Business Rescue might find the results helpful when deciding to appoint a Business Rescue Practitioner. Future students could use the study as a solid foundation to investigate lacunas in the law and suggest possible solutions. From a business administration study perspective, this study could be beneficial in reminding management that essential stakeholders in a business deserve to be treated with the same deference once reserved for what traditionally was considered the most critical stakeholder, namely the shareholders (Mcvea & Freeman, 2005).

An economy that is still developing needs to take every step to prevent the companies and industries of that economy from being compromised due to a temporary setback that might prevent it from paying its creditors soon. For employment security and a growing economy, it is necessary to embrace a procedure like Business Rescue that might allow them to recover, discharge their debts, and again become successful concerns.

Business Rescue has a proven record of success in some cases (Statistics South Africa, 2022). The procedure enjoys the advantage of legal and business scholars researching and identifying its weaknesses early on. Therefore, research, such as the current study, should assist in eliminating problems in the early stages with the many solutions proffered by research. The present study delivers an original contribution to existing knowledge, as it investigated the employees' experience with this law and the impact on their employment security by conducting in-depth interviews with employees. Employers, business rescue professionals, and legislators could all benefit from the study's newfound insight into employee perspectives.

### **Recommendation for future research**

Since business rescue law is relatively new, it is necessary to thoroughly research and analyze its facets (Levenstein, 2018). The current exploratory and interpretive study raises many opportunities for future theory development and concept validation research. Future research is recommended on aspects of this study that the present research was unable to pursue due to time constraints and financial constraints: Pursuing a quantitative study investigating the statistical, rather than analytical, generalisability of the problem of the legislation's impact on unemployment is a recommendation for future studies. The results indicate that the theory of the employee as an essential stakeholder could be refined and elaborated on to include the role of all stakeholders in the process in terms of both the component elements and internal dynamics. As per the input from participants and previous studies, the concept of “Ubuntu” could be explored to see how the facets of this African philosophy could be applied in stakeholder theory to benefit the people from

Africa. It might be beneficial for a future study could identify possible lacunas in the law to recommend changes to the law. While students in the business sector might find a research gap in the application of this law, legal students will continue to study and decipher the provisions in the legislation of this law to refine and recommend possible changes. The present qualitative research study examined the employee's perception of the effect of the Business Rescue Procedures on their job security, making a noteworthy original contribution to the field. The author plans to pursue the option of working with future researchers on a quantitative study investigating the statistical correlation between unemployment and the Business Rescue Procedure. The financial implications of unemployment are of national interest.

### **Enhancing communication and availability of information**

Based on the findings that employees feel marginalized and lack access to information, it is recommended that stakeholder communication be enhanced to ensure that employees are informed and engaged throughout the business rescue process, which might lead to a better outcome. As mentioned earlier, the findings indicate that although the terms of the Act grant employees a vital role in Business Rescue Procedures, the analysis of study data reveals that a deficiency in communication hampers their ability to actively engage in the proceedings. The findings indicate that the provision of information about the business rescue process by the employer to employees and their representatives may influence the perception of the process and maybe lead to a more favourable conclusion if the suggestion is implemented. The performance of the Business Rescue Practitioner fell short of the participants' expectations. The lack of

communication was attributed to the business rescue practitioner, who was selected by the employer and was responsible for handling any queries. The Focus group meeting validated the stance of the business rescue practitioner. The participants of the Focus Group included two Business Rescue Practitioners, who confirmed their legal obligation to report and stated that they rigorously comply with this provision. The results confirmed that although the legislation stipulates the allocation of information to all relevant stakeholders, failure to adhere to this need from participants in the face-to-face interviews resulted in ambiguity among employees.

The advice is founded on the observed necessity to enhance stakeholder communication and guarantee the dissemination of information to employees. It is advised that a professional organisation be entrusted with the task of implementing oversight. This oversight will ensure that all business rescue practitioners comply with the legislation's requirements for communication with all employees, including those who do not have access to electronic media. Business rescue has a reputation, substantiated by the results of current research and Statistics South Africa (2022), that it is not hugely successful in South Africa; therefore, research studies, including this research study, recommend changes as per the information that is shared with the general population. Future loss of employment, diminishing the taxpayer basis with the resultant impact this has on the general economy of a developing country (Saunders, 2009; Jijana et al., 2015), could be prevented if employees are well informed and know what their employment options will be. To improve the negative impact of the business rescue procedure on employees, information on the process should be readily available to all

employees in South Africa. Labour laws are well publicized and controlled by Government inspectors. The research results indicate that a similar level of attention given to Business Rescue Proceedings will empower employees to make informed decisions about their future in the event of their company landing in financial distress (Goncalves, 2020). Implementing the recommendation to enhance communication and availability of information will facilitate transparency, trust and cooperation among stakeholders, leading to better outcomes for all parties involved.

### **Empowering employees through training and development**

This recommendation responds to the finding that employees require skills and knowledge to adapt to changing circumstances. Training and development programs can enhance employee resilience and employability. Based on the findings, employees' lack of skills and training hinders their ability to secure new employment (Theme: job security). The researcher wants to recommend providing comprehensive training programs for employees affected by business rescue, concentrating on transferable skills and industry-specific competencies, to enhance their employability and facilitate a smoother transition to new roles. The results showed that many employees consider training essential, and participants felt they were not equipped to do other jobs as they were not given any training; it is critical to suggest that training be made compulsory during the business rescue process. Training will equip employees for other jobs and enable them to find a different financial future when some people lose their jobs during the business rescue procedure. Although the law recommends training for employees during the business rescue process to enable them to find new employment, the reality is

that training is not prioritised during periods of financial stress. Skills Training programs provided and sponsored by the government could reduce the indirect effect of job losses. Lower-level employees significantly would be uplifted by a targeted training program, enhancing their future employability. In a nation like South Africa, where high unemployment rates have a detrimental effect on the economy as a whole, people need to be trained to create employment for themselves, and training to equip citizens to establish small businesses could ensure that families become financially independent. Training of employees should include training for organised labour groups. Since a trade union representative is elected from the employee groups, training on knowledge of business rescue will benefit all employees. Participant nr 25 said: "Unions must inform their representatives. He could not tell us anything". Participants in the face-to-face interviews suggested that provisions should be made for employers to provide extensive training to them and to trade union representatives or other organised labour groups. This would empower employees, as it could not be fair to blame the lack of information on the legal process. Formal training of employee representatives could make sense in light of the argument that it is not conducive to a good business environment to allow a single employee to initiate the Business Rescue procedure (Loubser, 2005). According to Loubser, many of the essential components required for a successful business rescue have been undermined by some of the democratic rights granted to a single employee in the new South African Corporate Rescue Act (2005). Therefore, some scholars recommend that amendments be made to existing legislation whereby only organised labour could institute Business Rescue Proceedings (Joubert, 2018). The current



researcher does not support this action as it goes against the purpose of the law, which aims to empower all stakeholders. However, the study suggests that providing education and training could help companies overcome resistance when entering Business Rescue.

### **Streamlining Business Rescue Process: Timeframe limitations**

Based on the finding that prolonged business rescue processes exasperate uncertainty and distress for employees (theme: personal, interpersonal, and observational factors that became important to employees during the business rescue process), the researcher recommends establishing a maximum timeframe for the conclusion of business rescue procedures, ensuring a more efficient and timely resolution that minimises the negative impact on employees and stakeholders. Currently the law does not make provision for set deadlines for the Business Rescue Procedure. While there are set timelines for some parts of this procedure's execution, the final completion date is flexible and can vary depending on a number of process-affecting circumstances. Since Business Rescue is a relatively new area of corporate law (having only been implemented in 2011), it is possible to assume that the legislature intentionally left the language vague to allow for various interpretations of the provisions. As a result, the boundaries of the law are tested in court, and the legislature now embraces a broader interpretation (Martin, 2005). The evaluation of the findings of this research study does come to a conclusion, nevertheless, that the lack of a set time period may have added to the misery of numerous workers who entered the project on the assumption that the Business Rescue Practitioners' initial estimate of a three-month procedure was accurate. Thus, the researcher identifies a potential lacuna in the law that needs redressing. It is recommended that a reasonable timeframe is decided upon that

makes provision for a rescue procedure to conclude. An impartial evaluation should be conducted at the end of this period to ascertain whether there is still a plausible possibility that the Business Rescue Procedure will be successful. The time frame should be practical and would likely not align with the three-month requirement, as it is a lengthy procedure, and finding a post-commencement financier within that short period would be quite challenging. Securing post-commencement cash is essential for effectively concluding any Business Rescue Procedure and assuming that the lawmakers establish a specific period of time and an impartial evaluation process to ascertain the continued feasibility of rescuing a corporation. Under those circumstances, the procedure might be finalised within a reasonable timeframe, enabling employees to proceed with their lives without lingering in anticipation of ongoing employment.

### **Enhancing Business Rescue Practitioner Appointment**

This recommendation responds to the finding that business rescue practitioners' expertise and independence are crucial for successful outcomes. Building on the finding that stakeholder management is vital for successful business rescue outcomes, the research recommends providing industry-specific training for business rescue practitioners to improve their understanding of stakeholder needs and expectations. Appointing practitioners with industry knowledge and experience can improve the effectiveness of business rescue process. Specific recommendations about appointing a Business Rescue Practitioner could be made to the legislator in light of the results, which showed that employees felt uneasy with the failing company's management appointing and paying a Business Rescue Practitioner. The law allows a company's board to appoint a business

rescue practitioner when facing financial difficulties (Pretorius & Rosslyn-Smith, 2014). It was suggested that the legislator look into the potential creation of a Board of Business Rescue Practitioners. Every panel may function similarly to an association of professionals, with practitioners required to demonstrate their competence through yearly membership applications and professional training. Pretorius (2014) suggested regulating membership in this Board by imposing minimum requirements and entrance exams. The court could thereafter manage the Practitioner's appointment to a particular rescue process. As a result, when a firm applies for Business Rescue, the judge, the court, or a committee may select a qualified board member based on the applicant's qualifications and other observable capabilities, such as familiarity with the company's sector. In this manner, the Practitioner's talents will be taken into consideration, and the appointment will not be determined by the Board of Directors or the management of the organization. The legislation does not explicitly outline the activities of a business rescue practitioner, despite the fact that the roles and obligations of such practitioners can be defined appropriately based on research. The study's findings suggest that workers and other stakeholders involved in a business rescue process may benefit from the impartial appointment of a business rescue practitioner to a failing company. By appointing qualified and experienced business rescue practitioners, companies can ensure that the interests of all stakeholders are protected and that the process is conducted efficiently and effectively.

### **Enhancing management Practices for sustainable Business Rescue**

This recommendation aims to address the finding that management practices significantly impact business rescue outcomes. Adopting pro-active and collaborative

approaches can improve communication, trust, and overall success. Based on the finding that early action is essential to prevent loss of income and employment, the results of this research recommend that managers take appropriate action to address financial difficulties promptly and proactively. Management's fiduciary duty is to recognize early warning indicators of economic hardship. Stakeholders must understand that the likelihood of success for business rescue increases with prompt use of the method. Post-commencement finance will be needed to return a business to a healthy state; if stakeholders wait too long to approve the process, the financial decay will make the prospect of saving a company less attractive to potential investors. The recommendation is thus that management makes a regular and proper assessment of the business's financial well-being and acts before it is too late to rescue a company. Unsuccessful business rescue attempts adversely affect employees' economic and health conditions. Maintain open lines of contact with your staff, as a significant factor in employees' feelings of uncertainty about their jobs is a lack of communication from the employer, as supported by the data collected for this research study. Participants voiced dissatisfaction with the inadequate communication from management, leading to heightened worry and uncertainty around their employment. Refer to Figure 8, which is located in Chapter 4. The absence of job stability has a detrimental impact on an employee's performance (Dhanpat et al., 2018). Managers can enhance the situation by thoroughly investigating all possible means of communication with staff. By adopting these management ideas, firms can improve their ability to quickly adapt, recover, and maintain their operations, even in a challenging business environment.

## **Conclusion and Recapitulation of the Research**

The study's goal was to understand better how corporate rescue affected South African mining workers' job security and if their employment security affected the unemployment statistics and economy in South Africa.

Business rescue and employment protection were evaluated, and the findings indicated that the process did not have the success rate that lawmakers had anticipated when the need for these laws was recognized in 2008. This was even though the study found that business rescue results in the preservation of some jobs and offers a better chance of employment being retained than when liquidation is the only option. Additionally, the behaviour of management and business rescue practitioners did not inspire employment security. There was a clear need for better communication.

This study also revealed that employees, their families, and their communities suffer greatly when a firm rescue plan fails. A breadwinner in South Africa who loses their job will affect at least fifteen other people, as evident from this study's results agreeing with previous studies (Pretorius, 2015). Many suicides were blamed directly on the job losses resulting from the business rescue process. Employees often do not understand the rescue process. They associate the word “rescue” with a positive outcome. When they become frustrated with the apparent lack of success, labour unrest may follow, thereby further hampering the process's chances of success. According to the study, business rescue has a negative impact on the South African economy. More jobs are lost, and the nation is unable to maintain its infrastructure as a result of the skilled workers leaving the country and the closure of companies that employ mine workers. The detrimental financial effects

of people losing their jobs increase the demand for government resources for unemployment benefits. Preserving employment means the government can retain a robust taxpayer base and reduce the need for international loans.

It is crucial for emerging nations like South Africa to prevent the sectors and businesses that comprise their economies from collapsing when they are merely experiencing a brief financial crisis. The Companies Act 71 of 2008 has legislation that allows a company to be saved by issuing a temporary moratorium, which in turn enables the company to become a thriving business that creates jobs for South African citizens. Though there is always a need for improvement, this statute should be seen as a masterpiece of democratic governance. These can be enhanced by ongoing research contributing to the existing database. Scholars make valuable contributions by identifying shortcomings in this legislation and suggesting possible solutions while the law is still in its infancy. Increased job security and job preservation will result from a better success rate for the Business Rescue procedure. This study recorded the employees' perspectives and recommended changes for the future implementation of this law to improve the procedure's success rate and save more jobs for the South African economy.

Scholarly research is a time-honored process that holds governments accountable for the true purpose of serving their citizens (Horkheimer, 1972). This study humbly joins the context of scholarly research to attempt a small contribution to academic research serving citizens by holding governments accountable.

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## APPENDICES

### Appendix A      American Chapter 11 creditor rating.

In America, during a Chapter 11 Rescue process, unsecured creditors are rated according to this table:

Level of Priority	Description of claim
First	Domestic Support Obligations
Second	Administrative Expenses
Third	Claims Arising in Involuntary Bankruptcy Cases
Fourth	Unpaid Employee Compensation
Fifth	Employee Benefits
Non-Priority	General Unsecured Creditors

Source: Adapted from Lewis ( 2019)

From this table, employee claims are not high on the priority list, although several of the priority levels might be necessary for employees. South Africa uses the same table of hierarchy of claims.

The second level priority, Administrative Expenses, may include employee claims.

Section 507(a)(2) of the United States Bankruptcy Code allows for administrative costs that a Debtor incurs during the re-organization process that will either assist in preserving the debtor's assets or facilitate the winding-down in liquidation to be processed as a second-level priority claim (Lewis, 2019). Employees may claim wages, salaries, and commissions for services as an administrative cost if rendered after a

company entered Chapter 11 proceedings and if the price represents necessary expenses to protect the debtor's assets.

Employee compensation is a Fourth-Level Priority.

An employee only qualifies for this priority treatment under Section 507(a)(4) if the work was rendered in the 180 days preceding the date on which the debtor filed for bankruptcy (Lewis, 2019). Likewise, a Level Five priority level might be necessary for employees as it pertains to benefits due to them working in the ten days preceding bankruptcy filing.

Below the priority claims are the general unsecured claims. Certain circumstances might lead to an employee holding a claim against an employer that falls outside the scope of the other levels, for instance, a workplace injury claim arising from an injury incurred before the bankruptcy. Such a claim would fall at the bottom of the ranking of creditors.

## Appendix B      Creditor Ranking in the United Kingdom

Priority	Secured creditors.
Second	Preferential Creditors, such as Employees
Third	Fixed and floating charges
Fourth	Fixed charge creditors
Fifth	Floating charge creditors
Sixth	Unsecured creditors
Last	Shareholders

Table authors own. Source of information: (Steven, 2020)

## Appendix C      United Kingdom compared to Australia.

United Kingdom	Australia
Employment Rights Act of 1996 and the Insolvency Act of 1986	Corporations Act 2001 in Part 5.3A in 2001
The legislation does not allow for an employee to commence compulsory administration proceedings.	Employees have no direct commencement rights.
An Administrator can be appointed without any legal compulsion to notify the employees of the company.	Two meetings of creditors. In section 444DA, provision is made for a discussion of employees but is limited to “eligible employee creditors.”
An employee has a right and obligation to provide the administrator with a statement of a company’s affairs. Still, no absolute participation rights are given to employees during administration in England.	The Insolvency Reform Act of 2016 changed the employees’ position. Part 3 of the Insolvency Practice Schedule, provided for by the Insolvency Law Reform Act 2016, currently makes provision for employees to participate in committees of inspection as they are now allowed to appoint an employee as a committee member.

Employees do not have the express right to be present at meetings and to vote during administration proceedings.	Employees are not given any input into developing the deed of company arrangement during Rescue Proceedings.
In England, only fourteen days are allowed for an administrator to decide whether to adopt or terminate employee contracts. Employment contracts are not terminated automatically. State-guaranteed payments create a level of certainty for employees in England.	An Administrator can terminate employee contracts by following the Fair Works Act. Where a dismissal qualifies as a genuine redundancy, an employee will be entitled to redundancy pay according to the National Employment Standard in the Fair Works Act. Specific provisions need to be met to qualify for redundancy pay. All employees do not automatically qualify.

Students own compilation.

Narrative adapted from (Fletcher I., 2017).

The above demonstrates the different aspects that impact the protection afforded to employees during the Corporate Rescue Process. South Africa, Australia, and the UK Corporate Rescue Law are comparable. Details discussing and comparing the South African process to those of Australia and England will demonstrate that South Africa has adopted an advanced version of this law to treat employees like European Union countries.

## **Appendix D      Definition of an Affected Person**

Shareholders, creditors, and registered trade unions representing employees and unrepresented employees are all defined as “affected persons” in the King IV Report (King IV Report, 2016).

S 131 of the Act defines an affected person as:

*“a shareholder or creditor of the company, any registered trade union representing employees of the company, and if any of the employees of the company is not represented by a registered trade union, each of those employees or their respective representatives.”*

(Constitution of the Republic of South Africa Act 108, 1996)

The group mentioned above, known as “affected persons,” are materially affected during the Business Rescue Process and, therefore, are given a wide range of rights during the Business Rescue Process.

**Appendix E      Mining sector participation in Business Rescue Procedures.**

Year	2015- 2016	2016- 2017	2017- 2018	2018- 2019	2019- 2020	2020- 2021	Grand Total
Number of BR Proceedings started in the Mining Sector	25	11	36	12	14	8	106
Total Number of BR Proceedings as started in South Africa as per CIPC website	481	375	362	349	373	233	2173
Mining BR procedure as a percentage of Total BR Proceedings	5.19%	2.93%	9.94%	3.43%	3.75%	3.43%	4.87%

Source: Student's own table. Information from (CIPC, 2020).



## Appendix F      South African Authors

Name of Author	Research Title	Research Gap
A Loubser	Some Comparative aspects of Corporate Rescue in South African company Law(2010)	No empirical evidence Legal research paper. Research Methodology
P.J. Bezuidenhout	A review of business rescue in South Africa since the implementation of the Companies Act(2012)	Time limitation. One year of study. Methodology and Theory
Levenstein	South African Business Rescue Procedure (2018)	Legal Research deals with all aspects of the law, but not including case study Methodology. Theory
Joubert E P	A Comparative study of the effects of Liquidation or Business Rescue Proceedings on the rights of the employees of a company (2018)	Comparison between liquidation and BR Proceedings. No interviews or concentration on BR Proceedings. Methodology.
M Pretorius	Business Rescue Status Quo Report (2015)	Additional information became available after 2015. Theory and Methodology

M Pretorius	Task and activities of the BR practitioner. A strategy as practice approach(2013)	Important work on BR Practitioners. Methodology. It does not include a case study of the particular influence of BR practitioners on one company.
M. Pretorius and W. Rosslyn-Smit	Expectations of a BR plan. International Directives for Chapter 6 Implementation. (2014)	They are applying international directives to the South African landscape. Legal research does not include actual case studies. Methodology.
Rajaram R	Success Factors for BR in South Africa (2016)	Survey amongst BR Practitioners identifying lack of post-commencement finance. No study on the effect of not obtaining post-commencement finance on the employee's Methodology

## Appendix G

## Informed Consent Form



UU\_IC - Version 2.1

### Informed Consent Form

#### Part 1: Debriefing of Participants

**Student's Name:**

**Student's E-mail Address:**

**Student ID #:**

**Supervisor's Name:**

**University Campus:**

**Program of Study:**

**Research Project Title:**

**Date:**

Provide a short description (purpose, aim and significance) of the research project, and explain why and how you have chosen this person to participate in this research (maximum 150 words).

The above named Student is committed in ensuring participant's voluntarily participation in the research project and guaranteeing there are no potential risks and/or harms to the participants.

Participants have the right to withdraw at any stage (prior or post the completion) of the research without any consequences and without providing any explanation. In these cases, data collected will be deleted.

All data and information collected will be coded and will not be accessible to anyone outside this research. Data described and included in dissemination activities will only refer to coded information ensuring beyond the bounds of possibility participant identification.

I, \_\_\_\_\_, ensure that all information stated above is true and that all conditions have been met.

**Student's Signature:** \_\_\_\_\_

## Appendix H Interview Discussion Guide



### Discussion Guide: Interview

#### Checklist before Introduction:

Identify participants to be interviewed using purposive sampling

Explain the interview and research process, including confirmation and completion of consent documents, confidentiality, and anonymity.

Remind the interviewee that the interview process is entirely voluntary and that the interviewee can withdraw at any time.

Remind the interviewee that the interview will be audio-recorded and that there is no right or wrong answer to any questions.

Discuss how important it is for the researcher to understand the employee's role as a stakeholder in the Business Rescue Process and how it impacts their employment protection.

Thank the interviewee for participating in the study and explain that you will refer to "Big Five Mine" as "The Mine," as this seems to be the most common way of referring to their employer.

### Introduction:

I appreciate your willingness to take part in my study. The purpose of this study is to investigate the Business Rescue Process and the impact this process has on employment protection in South Africa. This interview should take no more than sixty minutes of your time. As you might have read in the informed consent form, your responses will be kept strictly confidential, and you will never be identified by name when I report the results of this study. Your participation in this study is significant to me. However, participation in this study is voluntary; therefore, you can stop participating at any time and withdraw without any consequences.

Before starting the interview, check whether the interviewee has any concerns or questions for the Researcher.

### Interview questions:

**Question 1:** Question one will deal with demographics, and the information will not be used to identify you. We have dealt with issues of confidentiality in the informed consent section.

Please state your gender.

How old are you?

Are you married?

How many dependents do you have?

What job did you do in “The Mine?”

What other skills do you have?

Did you complete any tertiary education?

How long have you lived in this area?

How many years has the mine employed you?

**Question 2:** What does the term ‘job security’ mean to you?

Prompts:

- Knowledge of Labour Laws
- Importance of communication with management
- Influence of workers on employment security
- Knowledge of Management structures
- Did the mine have regular labour meetings?
- Did you feel involved in management decisions?
- How secure did you feel your employment was?

**Question 3:**

What personal factors became most vital for you during the Business Rescue Process?

**Prompts:**

- Perceived job security after becoming aware of the Business Rescue process.

- How did they feel the process will influence them, if at all?
- Did you try to leave the company during this time/seek alternative employment during the BR Process?
- When did you realise that the process might involve you losing your job?
- Did you get paid for the last months of your work?
- How did you perceive management's role in your job security?
- Did you at any time believe that the mine will close?
- How long have you been unemployed(if you lost your job after BR)

**Question 4:**

What interpersonal factors became most important to you and your colleagues during the BR Process compared to when you were working and the mine was operating normally?

**Prompts:**

- Business Rescue's influence on feeling secure in your job
- Perceive levels of uncertainty among colleagues
- Did you discuss the process with colleagues?
- Did you discuss the behaviour of management during this time?
- Did the BR Practitioner provide feedback on the process?
- How did you obtain information on the BR Process?
- Did you receive financial support from the mine?

**Question 5**

What organizational factors became most important to you during this process?

**Prompts**

- Company feedback
- Teamwork
- Company politics/Teamwork/Uncertainty/conflict
- Availability of critical skills
- Feedback from Business Rescue Practitioners
- Access to finance
- Influences perceived to have an impact on your job security.

**Question 6:**

How would you describe your position during the Business Rescue Process?

**Question 7:**

What advice will you give to future employees and Union Representatives who might find themselves in Business Rescue?

**Prompts**

- Talk to the Business Rescue Practitioner
- Union Leaders communication
- Training for diverse skills



- Selling outstanding debt to other debtors(Some ex-employees were offered this option)
- Any additional insight to share regarding your experience with the BR Process

## **END OF INTERVIEW**

Confirm that the interviewer will remain in contact with the Participant if any further information is required. The Participant will have the Researcher's contact details should they wish to add anything or ask for any additional clarification from the Researcher.

Thank Participant for their time, the information provided, and their contribution to the research study.

## **INTERVIEW FOR FOCUS GROUPS:**

The focus group discussions will take place after the interviews have been completed and will aim to clarify legal issues and other issues that might have emerged during the initial interviews.

### **Question 1:**

Could each one in the group briefly describe their occupation?

### **Question 2:**

What do you understand under the term Business Rescue?

**Question 3:**

Could you briefly share your observations on the Business Rescue Process as it happened at Big Five Mine?

**Question 4:**

**Question four is directed at the lawyers in the Focus Group.**

Could you explain the legal steps that might have influenced job security for the employees at Big Five Mine?

**Question 5:**

Do you think more could have been done to protect jobs during this process?

**Question 6:**

How does the role of the Business Rescue Practitioner during this Business Rescue Procedure impact the continued job security of the employees?

**Question 7:**

The law makes provision for additional training for people who will be retrenched.

To your knowledge, why was this not done in the case of Big Five Mine? Is this something that should be addressed by additional legislation?

**Question 8:**

Do you think Business Rescue is an efficient process to rescue South African Businesses and thereby save jobs for employees?

**Question 9:**

Have you any advice on how this process can be implemented in the future to provide more employment security?

**END OF INTERVIEW**

Confirm that the interviewer will remain in contact with the Participant if any further information is required. The Participant will have the Researcher's contact details should they wish to add anything or ask for additional clarification from the Researcher.

Thank Participants for their time, the information provided, and their contribution to the research study.

## APPENDIX I

## Research Ethics Application Form



REAF\_DS - Version 3.1



UNICAF UNIVERSITY RESEARCH ETHICS APPLICATION FORM DOCTORAL STUDIES		UREC USE ONLY: Application No: Date Received:
Student's Name:	Aletta C Nel	
Student's E-mail Address:	alma@mroliepr.com	
Student's ID #:	R1805D5279901	
Supervisor's Name:	Dr.Attridge Mwelwa Mwape	
University Campus:	Unicaf University Zambia (UUZ) ▼	
Program of Study:	UUZ: DBA Doctoral of Business Administration ▼	
Research Project Title:	Investigating Business Rescue and Employment protection in South Africa: A case study of the Big Five Mine in Mpumalanga.	

1. Please state the timelines involved in the proposed research project:

Estimated Start Date: 07-Oct-2021

Estimated End Date: 7-Oct-2021

2. External Research Funding (if applicable):

2.a. Do you have any external funding for your research?

☐ YES
 ☒ NO

If YES, please answer questions 2b and 2c.

2.b. List any external (third party) sources of funding you plan to utilise for your project. You need to include full details on the source of funds (e.g. state, private or individual sponsor), any prior / existing or future relationships between the funding body / sponsor and any of the principal investigator(s) or co-investigator(s) or student researcher(s), status and timeline of the application and any conditions attached.

2.c. If there are any perceived ethical issues or potential conflicts of interest arising from applying or and receiving external funding for the proposed research then these need to be fully disclosed below and also further elaborated on, in the relevant sections on ethical considerations later on in this form.

### 3. The research project

#### 3.a. Project Summary:

In this section fully describe the purpose and underlying rationale for the proposed research project. Ensure that you pose the research questions to be examined, state the hypotheses, and discuss the expected results of your research and their potential.

It is important in your description to use plain language so it can be understood by all members of the UREC, especially those who are not necessarily experts in the particular discipline. To that effect ensure that you fully explain / define any technical terms or discipline-specific terminology (use the space provided in the box).

The Purpose of this qualitative case study is to investigate the impact of the Business Rescue Laws in South Africa has on the employment protection of mine workers . The study will seek to gain insight into the factors that influence job security during the process with the aim of providing insight and guidance to mine bosses, union representatives and employees during any future Business Rescue processes. The study will be guided by the Stakeholder Management theory. Employees are valuable stakeholders in any business and the research gap that was identified by the literature review is that no studies could be found where employees were interviewed .The interviews are important as it could provide a unique insight into how workers experience the Business Rescue Process and how their job protection was affected by the process.

The research question is:

Question 1:How does the application of Business Rescue Law in South Africa compare to the application of similar laws internationally?

This question will be answered by a desktop research approach were secondary documents will be studied.

Question 2: What effect did the implementation of Chapter 6 of the Companies Act71 of 2008 have on the protection of Employment in South Africa?

This question will be explored by studying secondary material available to the researcher , as well as the judgment of South African Laws and available journals and doctoral thesis's on different aspects of the Business Rescue Process.

Question 3:How does the BR Process impact on Employment Protection?

To answer this research question face to face interviews will be held with the ex-employees of Big Five Mine. Their perspective and lived experience will provide insight on the actual impact of this law on employees and their job security. The results be compared to the legal expectations this Law created.

Question 4 : What recommendations could be made for future legal reform to protect employee interest during the Business Rescue Process? The procedure did not produce good results in the ten years since inception in 2011. The expected results is that employees,as an often overlooked group of stakeholders ,will offer a unique perspective on the procedure and how it affects their continued employment security.

### 3.b. Significance of the Proposed Research Study and Potential Benefits:

Outline the potential significance and/or benefits of the research (use the space provided in the box).

The significance of this study is the unique contribution to knowledge that will be added to the scarce literature available on the Business Rescue Procedure. Many studies have been undertaken on different aspects of this Procedure. Since this law is only ten years old in South Africa in 2021, the availability of research is limited. The study will critically apply the normative theory of Stakeholder Management to the Business study currently undertaken. The study will provide unique insight into how this Process impact on the employment security of mine workers. Labour and Unions are not well informed of the the Business Rescue process and their reluctance to take part in the process might be due to a lack of knowledge. The study will aim to provide useful information to Directors of mines, labour, unions and practitioners in future Business Rescue Procedures. The study is designed to enhance scholarly knowledge and theory .

### 4. Project execution:

#### 4.a. The following study is an:

- ☒ experimental study (primary research)
- ☒ desktop study (secondary research)
- ☐ desktop study using existing databases involving information of human/animal subjects
- ☐ Other

If you have chosen 'Other' please Explain:

**4.b. Methods.** The following study will involve the use of:

Method	Materials / Tools
Qualitative:	<input checked="" type="checkbox"/> Face to Face Interviews
	<input checked="" type="checkbox"/> Phone Interviews
	<input type="checkbox"/> Face to Face Focus Groups
	<input checked="" type="checkbox"/> Online Focus Groups
	<input type="checkbox"/> Other *
Quantitative:	<input type="checkbox"/> Face to Face Questionnaires
	<input type="checkbox"/> Online Questionnaires
	<input type="checkbox"/> Experiments
	<input type="checkbox"/> Tests
	<input type="checkbox"/> Other *

\*If you have chosen 'Other' please Explain:

**5. Participants:**

**5 a. Does the Project involve the recruitment and participation of additional persons other than the researcher(s) themselves?**

- ☒ YES    If YES, please complete all following sections.
- ☐ NO    If NO, please directly proceed to Question [7](#).

### 5 b. Relevant Details of the Participants of the Proposed Research

State the number of participants you plan to recruit, and explain in the box below how the total number was calculated.

Number of participants

The respondents are the employees available in one geographical area that is willing to talk to the researcher and does have a rudimentary command of the spoken English language. All chosen participants were able to attend the first Business Rescue meeting five years ago(2016), where the researcher met the participants. One interpreter will participate in the interviews.

Describe important characteristics such as: demographics (e.g. age, gender, location, affiliation, level of fitness, intellectual ability etc). It is also important that you specify any inclusion and exclusion criteria that will be applied (e.g. eligibility criteria for participants).

Age range From  To

Gender ☒ Female  
☒ Male

Eligibility Criteria:

- Inclusion criteria Location as well as ability to eloquently communicate. All participants was selected because they were stakeholders (employees) during the commencement of the Business Rescue Procedure.
- Exclusion criteria Participants that stays in very remote areas where the researcher is unable to reach them even electronically and underage children and pensioners. Participants that are unable to converse in English or Zulu.

Disabilities

Other relevant information (use the space provided in the box):

South Africa has eleven official languages. The researcher is able to converse in three of them(Afrikaans,English,Zulu).An interpretor will be able to assist with Tswana, but the Researcher will have to make provision for some rich data going missing if the language is not understood correctly. Every effort will be made to reach information saturation within the language barrier limitations.



**5 c. Participation & Research setting:**

Clearly describe which group of participants is completing/participating in the material(s)/ tool(s) described in 5b above (use the space provided in the box).

Eighteen respondents will be interviewed. all eighteen will participate in a semi-structured interview where the researcher will ask question aiming to answer the research question. Prompts planned with the interview will keep the conversation more structured.

**5 d. Recruitment Process for Human Research Participants:**

Clearly describe how the potential participants will be identified, approached and recruited (use the space provided in the box).

All participants agreed to sign a consent form. The participants form part of a group of employees of the Big Five Mine all staying in the same geographical area. Interviews, no longer than an hour will be held individually and treated confidentially. Where requested one interpreter might be present at the meeting. The participants will be approached by the gate keeper to introduce the Research and the Researcher to the participants, although the Researcher is known to the participants from previous encounters and being a guest speaker at some of the proceedings pertaining to the Business Rescue Process. The Researcher will take measures to eliminate research bias and approach the question from the perspective of the employees(stakeholders) and guided by Stakeholder management theory.

**5 e. Research Participants Informed Consent.**

Select below which categories of participants will participate in the study. Complete the relevant Informed Consent form and submit it along with the REAF form.

Yes	No	Categories of participants	Form to be completed
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Typically Developing population(s) above the maturity age *	Informed Consent Form
<input type="checkbox"/>	<input type="checkbox"/>	Typically Developing population(s) under the maturity age *	Guardian Informed Consent Form

\* Maturity age is defined by national regulations in laws of the country in which the research is being conducted.



**5 f. Relationship between the principal investigator and participants.**

Is there any relationship between the principal investigator (student), co-investigators(s), (supervisor) and participant(s)? For example, if you are conducting research in a school environment on students in your classroom (e.g. instructor-student).

☒

YES

☐

NO

If YES, specify (use the space provided in the box).

The investigator(student) initially became aware of the Business Rescue Procedure as one of the creditors of the procedure. At the first mandatory meeting of this procedure in 2016 the researcher met the miners that were impacted by this procedure. Since then the researcher has relinquished her claim, but continued to attend meetings and talk to the employees as part of her on-going interest of the impact this procedure has on different stakeholders. It is an academic interest, as the researcher is no longer a stakeholder.

**6. Potential Risks of the Proposed Research Study.**

**6 a. i. Are there any potential risks, psychological harm and/or ethical issues associated with the proposed research study, other than risks pertaining to everyday life events (such as the risk of an accident when travelling to a remote location for data collection)?**

☐

YES

☒

NO

If YES, specify below and answer the question 6 a.ii.

**6 a.ii Provide information on what measures will be taken in order to exclude or minimise risks described in 6.a.i.**

## 6 b. Choose the appropriate option

	Yes	No
i. Will you obtain written informed consent form from all participants?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. Does the research involve as participants, people whose ability to give free and informed consent is in question?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Does this research involve participants who are children under maturity age? If you answered YES to question iii, complete all following questions. If you answered NO to question iii, do not answer Questions iv, v, vi and proceed to Questions vii, viii, ix and x.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Will the research tools be implemented in a professional educational setting in the presence of other adults (i.e. classroom in the presence of a teacher)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v. Will informed consent be obtained from the legal guardians (i.e. parents) of children?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
vi. Will verbal assent be obtained from children?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
vii. Will all data be treated as confidential? If NO, explain why confidentiality of the collected data is not appropriate for this proposed research project, providing details of how all participants will be informed of the fact that any data which they will provide will not be confidential.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
viii. Will all participants /data collected be anonymous? If NO, explain why and describe the procedures to be used to ensure the anonymity of participants and/or confidentiality of the collected data both during the conduct of the research and in the subsequent release of its findings.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

		Yes	No
ix.	Have you ensured that personal data and research data collected from participants will be securely stored for five years?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
x.	Does this research involve the deception of participants? If YES, describe the nature and extent of the deception involved. Explain how and when the deception will be revealed, and who will administer this debrief to the participants:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6 c. i. Are there any other ethical issues associated with the proposed research study that are not already adequately covered in the preceding sections?

☐ Yes ☒ No

If YES, specify (maximum 150 words).

6.c.ii Provide information on what measures will be taken in order to exclude or minimise ethical issues described in 6.c.i.

6 d. Indicate the Risk Rating.

☐ High ☒ Low



### 7. Further Approvals

Are there any other approvals required (in addition to ethics clearance from UREC) in order to carry out the proposed research study?

☒ YES ☐ NO

If YES, specify (maximum 100 words).

Gate keepers letter. The employees trust their elected representative to approach them with people that he find trustworthy as many journalist has taken advantage of their exposure.

### 8. Application Checklist

Mark ☒ if the study involves any of the following:

- ☐ Children and young people under 18 years of age, vulnerable population such as children with special educational needs (SEN), racial or ethnic minorities, socioeconomically disadvantaged, pregnant women, elderly, malnourished people, and ill people.
- ☐ Research that foresees risks and disadvantages that would affect any participant of the study such as anxiety, stress, pain or physical discomfort, harm risk (which is more than is expected from everyday life) or any other act that participants might believe is detrimental to their wellbeing and / or has the potential to / will infringe on their human rights / fundamental rights.
- ☐ Risk to the well-being and personal safety of the researcher.
- ☐ Administration of any substance (food / drink / chemicals / pharmaceuticals / supplements / chemical agent or vaccines or other substances (including vitamins or food substances) to human participants.
- ☐ Results that may have an adverse impact on the natural or built environment.

### 9. Further documents

Check that the following documents are attached to your application:

		ATTACHED	NOT APPLICABLE
1	Recruitment advertisement (if any)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Informed Consent Form / Guardian Informed Consent Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3	Research Tool(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	Gatekeeper Letter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5	Any other approvals required in order to carry out the proposed research study, e.g., institutional permission (e.g. school principal or company director) or approval from a local ethics or professional regulatory body.	<input type="checkbox"/>	<input checked="" type="checkbox"/>



**10. Final Declaration by Applicants:**

- (a) I declare that this application is submitted on the basis that the information it contains is confidential and will only be used by Unicaf University for the explicit purpose of ethical review and monitoring of the conduct of the research proposed project as described in the preceding pages.
- (b) I understand that this information will not be used for any other purpose without my prior consent, excluding use intended to satisfy reporting requirements to relevant regulatory bodies.
- (c) The information in this form, together with any accompanying information, is complete and correct to the best of my knowledge and belief and I take full responsibility for it.
- (d) I undertake to abide by the highest possible international ethical standards governing the Code of Practice for Research Involving Human Participants, as published by the UN WHO Research Ethics Review Committee (ERC) on <http://www.who.int/ethics/research/en/> and to which Unicaf University aspires to.
- (e) In addition to respect any and all relevant professional bodies' codes of conduct and/or ethical guidelines, where applicable, while in pursuit of this research project.



I agree with all points listed under Question 10

Student's Name: Aletta C Nel

Supervisor's Name: Dr.Attridge Mwelwa Mwape

Date of Application: 11-Oct-2021

**Important Note:**

Save your completed form (we suggest you also print a copy for your records) and then submit it to your UU Dissertation/project supervisor (tutor). **In the case of student projects, the responsibility lies with the Faculty Dissertation/Project Supervisor.** If this is a student application, then it should be submitted via the relevant link in the VLE. Please submit only electronically filled in copies; do not hand fill and submit scanned paper copies of this application.

## APPENDIX J

## Informed Consent Form



UU\_IC - Version 2.1



## Informed Consent Form

## Part 1: Debriefing of Participants

Student's Name: Aletta C.Nel

Student's E-mail Address: alma@mroliepr.com

Student ID #: R1805D5279901

Supervisor's Name: Dr.Attridge Mwelwa Mwape

University Campus: Unicaf University Zambia (UUZ)

Program of Study: UUZ:DBA.Doctoral of Business Administration

Research Project Title: Investigating Business Rescue and Employment Protection in South Africa: A case study of the Big Five Mine in Mpumalanga.

Date: 11-Oct-2021

Provide a short description (purpose, aim and significance) of the research project, and explain why and how you have chosen this person to participate in this research (maximum 150 words).

The purpose of this study is to investigate the impact the Business Rescue Law has on the employment protection of the employee. Employees are important stakeholders in any business. No business can survive without employee involvement. This study aim to investigate the origin of this law and the appropriate application of this law during a Business Rescue Procedure. As a employees of the mine I would like to interview you for your unique perspective on this procedure and to find out the impact this procedure had on your job security. I will report and compare my findings against the legal outcome expected with the implementation of this law . Your experience as important stakeholder of the business,with this procedure, will provide information to employees, employee representatives, such as Union representatives as well as business owners who might find their business in financial distress in future. This study will aim to recommend reforms based on the investigation of the problem and the feedback received from all employees.

The above named Student is committed in ensuring participant's voluntarily participation in the research project and guaranteeing there are no potential risks and/or harms to the participants.

Participants have the right to withdraw at any stage (prior or post the completion) of the research without any consequences and without providing any explanation. In these cases, data collected will be deleted.

All data and information collected will be coded and will not be accessible to anyone outside this research. Data described and included in dissemination activities will only refer to coded information ensuring beyond the bounds of possibility participant identification.

I, Aletta C.Nel, ensure that all information stated above is true and that all conditions have been met.

Student's Signature:



### Informed Consent Form

#### Part 2: Certificate of Consent

**This section is mandatory and should to be signed by the participant(s)**

Student's Name:	Aletta C.Nel
Student's E-mail Address:	alma@mroliepr.com
Student ID #:	R1805D5279901
Supervisor's Name:	Dr.Attridge Mwelwa Mwape
University Campus:	Unicaf University Zambia (UUZ)
Program of Study:	UUZ:DBA.Doctoral of Business Administration
Research Project Title:	Investigating Business Rescue and Employment Protection in South Africa: A case study of the Big Five Mine in Mpumalanga.

I have read the foregoing information about this study, or it has been read to me. I have had the opportunity to ask questions and discuss about it. I have received satisfactory answers to all my questions and I have received enough information about this study. I understand that I am free to withdraw from this study at any time without giving a reason for withdrawing and without negative consequences. I consent to the use of multimedia (e.g. audio recordings, video recordings) for the purposes of my participation to this study. I understand that my data will remain anonymous and confidential, unless stated otherwise. I consent voluntarily to be a participant in this study.

Participant's Print name:

Participant's Signature:

Date:

**If the Participant is illiterate:**

I have witnessed the accurate reading of the consent form to the potential participant, and the individual has had an opportunity to ask questions. I confirm that the aforementioned individual has given consent freely.

Witness's Print name:

Witness's Signature:

Date: