THE REGULATION AND PROTECTION OF STAKEHOLDER INTERESTS UNDER ZIMBABWE'S NEW CORPORATE RESCUE REGIME: A COMPARATIVE STUDY

CALEB MUCHECHE*

ABSTRACT

Corporate insolvency law has been the major debate internationally due to its impact on companies and other business entities. Zimbabwe recently introduced two new corporate rescue procedures and measures which seek to rescue companies which have fallen into financial distress. These measures are, corporate rescue and compromise with creditors, following the enactment of the Insolvency Act [Chapter 6:07]. This legislative intervention by way of corporate rescue gives a clear path for the corporate rescue practitioner to follow to save a corporate from financial ruin. The practitioner and those who are affected will be able to decide whether it is feasible to develop a strategy that well benefit the corporate entity and rescue it from financial doldrums. The paper compares the Zimbabwean Act with that of UK, Australia and South Africa. The Zimbabwean Insolvency Act has some interesting provisions similar to the business rescue provisions of South Africa which includes the regulation of insolvency practitioners, the rights of creditors, the position of employees and shareholders. One may argue that the Insolvency legislation provisions on corporate rescue are poised to be the leeway for an effective corporate insolvency regime in Zimbabwe. Undoubtedly, the reforms to the Insolvency Act of Zimbabwe have brought about far-reaching changes to corporate rescue laws in the country.

1. INTRODUCTION

The Insolvency Act 6:07 presently regulating insolvency law in Zimbabwe came into effect on 25 June 2018.[1] This Act was the result of an in-depth investigation into insolvency law that began with the Companies Act 24:03.[2] There were a lot of recommendations for radical changes in the insolvency law to Parliament of Zimbabwe. Zimbabwe's corporate insolvency law reforms were

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* LLM Commercial Law(South Africa); LLM Labour Law(Zambia); LLB Hons (UZ-Zimbabwe), Head Partner at Caleb Mucheche and Partners Law Chambers.

[1] Insolvency Act 6:07

[2] Companies Act 24:03

timed to correspond with comparable developments elsewhere in the world, and the country tend to benefit greatly from emerging global best practices in the corporate rescue provisions.

This paper begins by briefly tracing the historical background on the regulation and protection of stakeholder interests in Zimbabwe, looking at the incremental development of the stakeholder protection through case law and the Insolvency Act 6:07. Comments will be made on the current position under the Insolvency Act as comparisons will be drawn between the developments in law in Zimbabwe and UK. Zimbabwe set the pace for the development of a modern corporate rescue which protects the position of stakeholders during the rescue of a company. It is therefore proper that the comparative analysis should begin with a brief study of developments in Zimbabwe. Australia will be considered next, as Australian law reforms benefited too from shifting to a new modern corporate rescue provisions which followed international standards. Lessons drawn from the Australian experience on the regulation and protection of stakeholder interests will assist in proposing the correct future judicial approach for Zimbabwe and development of standards. The UK law will be examined to give insight into the content of stakeholder protection, and the historical development of the regulation and protection of stakeholder during judicial management and the current provisions on corporate rescue.

2. BACKGROUND AND CONTEXT

One of the goals of law reform was to improve Zimbabwe's worldwide competitiveness in corporate insolvency law. One approach to do so was to ensure that the new Insolvency legislation was compatible and harmonized with best practice countries around the world. In this sense, Zimbabwe has followed a general trend in Commonwealth legal systems in enshrining the corporate rescue provisions under the new Insolvency Act 6:07, a complete shift from the judicial management under the Companies Act 23:03.[3] Judicial management had long been abandoned by so many jurisdictions including South Africa, UK, USA and Australia. Its unpopularity came because, in many situations, companies that had fallen under financial difficulties, which could have been rescued, were driven into liquidation since no effective rescue method was available to

[3] Companies Act 23:03

them.[4] The appointment of a rescue practitioner was not an option. One of the key objectives of the Insolvency Bill was to encourage the continuance and sale of a debtor's business as a going concern, as well as the retention of at least some of the jobs in such a business. As a result, the Bill advocated for the creation of a new mechanism to aid companies in financial distress by appointing a corporate rescue practitioner with the broad powers.[5] As a result of this advice, Zimbabwe adopted a new formal rescue mechanism, the corporate rescue procedure, which is governed by Part XXII of the Insolvency Act 7 of 2018. South Africa[6], Australia[7] and the United Kingdom[8] (hereinafter the UK) are three such legal systems that have likely had the biggest influence on the formation of modern provisions of corporate rescue in Zimbabwe. In their amended company statutes, South Africa, Australia and the United Kingdom have formalized the use or corporate rescue or business rescue.

Although the previous regime was successful in a small number of cases, it fell short of its goal of establishing a practical and widely adopted company rescue technique that could be employed in a variety of situations where assistance was required.[9] This was partly due to the fact that judicial management was a new and unfamiliar procedure, and thus viewed with some skepticism, but it was also due to the procedure's flaws, such as the requirement of a detailed independent and costly report on the company's affairs that had to accompany an application for judicial management, and the fact that the only way to have a judicial manager appointed was through a court application. The judicial management order procedure was thus chastised for being inconvenient and costly, the latter rendering it unsuitable for small and medium-sized businesses in particular.

In June 2018, the government of Zimbabwe substantially replaced those provisions of the Companies Act 24:03 [10]regulating the judicial management procedure. The rescuing of a company

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[4] B Wessels. (2017). *International insolvency law. Part II, European insolvency law*.

[5] Calitz, J. (2016). Is post-commencement finance proving to be the thorn in the side of business rescue proceedings under the 2008 Companies Act? *De Jure*, *49*(2), 265–287.

[6] Companies Act 71 of 2008

[7] See s180 (1) of the Corporations Act 50, 2001.

[8] See s 174 (1) & (2) of the Companies Act, 2006 (c46).

[9] Calitz, J. (2016). Is post-commencement finance proving to be the thorn in the side of business rescue proceedings under the 2008 Companies Act? *De Jure*, *49*(2), 265–287.

[10] Companies Act 24:03

is now being regulated by the provisions contained in Part XXII of the Insolvency Act 6:07.[11] Some more radical recommendations contained in the Insolvency Bill had to be utilized after strong opposition of the judicial management procedure, the Insolvency Act 6:07 effectively relaunched the rescue procedure.

The Insolvency Act further drew attention to the lack of a procedure whereby a company could affect an out-of-court, formal and binding composition with its creditors, and the fact that the available procedures, particularly the court-sanctioned arrangement between a company and its creditors, were lengthy, involved and costly. The simplicity of the corporate rescue procedure in the Insolvency Act would prove to be of great value to small companies in particular.[12]

Once again, the new corporate rescue regime appeared to be an attractive proposition, and prove to be as popular as it had been hoped or anticipated. Most companies, like Metallion Gold mine which was still under judicial management, quickly shifted to use the corporate rescue.[13] Statistically, during judicial management, company voluntary arrangements were shown to be even less attractive in practice than through a court order. This could be ascribed primarily to one reason: there was no provision in the Companies Act for a moratorium to prevent creditors from enforcing their claim while the proposal was still being prepared and considered. In most cases, a voluntary arrangement was thus combined with an order that supplied the required moratorium, but this inevitably increased the costs of the procedure. Particularly in the case of smaller companies, judicial management was not a viable option because the full process of judicial management was too expensive and onerous in relation to the problems that needed to be solved. In reaction to these deficiencies in the company voluntary arrangement procedure under judicial management, the Insolvency Act 6:07 that came into force on 25th of June 2018 included several provisions aimed at removing some of the obstacles that prevented companies from entering into a successful rescue procedure.

The purpose of this is to trace the development of corporate rescue provisions in the countries selected as comparators of choice for this study, being Zimbabwe and UK, in the

[11] Insolvency Act 6:07
[12] Conradie, S & Lamprecht, C. (2018). What are the indicators of a successful business rescue in South Africa? Ask the business rescue practitioners. *South African Journal of Economic and Management Sciences*, *21*(1).
[13] Metallon Gold case.

regulation and protection of stakeholders' interests. The further considers how the shift from judicial management to corporate rescue was influenced, and reference will be made from a growing body of successfully rescued companies through case law in these countries, and how this have influenced Zimbabwe's law reform on stakeholder protection. Even more importantly, this considers how these provisions from these countries may continue to impact on the future development of relevant jurisprudence in Zimbabwe. The chapter will compare and contrast the regulation of stakeholder interests in Zimbabwe and review provisions contained in the various pieces of legislation in the selected countries on one hand, and the provisions now contained in the new Insolvency Act on stakeholder protection on the other hand. The success stories or the challenges of interpreting and enforcing corporate rescue provisions in those countries will serve as lessons for development of better corporate rescue provisions in Zimbabwe.

Why is a comparative approach important to this study? It is decidedly relevant to this study because the Constitution encourages such an approach when interpreting the law. S 46(1) of the Constitution states that — when interpreting Chapter 4, a court, tribunal forum or body may consider relevant foreign law. Each comparator selected adds a peculiar dimension to understanding the historical as well as the future development of the regulation and protection of stakeholder's interests under the Insolvency laws of Zimbabwe. As stated earlier, the South African, UK and Australia jointly share the same provisions that have been implemented in Zimbabwe. Zimbabwe shares a common law heritage with these three legal systems. As such an understanding of any developments in corporate insolvency laws has been correctly said to be of great comparative value to understanding the regulation and protection of stakeholders' interests.[14]

This paper begins by briefly tracing the historical background on the regulation and protection of stakeholder interests in Zimbabwe, looking at the incremental development of the stakeholder protection through case law and the Insolvency Act 6:07. Comments will be made on the current position under the Insolvency Act as comparisons will be drawn between the developments in law in Zimbabwe and UK. Zimbabwe set the pace for the development of a modern corporate rescue which protects the position of stakeholders during the rescue of a company. It is therefore proper that the comparative analysis should begin with a brief study of

[14] Conradie, S., & Lamprecht, C. (2018). What are the indicators of a successful business rescue in South Africa? Ask the business rescue practitioners. *South African Journal of Economic and Management Sciences*, *21*(1).

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3. INSOLVENCY LAW IN ZIMBABWE

Distressed businesses can keep their status as going concerns under Part XXII of the Insolvency Act 6:07 if they use improved business rescue procedures. This will ultimately boost businesses in Zimbabwe, improving investments and trade through the consistency and reliability of companies that are compliant with international standards[15], while also ensuring that jobs are kept and economic and social benefits for all are maintained by the community.[16]

It is important that whilst companies are thriving to have a successful rescue, they also take into consideration the rights and interests of all relevant stakeholders.[17] As a result, it is critical that the essential elements of the corporate rescue regime provide a favorable climate for the rescue of enterprises on the verge of bankruptcy. In the current economic context, Zimbabwe simply cannot afford another display of judicial management, this time under the guise of 'enterprise rescue.'

Zimbabwe has followed a "creditor-friendly approach" in which the concept of business was not prioritized and the focus was on liquidation and the protection of creditors' rights.[18] The focus has turned to the creation of commercial procedures that are largely focused on the debtor or troubled company.[19] However, the Insolvency Act 6:07 has the disadvantage of focusing solely

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[15] Davis, G., & Haywood, M. (2019). *Butterworths insolvency law handbook.* Butterworths.

[16] Loubser 2004 SA Merc LJ 137.
[17] Companies Act of 2008
[18] Braatvedt Chapter 6 of the South African Companies Act 71 of 2008 Reviewed (2010). www.hg.org/article.asp?id=19587. Date of access 01/02/2022
[19] Davis, G., & Haywood, M. (2019). *Butterworths insolvency law handbook.* Butterworths

on companies and closely held corporations, ignoring businesses such as partnerships, business trusts, and sole proprietorships.[20]

3.1 The definition of corporate rescue

The corporate rescue procedure is defined in section 121(1)(b) of the Insolvency Act 6:07[21] as;

> *(i) "the temporary supervision of the company, and of the management of its affairs, business and property,*
>
> *(ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession,*
>
> *(iii) the development and implementation, if approved, of a plan to rescue the company or, if that is not possible, a plan that would achieve a better return for the company`s creditors than the payment they would have received if the company had simply been liquidated immediately."*

Despite the fact that the Insolvency Act uses the term "corporate rescue," this can also be classified as a corporate rescue operation in which the complete firm or corporate entities are part of the package.[22] The definition refers to a company's rehabilitation and a plan to save it in a way that maximizes its chances of survival. The term "rescue" refers to the reorganization of a firm in order to re-establish it as a profitable entity and, eventually, prevent liquidation, in order to preserve the company and ensure it once again becomes a vital contributor to the country's economic life.[23]

Section 121(b)(iii),[24] makes it clear that company rescue can result in one of two results. The primary goal is for the firm to re-establish itself as a continuing concern, with a secondary goal of providing a higher return for creditors or shareholders than would otherwise be the case if

[20] Meskin Henochsburg on the Companies Act Volume (2011) 18.1.
[21] Insolvency Act 6:07
[22] Section 128(b)(iii) of the Companies Act of 2008
[23] W.A. Joubert 'Business Rescue and Compromise with Creditors' (founding ed) The Law of South Africa vol 4(1) (2012).
[24] Insolvency Act 6:07

the company were liquidated.[25] As a result, unlike judicial management, which required the firm to be brought back into financial solvency, either of the two outcomes would be regarded a successful rescue under section 121(1)(b) of the Act.[26] The alternative, secondary goal, on the other hand, is significantly less taxing on the corporate rescue practitioner than the core goal.

When it was evident from the start that the company would never be spared from immediate liquidation, our courts were not always unanimous on whether corporate rescue proceedings might be used to gain a better return for creditors and shareholders.[27] The court in *A G Petzetakis International Holdings Ltd v Petzetakis Africa (Pty) Ltd and Others*[28] emphasised that, under section 131(4) of the 2008 Act,[29] the court may grant an order commencing business rescue if there is a reasonable prospect of it being rescued, and thus doubted whether the alternative objective could be relied on in support of a business rescue application at the outset.[30] In *Southern Palace Investment 265 (Pty) Ltd v Midnight Storm Investments* 386 Ltd[31], Eloff AJ acknowledged the alternative goal, saying that if the goal is just to get a greater return for creditors the applicant must offer specific facts about the source, type, and scope of the resources that are expected to be available to the company, as well as the basis and terms on which such resources will be made available. This would enable the courts to make informed decisions that use "mere speculation". In addition to being 'financially distressed,' a reasonable prospect of saving the company is required in both cases, regardless of whether corporate rescue is initiated by a corporate resolution or a court order.[32] As Cassim points out, "the two prerequisites for corporate rescue proceedings are that the company must be financially distressed and that there must be a 'reasonable possibility' of rescuing the company," despite the fact that the requirements for each case are slightly different.[33]

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[25] E.P. Joubert 'Reasonable possibility versus reasonable prospect: Did business rescue succeed in creating a better test than judicial management?' 2013 (76) THRHR 554.
[26] Of the Insolvency Act 6:07. S Conradie and C Lamprecht 'Business rescue: How can its success be evaluated at company level?' (2015) 19 (3) South African Business Rescue Review6.
[27] Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others 2013 (4) SA 539 (SCA) 23.
[28] 2012 (5) SA 515 (GSJ) para 17.
[29] Section 131(4) of the 2008 Act
[30] Sharrock 276
[31] Southern Palace Investment 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd 2012 (2) SA 423 (WCC) para 25.
[32] Section 122(1)(b) of the Insolvency Act 6:07
[33] Cassim 865

3.2 Commencement of corporate rescue

Corporate rescue proceedings may concern by either company resolution[34] or court order,[35] after an "affected person" has brought an application to place the company under supervision. The company's board of directors may pass a resolution by majority vote to "voluntarily begin corporate rescue proceedings and place the company under supervision" only if the board has reasonable grounds to believe[36] that the company is financially distressed and there appears to be a reasonable prospect of rescuing the company.[37] The Insolvency Act does not define what is meant by "reasonable grounds to believe". Levenstein submits that directors will have to consider the company's specific circumstances at the time, which will include both subjective (the director's personal view) and objective (a reasonable director's view) elements.[38] In ascertaining whether a company is 'insolvent', Levenstein correctly submits "that the board will have to take advice from its auditors and to establish by way of formal accounting deliberation whether or not such company is in a position of balance sheet insolvency".[39]

In terms of section 122(7) of the Insolvency Act, if a company's board of directors "have reasonable grounds to believe that the company is financially distressed", but have not adopted a resolution to commence corporate rescue proceedings, the board is required to give written notice to each 'affected person', setting out the relevant criteria of financial distress applicable to the company, and its reasons for not adopting the resolution to voluntary commence corporate rescue proceedings.[40] This, therefore allows an 'affected person' to apply to court to commence corporate rescue proceedings, and also puts into effect the necessary 'checks and balances'.[41]

The rationale for introducing voluntary commencement of corporate rescue by a company's board of directors is that the board is best suited to ascertain whether the company is indeed financially distressed.[42] As stated by Gutta J in *Lazenby v Lazenby Vervoer VV and Others*[43]

[34] Section 122(1) of the Insolvency Act 6:07
[35] Section 124(1) of the Insolvency Act 6:07
[36] J Rushworth 'A critical analysis of the Business Rescue Regime in the Companies Act 71 of 2008' (2010) Acta Juridica 377.
[37] Section 122(1)(a) & (b) of the Insolvency Act.
[38] Levenstein 308
[39] Levenstein 303.
[40] Rushworth (Note 229 above; 379).
[41] Sharrock (Note 14 above; 278).
[42] Delport (Note 207 above; 458).
[43] *Lazenby v Lazenby Vervoer VV and Others* (M328/2014) [2014] ZANWHC 41 (4 September 2014) para 23.

"a board of a company bears knowledge that a company is financially distressed and is best equipped to pass a resolution that a company be placed under corporate rescue and to initiate the corporate rescue proceedings… ."

Voluntary commencement circumvents the delays and exorbitant costs associated with the court process and ensure that the company receives the assistance of the corporate rescue mechanism as soon as possible,[44] thereby increasing the prospects of the company being rescued.[45] This self-regulating approach clearly signifies a shift towards a more debtor friendly procedure, however, it has been criticized for being "too debtor-friendly" and creating too low a threshold for the commencement of corporate rescue, making the process susceptible to abuse.[46]It is submitted that the severe consequences for directors breaching their fiduciary duties should curb the abuse of the voluntary process to a certain extent.

3.3 Duration of corporate rescue proceedings

The UK Insolvency Act 392 provides for the automatic termination of administration at "the end of the period of one year" from the date on which it commenced. Provision is also made for the extension of time by the court (on application by an administrator) for a specific period or by creditors for a period not exceeding one year.[47] In contrast, the Insolvency Act does not make provision for the automatic termination of corporate rescue proceedings, instead, it expressly envisages that the corporate rescue process would terminate "within three months after the start of those proceedings".[48] This time period may be extended by a court on application by a practitioner.[49] The practitioner is, therefore, within the space of three months "required to hold a meeting of various stakeholders, consult on the development of a corporate rescue plan, hold a meeting to decide the future of the company, and implement the corporate rescue plan if one has been approved".[50] It is submitted that the time frame of three months is practically unrealistic, as once any component of the corporate rescue process is challenged, there is virtually no prospect

[44] Cassim (Note 4 above; 866).
[45] Delport (Note 207 above; 458).
[46] Stein and Everingham (Note 8 above; 412).
[47] Cassim (Note 4 above; 877).
[48] Section 125(3) of the Insolvency Act 6:07.
[49] Section 125(3) of the Insolvency Act 6:07.
[50] Delport (Note 207 above; 482(23)).

of it being completed within three months.[51] In the case of *Oakdene Square Properties (Pty) Ltd and Others supra*[52] Classen J criticised the time frame of three months as being "totally unrealistic in a case such as this where there are numerous court proceedings still pending".[53] If the corporate rescue proceedings have not terminated within three months, or within such longer time permitted by a court, the practitioner is required to prepare a report on the progress of the corporate rescue proceedings and update it at the end of each succeeding month, until such time that proceedings have terminated.[54] The practitioner is further required to deliver the report to each 'affected person' and the court (if proceedings have been the subject of a court order), or the CIPC in any other case.[55] However, as highlighted by the court in *Resource Washing (Pty) Ltd v Zululand Coal Reclaimers Proprietary Limited and Others*[56] the 2008 Act is silent on "what the consequences would be if the … [practitioner] fails or refuses to apply to court for an extension".

3.4 The effect of an adopted corporate rescue plan

Once the plan is finally adopted it becomes binding not only on the company, but also "on each of the creditors of the company and every holder of the company's securities", irrespective of whether they were present at the meeting, voted for the plan to be adopted, or "in case of creditors, had proven their claims against the company".[57] Surprisingly, unlike Chapter 11 of the US Bankruptcy Code and the 2008 Act, no such provision is made in the UK Insolvency Act[58] or Enterprise Act of 2002. To ensure co-operation, the company is required in terms of section 144(5)[59] to take all steps necessary, under the directions of the practitioner, to attempt to satisfy any contingent conditions of the adopted plan and ensure that it is implemented. The practitioner, to the extent necessary to implement the adopted plan, is further empowered in accordance with the plan to "determine the consideration for, and issue, any authorized securities of the company". [60] In the event of the plan being approved by shareholders of the company, "the practitioner may amend

[51] Khan (Note 202 above; 23).
[52] Oakdene Square Properties (Pty) Ltd and Others supra para 47.
[53] R S Bradstreet 'Business rescue proves to be creditor-friendly: CJ Classen J's analysis of the new business rescue procedure in Oakdene Square Properties' (2013) 130 SALJ 46.
[54] Section 132(3)(a) of the Insolvency Act
[55] Section 132(3)(b)(i) and (ii) of the 2008 Act. See also Rushworth (Note 229 above; 383).
[56] (10862/14) [2015] ZAKZPHC 21 (20 March 2015) para 19. See also Delport (Note 207 above; 482(27)).
[57] Section 142(4)(a), (b) and (c). Section 142(4) of the Insolvency Act 6:07
[58] UK Insolvency Act of 1986.
[59] Section 152(5) of the Insolvency Act 6:07.
[60] Section 142(6)(a) of the Insolvency Act.

the company's Memorandum of Incorporation to authorize, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorized, but contemplated" in terms of the plan.[61] Once the corporate plan has been 'substantially implemented', the practitioner is required to file a notice of substantial implementation.[62] The term 'substantially implemented' is not defined, however, as submitted by Delport: [63]

4. UNITED KINGDOM

In the United Kingdom (UK), the modern law relating to both personal and corporate insolvency is currently contained in the Insolvency Act 1986.[64] The Act introduced formally the concept of administration as a measure of corporate rescue, doing away with administration receivership. Administration was seen as the main weapon of company rescue allows companies a temporary breathing space from pressing creditors by virtue of statutory moratorium.[65] The purposes of administration of corporate insolvency are specified in the Insolvency Act 1986 which highlights the purposes and objectives as rescuing the company as a going concern; achieving a better result for the creditors as a whole than would be possible in an immediate liquidation. It also includes realising property to make distributions to one or more secured or preferential creditors.[66] The foundation of corporate insolvency is the Cork Report[67] which laid down the insolvency framework and its values when a company is faced with financial distress. Nevertheless, it could be argued that the statutory regime preceding the Enterprise Act of 2002[68] undermined the effectiveness of Administration. No doubt, the statutory regime preceding the Enterprise Act, 2002, arguably weakened the effectiveness of administration as a company rescue device. The Act, however, introduced revolutionary changes to what was a time-consuming, expensive and complex procedure.

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[61] Section 142(6)(b) of the Insolvency Act. See also Sharrock (Note 14 above; 291).
[62] Section 152(8) of the 2008 Act.
[63] Delport (Note 207 above; 529).
[64] A portion of this introduction was taken from Chapter 4 of Jennifer Gant's PhD Thesis, titled "Rescue Before a Fall: an Anglo-French Analysis of the Balance between Business Rescue and Employment Protection in the UK and France", submitted at the Nottingham Law School in January 2016 140.
[65] Linklater L. "The Enterprise Act: Fulfilling Great Expectations" (2003) 24 (8) Company Law 225- 226.
[66] Insolvency Act 1986, Schedule B1, para 3.
[67] Cork Report (Report of the Review Committee on Insolvency Law and Practice) (1982), Cmnd 8558.
[68] Rules 2.2(1), 2.3 and 2.4 of the Insolvency Rules 1986 failed to provide creditors with the ability of taking early action, since this was only possible through a court petition

4.1 The Insolvency Act, 1986

The enactment of the Insolvency Act, 1986, which introduced more elaborate corporate rescue procedures, which is a debtor-in-possession process and is designed to facilitate the rehabilitation of financially troubled but viable enterprise. In particular it introduced alternative measures such as the Company Voluntary Arrangements (CVAs) which is a compromise between the debtor company and its creditors, whereby, for instance, the creditor agree to receive less than the amount due to them in discharge of their claims.[69]

There are two types of CVA: firstly, there is the CVA without moratorium, which is governed by Part I of the Insolvency Act, 1986 and secondly, CVA with moratorium, which is governed by the Insolvency Act, 1986 and Insolvency Act, 2000.[70]The CVA with Moratorium was introduced for eligible companies in order to remedy a perceived weakness in the traditional CVA procedure. It was hoped that the availability of a moratorium during the period of formulating and presenting a CVA proposal to creditors and such proposal being approved would address this weakness and, as a result, increase the use of CVAs and the incidence of corporate rescue. In the UK, there are three rescues procedures, which are voluntary winding up, [71] a compulsory winding up[72] and winding up through administration.[73]The main difference between the voluntary and compulsory procedures of winding up is the fact that the former is commenced with the passing of a resolution at a duly convened meeting while the latter is initiated by a court order upon a petition, often presented by a creditor. Two objectives focus on creditors namely[74] achieving a better result for the company's creditors as a whole than would be likely if the company were wound up; and realising property of the company in order to make a distribution to one or more secured or preferential creditors. The UK laws have been traditionally regarded as "creditor friendly" because of the strong priority given to the protection of creditors' interests.[75]

[69] Tribe, John Paul "The reform of United Kingdom Corporate Insolvency Laws: CVA's, the Conservative and Chapter 11"International Accountant, Vol.47, 2009.
[70] Chapter 11"International Accountant, Vol.47, 2009. 105 Insolvency Act of 1986 (c45).
[71] S 84 of the Insolvency Act 1986.
[72] S 73 (1) of the Insolvency Act 1986.
[73] Enterprise Act 2002, Schedule 16.
[74] Insolvency Act 1986, Schedule B1 as updated by the Enterprise Act 2002
[75] Gilson S, Creating Value Through Corporate Restructuring: Case Studies in Bankruptcies, Buyouts and Break ups 2nd edition (John Wiley & Sons, New Jersey, 2010) pg.442.

Previously the Insolvency Act 1986 provided for an automatic moratorium on most legal processes that commenced or continued against the company as soon as an administration order was presented to the court, the moratorium on insolvency proceedings and other legal processes against the company now only commences once the company is in administration, that is, from the moment when an administrator is appointed.[76] The administrator is appointed either by the court as part of the administration order or by the company or its directors.[77] Only a person who is qualified to act as an insolvency practitioner in relation to the company may be appointed. The administrator of the company is responsible in performing his duties with the aim of rescuing the financially distressed company as a going concern, achieving a better return for the company's creditors or realising property in order to make a distribution to 1 (one) or more rescued and or preferential creditors.[78]

The moratorium does not like the system in Zimbabwe postpone the payment of debt, but only protects the company from the creditors and other parties alike from enforcing several legal rights.[79]There is an interim moratorium that protects the company before the appointment of the administrator and directly after the application has been lodged.[80] Directors still have the right to exercise their powers including the power to dispose of property through alienation, leasing or mortgaging as well as accessing company accounts.[81] Management will however will still be required to carry out their statutory duties.[82] In terms of the Act corporate rescue in Zimbabwe relieves directors of all their powers and places management under the full control of the corporate rescue practitioner.[83] The final moratorium is automatic and wide in its application for the duration of the administration, but is however not absolute as both the administrator and the court have the discretion to allow specific legal processes against the company to be instituted or continued.[84]

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[76] Loubser A, Some Comparative aspects of Corporate Rescue in South Africa Company Law 2010 195.
[77] Insolvency Act 1986, para 2 of Schedule B1.
[78] Macrow A, A Comparative Assessment of Employee Rights within South Africa, United Kingdom and Australian Corporate Rescue Legislation LLM University of Pretoria (2014) at 33.
[79] Lightman G et al The Law of Administrators and Recievers of Companies (2007) 40.
[80] Loubser A Some Comparative aspects of Corporate Rescue in South Africa Company Law 2010 193, In terms of par 27(1) of the Schedule B1 to the Insolvency Act 1986
[81] Pennington R Corporate Insolvency Law (1997) 2nd ed Butterworths London 361-362
[82] Bailey E and Groves H Corporate Insolvency (2008) 3rd ed Oxford University Press 393 and Fletcher I.F the Law of Insolvency (1996) 2nd ed Sweet and Maxwell, London 549
[83] S 126(2) of the Insolvency Act 6:07.
[84] Louber A Some Comparative aspects of Corporate Rescue in South Africa Company Law 2010 195. 254 S 121 of the Act.

Currently, corporate rescue is regulated by the Enterprise Act; 2002.The insolvency laws of the United Kingdom have arguably undergone thorough reforms so as to promote the idea of corporate rescue. The impact of the Enterprise Act, 2002 (c39) on the establishment of a corporate rescue is, arguably, very significant, as it makes provision for the virtual abolition of administrative receivership and also establishes the more administrative procedure as the primary way of achieving a corporate reorganisation. Arguably, the reforms by means of the Enterprise Act, 2002, contribute greatly to affording distressed companies and their management a second chance. However, it should be noted that the Enterprise Act not only promotes a procedural change, but also a shift of ethos, that is to say, it seeks to remove a traditionally creditor-friendly jurisdiction towards a more debtor-friendly direction. The Enterprise Act, 2002, (C40) substantially replaced those provisions of the Insolvency Act, 1986 regulating the administrative procedure. Administration is regulated by the provisions contained in Schedule B1 of the Insolvency Act, 1986 as inserted by the Enterprise Act, 2002.[85] For purposes of the Insolvency Act, 1986 (c45), an administrative order of a company is defined,[86] as a person appointed under Schedule B1 of the Act to manage the affairs, corporate and property of a company. A company is thus in administration while the appointment of an administrator is in force[87] but does not cease to be so because of the vacation of his office by an administrator as a result of death, resignation or otherwise or if he is removed from his office.[88]The administrative procedure commences with the appointment of an administrator for the particular company.[89]There are three ways in which a person may be appointed as an administrator of a company: by an administrative order of the court[90] by the holder of a floating change,[91] or by the company or its directors.

4.2 Administration and post-petition finance

Finding probable access to some forms of external finance may prove extremely difficult, once the fact that a company has become insolvent or entered into a rescue regime is made public.

[85] Section 248(1) of the Enterprise Act, 2002 substituted Part 11 of the Insolvency Act, 1986 for a new Part 11. S
[86] Schedule B 1 of the Insolvency Act, 1986 inserted by the Enterprise Act, 2002.
[87] Para 1(2)(a)of SchedB1.
[88] Para (1)(2)(d) of Sched B1.
[89] Para (1)(2)(b) Sched B1.
[90] Schedule B1 of the Insolvency Act, 1986.
[91] Schedule B1 of the Insolvency Act, 1986

Continuing financing is the crucial and troublesome problem bedeviling every corporate reorganization regime. Without a set of post-petition financing provisions which clearly define n the hierarchy of priorities for potential post-petition lenders, other great efforts to cast an effective rescue may prove fruitless. Representing one of the poles of the so-called market-led 'rescue culture', the UK Administration could be characterized as a creditor-oriented regime. The possibility of getting new money by offering uncharged assets (or charged assets with sufficient equity) of the company that can be offered as fresh security may prove impractical in the UK because of the prevalence of floating charges. There is no express provisions in the Enterprise Act, 2002, concerned with continuing financing in the UK but is argued by many academic writers that is authorized by implication. The Administrator may exercise management powers to borrow money and grant security on behalf of the company.[92] The Insolvency Act provides special provisions for the payment of debts and liabilities incurred during the administration under contracts entered into by the administrator.[93] Put all the relevant provisions together and one can see contractual liabilities incurred during the administration by the administrator enjoy priority in the following order that loan obligations are payable ahead of the administrator's remuneration and which in turn are payable ahead of floating charge.

It seems to me that all these commitments are payable out of the same 'pot'-property of which the administrator had custody control immediately before cessation of his appointment.[94]According to Qi[95], these provisions of the Insolvency Act 1986 could be read in such a way as to permit new financing arrangements during Administration that would take priority over both the administrator's remuneration and expenses and an existing floating charge. Because Administration is a management displacement[96] device itself, there is no need for the QFCH to bother continuing financing as a control device: he or she appoints an administrator himself or herself out of court or choose somebody in whom he has confidence.[97] UK style post-petition

[92] Insolvency Act, 1986, Sched 1 para 3.
[93] Insolvency Act, 1986, Sched B1, para 99.
[94] McCormack "Super- priority New Financing and Corporate Rescue" (2007) JBL701, 721. Insolvency Act Schedule B para 99(3),
[95] Davis, G., & Haywood, M. (2019). *Butterworths insolvency law handbook.* Butterworths.

[96] Dahiya,S ,John,K, Puri,M and Ramirez G "Debtor- in- Possession Financing and Bankruptcy Resolution" Journal of Finance 69 (2003) 259
[97] D- I- P Financing and Bankruptcy Resolution: Empirical Evidence (2003) 69IFE 259, 63

financing arrangements are less likely to be used as a lever of exerting control over management and to transfer value to privileged creditors at the expense of ordinary creditors and shareholders.

It is asserted that the floating charge is not a de facto priority-based security interest, when considering the low recovery on a floating charge.[98]So, the position of ranked before floating charge but behind fixed charges seems not so attractive to new lenders in a lot of circumstances. On the other hand, the bank, as a floating charge holder, is unwilling to allow new finance to be introduced which would rank ahead of his or her own debts. It is unreasonable to believe therefore that the concentrated bank[99] , the floating charge holder in the UK, should be the most possible and suitable post-petition financer, in the context of the current legal framework of this jurisdiction. The Insolvency Act, 1986, in section 19 and schedule B1 paragraph 99 could be read in such a way as to permit new financing arrangements during administration to take priority over both, the administrator's remuneration and expenses and an existing floating charge. It is said that this approach, which is convenient and flexible, may achieve a fine balance between the protection of existing security holder's interests and the possibility of obtaining continuing financing by the distressed debtor.[100]

While bringing in changes in the insolvency law in what became the Enterprise Act, 2002, the UK government considered amending the legislation and concluded that the matter was one of great complexity which required a wider consultation, particularly, if it were intended that the UK courts would have a role in approving the grant of super-priority funding on a case by case basis.[101] Hence, it is the structure of lending in the UK and, it must be said that market practice during restructurings has prevented the development of debtor-in-possession financing. The UK insolvency law, could, however, without much difficulty, be read in such a way to permit new financing arrangements during administration that would take priority over an existing floating charge. There is a lot going for this interpretation. It offers the advantages of convenience and flexibility and achieves a necessary reconciliation between the rights of the existing security

[98] If the financing order is stayed, the lender will not finance funds, thus incurs no risk.
[99] Schorer,JU and Curry, OS, "Chapter 11 Lending: An Overview of the Process" (1991) 47 (2) the Secured Lender IO.
[100] Akpareva,Wendy, A "Business funding in corporate rescue; the UK perspective" LLD Thesis, University of Nottingham. 2014 at 22
[101] Taylor, Stephen J "Repair or Recycle? Some Thoughts on DIP Financing and Pre- Packs" (2010) 7 (4) International Corporate Rescue, 269- 270.

holders, allowing an ailing company to obtain new financing. A creative judicial interpretation that admits the possibility of super-priority new finance would be sensitive to the balancing of interests required by the statutory framework and also firmly in the tradition of incremental charge

4.3 Administration and employment

This subsection deals with transfer of undertakings and protection of employment regulations (TUPE) 246/06. In the UK an employee's rights on the insolvency of his employer principally depend upon whether the corporate in which he was employed is likely to continue or not. Where there is some element of corporate rescue and a transfer of the corporate of the insolvent employer (for example, administration), it could well be that the employee's position is unaffected; their employment rights and liabilities being transferred as a matter of law to the new employer pursuant to the transfer of undertakings.[102] It is noteworthy that, considering the requirements to commence administration proceedings,[103] , employees are not considered to be affected persons who can initiate administration proceedings. It should be noted further that, unlike in Zimbabwe, employees are not actively involved in the initiation and the running of the rescue mechanism as a whole. As already mentioned, the rights of employees only come to the fore when the business of the employer is transferred. The TUPE 2006 Regulations apply where there has been a transfer of an undertaking or business (or part of a business) to another person or where there is a "service provision change". The effect of a business transfer on employment contracts is not much. The contracts of employment of the transferor's employees are treated as if they had originally been made with the transferee so that the terms and conditions remain the same[104] and the continuity of employment is preserved.

The transferor's rights, powers, duties and liabilities under or in connection with the employment contracts are transferred to the transferee.[105]Anything done by the transferor before the transfer is treated as having being done by the transferee. The employees covered are those employed by the transferor in the business (or part of the business) transferred or who form part of the organised grouping of employees providing the service in a service provision change.[106]

[102] The Transfer of Undertakings (Protection of Employment Regulations) 246 of 2006 (TUPE).
[103] Schedule 1 of nterprise Act, 2002.
[104] Regulation 4.
[105] Regulation 4(a) and (b).
[106] Regulation 3.

This depends on whether the employee is assigned to the part of the business or service being transferred. In principle, it may be possible to terminate the contracts of employment of employees pre-transfer and for the transferee to re-hire those employees on less favourable terms and conditions. Employees have a right to object to the transfer.[107] The Regulations do not specify when the objection must take place, although in practice the objection would usually occur before the transfer. The Regulations do not operate to transfer the employment of any employee who objects to becoming employed by the transferee. Such an objection is treated as terminating the employee's contract of employment and he is not treated for any purposes as if were dismissed by either the transferee or transferor.[108]

There is, therefore, no general right to compensation if an employee objects to a transfer and loses his employment as a result. However, the position is different if an employee objects to a transfer because the transferee is planning to make changes to his contract of employment that would amount to a breach of contract or substantial changes to his working conditions that are to his detriment.[109] In either case the employee would be entitled to receive unfair and possibly wrongful dismissal compensation. Transferors and transferees must inform and, in some circumstances consult appropriate representation of affected employees about the transfer.[110]Appropriate representation will be the representation of a recognised trade union if there is no recognised one, elected representation of the employees instead. In cases where corporate rescue is not possible, the employee may have a claim against the insolvent company for redundancy pay,[111] damages for unfair dismissal and/or arrears of wages.

An employee may be either a preferential or an unsecured creditor depending upon a variety of factors, the most important of which is the type of insolvency procedure adopted. An administrator is not personally liable for any liability arising out of a contract of employment, provided an administrator has not taken a step to adopt the contract of employment. It follows that it can be said that upon commencement of the administration procedure, the administrator has the option of

[107] Regulation 4(7)
[108] Regulation 4(8).
[109] Regulation 4(9).
[110] Regulations 13- 15.
[111] Regulation 8.

adopting the employment contracts of employees or not.[112] An administrator has fourteen days in which to determine whether or not to adopt a contract of employment and if adopted no liability arises in respect of anything before the adoption of the contract, and the liability is limited to qualifying liabilities. Importantly, the administrator's liability to employees under this section is treated with priority over all other expenses of the administration, including the administrator's remuneration. An administrator therefore must determine quickly whether employees are needed for the purpose of selling the business as a going concern, or whether costs can be saved by reducing the workforce. [113]

5. A COMPARISON OF ZIMBABWE AND THE UNITED KINGDOM

In comparison with corporate rescue proceedings in the UK, the Act provides third parties with an opportunity to initiate business rescue proceedings. Any "affected persons," such as a shareholder, creditor, union or employee, may initiate filling.[114] Although the "general moratorium" provisions of the Act do not explicitly provide a formal mechanism for obtaining relief from the company, for instance, an affected creditor who has leased property to the company or holds a security interest in company property could presumably seek relief under section 134(2) of the Act, claiming that the practitioner's failure to consent to the creditor's proposed action is unreasonable.[115]

Zimbabwe just like the UK provides that a corporate rescue practitioner must be a qualified person.[116]The corporate rescue practitioner must be licensed by the Companies and Intellectual Properties Commission.[117]

5.1 Commencement of corporate rescue

The corporate rescue proceedings begin either when the company files resolution to place itself under supervision, or a person applies to the court for an order placing the company under

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[112] Frieze, S. A. (2001). *Insolvency law*. Cavendish

[113] Geva, E. Z. (2011). Convergence and Persistence in Corporate Insolvency Law: Employee Participation in Corporate Insolvency Restructuring. *European Business Organization Law Review*, *12*(2), 315–352.
[114]S 121 of the Act
[115] Mongalo T, Butler D, Loubser A, Coetzee L and Burdette D Companies and other Business Structures in South Africa 3 rd ed (oxford 2013).
[116] S 138 of the Act.
[117] Regulation 126 of the Companies Regulation, 2011.

supervision, or during the course of liquidation proceedings, or proceedings to enforce a security interest, a court makes an order placing the company under supervision as highlighted in the previous chapter.[118]

The UK Voluntary procedures of winding up commence with the passing of a resolution at a duly convened meeting and compulsory procedures of winding up is initiated by a court order upon a petition, often presented by a creditor. Whereas in Zimbabwe, it is through a company resolution or court order. When an application is initiated by the company or the directors, an affidavit must be drafted by one of the directors or the secretary of the company.[119] In Zimbabwe, an affidavit is not needed. However, if the application is initiated by creditors, they must authorise one of them to make the affidavit on their behalf.[120]

5.2 The qualifications of a corporate rescue practitioner

In Zimbabwe, the minister designates an individual with good standing in the profession, who is not subject to an order in terms of section 74 of the Act.[121] First, the person must have an independent relationship with the company and therefore not be in a position to compromise in terms of his or her integrity and impartiality.[122] Secondly, the individual should have been registered and licensed as an insolvency practitioner in terms of the Estate Administrators Act [Chapter 27:20].[123] Third, the Minister prescribes minimum qualifications for a person to practise as a corporate rescue practitioner, including different minimum qualifications for different categories of companies.[124] Lastly, the person should not be disqualified from acting as a director of the company in terms of the Companies Act [Chapter 24:31].[125]

Whereas in the UK, the Cork Report recommended that there should be a minimum standard professional qualification as well as a control structure to ensure a high standard of competence and integrity to prevent abuse.[126] Acting without the required qualifications is an offence which

[118] S 122(1) (a)-(c) of the Act.
[119] Rule 2.2(2) of the Insolvency Rules
[120] Rule 2.2(3) of the Insolvency Rules.
[121] S 131 of the Insolvency Act 6:07
[122] S 131(d) of the Act
[123] S 131(b) of the Act
[124] 63 S 138(3) (b) of the Companies Amendment Act of 2011 Government Gazette 20 April 2011
[125] S 131 (c) of the Companies Amendment Act of 2011 Government Gazette 20 April 2011.
[126] Pennington R, Corporate Insolvency Law (1977) 4.

may be sanctioned by imprisonment and the imposition of a fine.[127] Moreover, the administrator is deemed to be company`s agent[128] and anyone dealing with him in good faith for value need not be concerned whether or not administrator is acting beyond the power that he or she has given.268 Preceding the appointment of the administrator he or she must take control of all the assets including those that are distributed throughout the globe.[129]

5.3 The Moratorium

In both Zimbabwe and UK, the moratorium will result in a stay on all legal proceedings, including enforcement actions, against the company, or in relation to any property belonging to the company, or lawfully in its possession.[130] It is important to distinguish when exactly the proceedings commence as the moratorium will commence automatically from the beginning of the process. Where the commencement of corporate rescue proceedings by way of a board resolution, the process would have started at the moment the company files with the Companies and Intellectual Property Commission the resolution to place itself under supervision.[131] In terms of the initiation by order of the court, this process is said to have begun when the affected persons applies.[132] Whereas in UK, the moratorium now commences only once the company is in administration and although the definition of the word connotes an allowance or breathing space for the company, it does not like the system in Zimbabwe postpone the payment of debt, but only protects the company from the creditors and other parties alike from enforcing several legal rights.[133]

5.4 The corporate rescue plan

In Zimbabwe, in terms of section 142(1) the corporate rescue practitioner must consult with all affected persons.[134] In terms of the Act, the corporate rescue plan does not require a statement on the past, present or future financing of the company explaining its previous management.[135] In

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[127] S 390(2) of the Insolvency Act 1986.
[128] Insolvency Act 1986 Chapter 45 Part II S 14(5).
[129] Insolvency Act 1986 Chapter 45 Part II S 14(6).
[130] Rule 2.2(3) of the Insolvency Rules and S 126 of the Insolvency Act 6:07.
[131] S 129(5) of the Act.
[132] Loubser A Some Comparative Aspects of Corporate Rescue in South African Company Law LLD Unisa 201026, also see S 128 of the Act
[133] Lightman G et al The Law of Administrators and Receivers of Companies (20017) 40.
[134] S 142(1) of the Act
[135] Loubser A Some Comparative Aspects of Corporate Rescue in South African Company Law LLD Unisa 2010 140

UK, the administrator is mandated to prepare a rescue plan which he must submit personally, but he is not however obliged to consult or negotiate with creditors in terms of that specific plan.[136] The rescue plan must contain the statement of how the company has been managed and financed since the appointment of the administrator and how it will continue to be managed and financed.[137]

5.5 Post -commencement finance

In Zimbabwe, employee wages and salaries have a preferential claim after the remuneration of the corporate rescue practitioner has been paid out.[138] In UK, preferential debts rank equally among themselves after the expenses of the administration and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall be distributed in equal proportion.[139]

5.6 Uncompleted contracts

The corporate rescue practitioner under the Insolvency Act 6:07, must urgently apply to a court to entirely, partially or conditionally cancel, on any terms that are just and reasonable in the circumstances, any obligation of the company. Whilst the administrator of a company in UK may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.[140] The holder shall therefore have the same priority in respect of acquired property as he or she had in respect of the property disposed of. The court may by order enable the administrator of a company to dispose of property which is subject to some form of security (other than a floating charge) as if it were not subject to the security.[141]

5.7 Duration of the corporate rescue proceedings

If the company`s corporate rescue proceedings have not ended within three months after the start of those proceedings, or such longer time as the court may allow, on application by the practitioner, in which he or she must prepare a report on the progress of the corporate rescue proceedings and give an update at the end of each subsequent month until the proceedings have come to an end.[142]

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[136] Goode R Principles of Corporate Insolvency Law (2008) 3rd Thomson, ed London 382.
[137] Supra 218 at 208, Rule 2.33(2) (o) of the Insolvency Rules.
[138] S 128 (3) of the Act.
[139] Paragraph 65(1) and (2) of Schedule B1 to the Insolvency Act 1986; Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to the winding-up of a company
[140] Paragraph 70(1) of Schedule B1 to the Insolvency Act 1986
[141] Paragraph 71 of Schedule B1 to the Insolvency Act 1986.
[142] S 125 of the Act.

He or she must deliver the reports and the updates to each affected person, court and the Commission.[143]

In Australia, the appointment of an administrator shall cease to have effect at the end of the period of one year beginning from the date on which it takes effect.[144] The administrator`s term of office may be extended through an application of the administrator by the court for a specified time, but not for a period exceeding six months.[145]

6. CONCLUSION

There are more clear similarities between the corporate rescue procedures as a result of the new procedures introduced into the laws in Zimbabwe by the Insolvency Act of 2018. Both administration and corporate rescue proceedings may be commenced without approaching the court, that both apply primarily to companies and were thus designed with companies in mind, and that both involve the appointment of an outsider to take over the management of the company during the rescue process.[146]

Corporate Rescue is now practiced by many countries[147] and in as much as there are those who may attempt to abuse the corporate rescue process, it has clearly rescued a lot of companies from failing or worse liquidation. In terms of the comparative study, it is evident that corporate rescue in African countries although applied in terms of the English law in most of these countries, has started to take shape and an alignment with the best international practices in this regard has already commenced with South Africa being one of the leading countries and now Zimbabwe followed suit.

Corporate Rescue should not be applied as a delaying tactic for the inevitable. It should rather be applied by financially distressed companies that are genuinely able to make a real and positive difference to those affected. In other words: to serve the best interests of all stakeholders as a collective.

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[143] S 125(3) of the Act.
[144] Paragraph 76(1) of Schedule B1 to the Insolvency Act 1986
[145] Paragraph 76(2)(a) –(b) of Schedule B1 to the Insolvency Act 1986.
[146] Loubser A Some Comparative Aspects of Corporate Rescue in South African Company Law LLD Unisa 2010 242.
[147] Countries such as the UK, USA and Australia

The main purpose of corporate rescue is to maximise the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.[148] The interests of these affected persons[149] must be recognized and their participation in the development and approval of a corporate rescue plan is extensively provided for in the Act. [150] The moratorium on legal proceedings by creditors is an important element of the success of the corporate rescue proceedings and allows the courts to have a say in giving effect to those transactions that may end up hindering the success of the company.[151] Corporate Rescue Proceedings provides the company with an opportunity to re-write is financial state and continue to trade and therefore contribute to economic growth of the Country. It will be advisable for companies to realize this opportunity and make use of it before they face liquidation.

[148] 3 http://www.werksmans.com/legal-services-view/business-rescue-insolvency/ (last accessed 12/02/2022).
[149] S 150(1) of the Act. Also, S 150 of the Act.
[150] Snyman-Van Deventer E, Jacobs L, "Corporate Rescue: The South African Business Plan Examined" 2014 NIBLeJ6.
[151] Bradstreet R, "The leak in the chapter 6 lifeboat: inadequate regulation of business rescue practitioners may adversely affect lenders' willingness and the growth of the economy"2010 22 SA Merc LJ at 195.