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DEDICATION

I would like to dedicate this dissertation to my mother, father and my wife for their love and encouragement during the time of study.

ACKNOWLEDGEMENTS

Firstly I would like to thank Mr. C Kazembe, my project supervisor for his guidance and support during the period of research.

I would also like to thank the Almighty God for his love and for taking me to the end of the project. A special note of thanks is extended to my family and friends who supported, encouraged, advised me and otherwise assisted me during the research.

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May God bless you all.

ABSTRACT

The effects of recession has seen many companies in Zimbabwe going through financial distress. Having seen that the company is now under financial distress, the stakeholders seek methods of resuscitating their operations. The methods sought are either judicial management, bailout or scheme of arrangement. The main objective of this research was to analyze the challenges of judicial management as a resuscitation tool for distressed companies in Harare District. Literature in the field of judicial management was reviewed so as to examine the existing knowledge in this arena. Judicial management involves a lot of processes, which include looking for investors, downsizing human capital, selling major assets and negotiating with the debtors to defer payments. Judicial management is done by a judicial manager appointed by the court replacing the directors of the distressed company. Questionnaires and interviews were used to come up with primary data for the research. Convenience sampling was used in the selection of respondents. The research findings revealed that distressed organizations prefer judicial management to other resuscitation tools like bailout and scheme of arrangement. It was also found during the research that judicial management has some challenges like high judicial management fees. However, successful judicial management is possible when changes are made to the current Zimbabwe Companies Act (Chapter 24:03) thereby creating a strong base to judicial management processes.

LIST OF ACRONYMS

NSSA	National Social Security Authority
DiMAF	Distressed Industries and Marginalized Areas Fund
CBZ	Commercial Bank of Zimbabwe
SPSS	Statistical Package for Social Scientist

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

The researcher will be analyzing the challenges of judicial management as a tool for resuscitating distressed companies especially in the District of Harare. This chapter will cover the background of the study, statement of the problem, research objectives, sub-research questions, significance of the study, assumptions, delimitations, limitations and summary of the chapter.

1.1 Background of the study

The effects of global recession has seen a number of companies going through economic and financial distress in Zimbabwe especially during the beginning of 2013. Unemployment reached unprecedented levels as companies were forced to lay off staff due to current economic conditions. Many entities sought remedies in an effort to resuscitate their operations and avoid liquidation.

Due to the declining level of production which led to high and unsustainable cost of production, many companies in manufacturing, agriculture and service sectors closed shops. In order to serve the interests of all stakeholders, that is, workers, creditors and shareholders, a number of companies were put under judicial management. The Zimbabwe Congress of Trade Unions (2014) revealed that close to 60 companies in Harare District were placed under judicial management as viability problems continued to affect industries in the district.

Even though the distressed company might not be able to pay its debts, the business might still be fundamentally viable and there would be a reasonable probability of rehabilitating the corporation as a going concern which would provide a more advantageous realization of the assets as compared to a winding up (Deloitte, 2013). From this analysis it was clear that there was high probability that if the company was placed under judicial management, it would be able to pay its debts or become a successful business concern. According to the Confederation of Zimbabwe Industries (2013) at least 44 firms in Harare closed shop due to viability problems. Capacity utilization in the manufacturing sector dropped by 13 percent in 2013 to 44 percent

owing to liquidity problems and constrained demand (Confederation of Zimbabwe Industries, 2013.) Public Service, Labour and Social Welfare minister Prisca Mupfumira in her 2015 ministerial statement on the current state of affairs at NSSA said that the authority was bleeding due to the closure of companies and retrenchments. The closure of companies has a negative impact on the performance on National Social Security Authority (NSSA) in terms of lost contributions that is why NSSA rely on judicial management for the resuscitation of distressed companies. Currently, companies are cutting down on production with others closing down operations altogether. Table 1.1 below shows the number of companies which were put under judicial management and those which were finally liquidated.

Table 1.1 Companies put under judicial management and liquidation.

Year	2013	2014	2015	Total
Companies under judicial management	51	60	96	207
Companies liquidated	44	57	89	190

Source: High Court of Zimbabwe (2016)

Table 1.1 above shows that companies continue to liquidate despite that there is judicial management. High Court Records (2016) showed that 51 companies were placed under judicial management in 2013 and 44 companies were finally liquidated. In 2014, 60 companies were placed under judicial management and 57 companies were liquidated. The number of companies which sought financial rescue in 2015 increased to 96 and 89 of the companies were finally liquidated. This means that more than 207 companies were put under judicial management in the last few years and close to 190 companies have closed shop in Harare District alone putting more than 30 000 workers out of jobs. These statistics challenged the effectiveness of judicial management as a resuscitation tool.

The fact that companies continued to close down basically pointed to the gaps and inefficiencies in the judicial management system which this research endeavored to analyze.

1.2 Statement of the research problem

Judicial management has been used as a resuscitation tool for all distressed companies. However, the rate of closures shows that there are challenges with the revival strategy used. According to the High Court records of 2016 a number of companies which were put under judicial management have not been resuscitated but instead some have been liquidated and others had their cases still pending. This therefore left a gap which this research strived to discover by way of analysing the effectiveness of judicial management as a resuscitation tool of distressed companies in Zimbabwe.

1.3 Research objectives

- To examine the challenges of judicial management as a tool for resuscitation of distressed companies.
- To discuss conditions necessary for effective business rescue by judicial management.
- To identify other options for resuscitating distressed companies.
- To discuss other options for resuscitating distressed companies.

1.4 Sub-research questions

- What are the challenges associated with judicial management as a business rescue model?
- What are the necessary conditions for judicial management to be effective as a business rescue model?
- What other strategies can be implemented in rescuing distressed companies?
- How effective are the other options in resuscitating distressed companies?

1.5 Significance of the Study

To the Researcher

- The research has been done in partial fulfilment of requirements of Bachelor of Commerce Accounting (Honours) Degree and provided the researcher with the research skills for future academic and scientific researches and enhanced the researcher's understanding in the field of Accounting.

To the University

- The research will provide an additional pool of knowledge which will be used by other researchers on related topics in the future.

To the Organization

- The study will benefit National Social Security Authority which rely on Judicial Managers for the payment of outstanding contributions owed by distressed companies to consider the chances of recovering the outstanding debts.

1.6 Assumptions

The research was done under the following assumptions:

- There would be no drastic market changes that could otherwise affect performance of distressed companies.
- The distressed company had well experienced employees required to turn around business.
- The sample under study would be representative of all the tools of resuscitating distressed companies.

1.7 Scope of the Study

Period under study

The study is confined to the period of three years of the Zimbabwean economy, that is from 2013 to 2015.

Geographical Area covered

Geographically the companies considered for the study are from Harare District. This District was picked because that is where most companies are concentrated.

Area under study

The study is focused on analyzing distressed companies in terms of how effective judicial management is in resuscitating them.

1.8 Limitations of the Study

It is essential to note that any study that is carried out is prone to inherent limitations that can compromise the quality of the research project. Some of these are noted below:

- Respondents may not be willing to release some of the data for reasons of confidentiality. However the respondent will be assured that the study is for academic purpose only.
- Sampling method, only distressed companies identified in Harare district were considered irrespective of company size in terms of capital base, number of shares or market share was used, however not all distressed companies in the chosen city and employees from every company were considered in the case study.
- Inaccurate data may be supplied to the researcher but however to overcome this the researcher will issue questionnaires, conduct interviews and the use of secondary data.

1.9 Definitions Of Terms

Winding Up: The process of selling all the assets of a business, paying off creditors, distributing any remaining assets to the principals or parent company, and then dissolving the business. Winding up can refer to such a process either for a specific business line of a corporation or to the dissolution of a corporation itself.

Judicial Management: a process that gives prime consideration to rescuing distressed companies as a going concern through the formulation and implementation of a reconstruction plan.

Scheme of arrangement: is a court approved compromise or arrangement entered into between a company and its creditors or members.

Financial distress: is a term used to indicate a condition when promises to creditors of a company are broken or honoured with difficulty.

1.10 Chapter Summary

This chapter gave an insight into the research by revealing a brief background of the research problem and it also highlighted the statement of the problem, research objectives and the questions that the research seeks to answer. The importance of the research was stressed as well as the delimitations and limitations of the study. Chapter II will look at Literature review that is both theoretical and empirical that has been explored regarding the issue of the effectiveness of judicial management.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

According to Fink (2005) literature review is an evaluative report of information found in the literature related to the selected area of study. The literature should be described, summarized, evaluated and clarified by the review. This study is centred on both theoretical and empirical literature. On theoretical literature, the study focused on the economic situation during the period of study, types of distressed companies, judicial management, scheme of arrangement and bailout packages through facilities such as the Distress Marginalised Areas Fund, a fund to help distressed companies and liquidation as approaches to manage companies in financial distress. Empirical literature considered situations in both developed and developing countries where these approaches were used. Sources consulted comprise reports, company reports, government publications, internet, journals, magazines, newspapers, books, relevant Acts and encyclopedias.

2.1 Theoretical Literature

The relevant literature that was analysed for the study included books and journal articles. The study discussed judicial management, schemes of arrangement, bailout and liquidation including related theories as options to be taken up by distressed companies.

2.2.1 The economic situation during the period of study

According to the Zimbabwe Monthly Economic Review (2013) most companies in Zimbabwe were facing challenges of low demand and inadequate raw materials in the market. Many companies for example MARS Zimbabwe, Gulliver Consolidated, Phoenix Consolidated Industries were placed under judicial management during 2013 to reduce pressure from the company's creditors. Steelnet Investments and Tipbridge Enterprises were finally liquidated during this period Government Gazette (2013). The fact that the companies afore mentioned fall in different sectors indicated that the economic environment in all sectors was not conducive for

business. The Zimbabwe monthly economic review 2013 further indicated that some companies in manufacturing sector were in financial distress due to competition from cheap products imported from the neighbouring countries which use better technology. Companies outside the manufacturing sector also suffered from liquidity crunch which reduced the demand of products Zimbabwe Economic Review (2013).

2.2.1 Distressed Companies

According to Sten, Buer and Hamman (2006) financial distress is the situation when a company cannot continue to exist in its current form. Mbongo (2014) pointed out forms of financial distress which include:

Technical insolvency

Technical insolvency is where a company cannot meet its financial obligations.

Insolvency in bankruptcy

This is a situation where the liabilities of a company exceeds its assets,

Business failure

Business failure refers to the business that has terminated its operations. However, according to IAS 14 (Discontinued operations) a business can also close and not be considered as a failure.

Economic Failure

This is a situation where by a company has inadequate revenue to meet all its costs including cost of capital. This kind of business can continue to operate as long as the creditors are prepared to continue funding the business, Mbongo (2014).

2.2.2 Judicial Management

In Zimbabwe, the *Companies Act (Chapter 24:03) Section 2 (2003)* states that a judicial manager is any person who is the principal officer of the company by whatever title he may be called but he is not a director. Judicial management is preferred instead of winding up in

circumstances where a provisional judicial management order is obtained where an application is made to the Master by any person who is entitled to apply for the winding up of a company. The reasons of mismanagement or for any other cause the company is unable or is probably unable to pay its debts and is prevented from becoming a successful concern Companies Act (Chapter 24:03) Section 299 to 300, (2003). Judicial Management is mainly used to resuscitate companies in financial distress.

The Master appoints a provisional judicial manager of a company if he is not the auditor of the company or is disqualified under this Act from being appointed as liquidator in a winding up (*Companies Act 24:03 Section 302 (1)2003*). The Act does not state the qualification for a Judicial Manager. The Companies Act does not provide for the liability of the Judicial Manager in case that he fails to execute his duties in accordance with the *Companies Act (Chapter24:03) Section 303 and 306 (2003)*.

In Zimbabwe according to the Companies Act (Chapter 24.03) (300) (a), a company, its directors or creditors can make an application for a provisional judicial management order to the High court. The court may, if it is satisfied that the company is or will be unable to pay its debts, issue the order. However, the Court must be satisfied that if the order is made it will lead to the survival of the company as a whole or part of its undertaking as a going concern, the approval under the Companies Act of scheme of arrangement between the company and any such persons as are mentioned in the Act, and the better realization of the company's assets than if the company was to be wound up. The wishes of the creditors are also considered by the court in coming up with the judicial management order.

After the court has made an order for judicial management, the business and property of the company will be managed by a judicial manager. However, if it is opposed by a debenture holder secured by a floating charge, the court is obliged to dismiss the application for a judicial management order. The holder of debenture is a creditor and whether he is a director or not. According to the Companies Act (Chapter 24.03) section 299 to 300, judicial management is preferred instead of winding up where a provisional judicial management order is obtained from an application made to the Master by any person who is entitled to apply for the winding up of a company if the reasons of distress is because of mismanagement or for any other cause the

company is unable or is probably unable to pay its debts and is prevented from becoming a successful concern.

According to the Companies Act Chapter 24:03 (Section 199 to 300) it is the duty of the judicial manager to rehabilitate the company or to preserve part or all of its business as a going concern, therefore on the making of a judicial management order, the judicial manager will take into his custody or control all the property that the company has or appears to have. During the period of the order, the judicial manager exercises all the powers and duties of the directors and all other things the judicial manager deems fit for the management of the affairs of the company and acts sanctioned by the court.

The Companies Act (Chapter 24.03) (209) state that judicial management can benefit the company by providing immunity from prosecution and this will give the company enough time to build up without being sued by the creditors. When a judicial management order is made, some legal implications arise for example, any petition for the winding up of the company is to be dismissed; no other proceedings and no execution or other legal process may be commenced against the company or its property, except with the consent of the judicial manager or with leave of Court; and no steps shall be taken to enforce security over the company's property or to repossess any goods except with the consent of the judicial manager *Companies Act 24:03 (Section 199 to 300)*

Hofisi (2015) also noted that workers will not lose jobs and pre-judicial management debts are paid first before the cancellation of a judicial management order as a benefit of the judicial management order. The distressed company also enjoys a window period when it is under judicial management to resuscitate before settling for prior debts. There are also various benefits that are derived from the success of judicial management for example creditors get their full payment and confidence in doing business is enhanced. A judicial manager can create good reputation for the company and for himself and brings in more business for the company. Members have their dividends paid, growth of the company, increased price share and going concern is established and job security for employees is obtained.

Musarurwa (2015) argues that though the judicial management has some advantages it has also some challenges. The costs of judicial management can be too high to the point that the

distressed company will subsequently collapse. Musarurwa also reported the case of Tetrad which was billed 145 000 United States dollars for one month's work by the judicial manager even though the prospects of recovering was a nightmare. This pointed out one of the challenges of judicial management as being the high cost of remuneration of the judicial manager which must be paid even though there are no results. The Companies Act (Chapter 24:03) section 308 (1) states that the remuneration of the judicial manager must be reasonable but the position of the distressed company is not considered in coming up with the remuneration figure in many cases. The charge should foster an environment that is conducive for the distressed company to survive. The writer also questions the criteria used to select some of the judicial managers since very few names were always featuring on several cases for example Musarurwa noted that some companies are put under judicial management even though there is no hope of turning it into a successful concern.

Ofwono (2014) supported the fact that judicial management has some challenges especially in South Africa. He noted that since the distressed company need to approach the court as required by the Act there are some costs to be incurred. The fact that the distressed company is put under two orders, that is provisional and final judicial management makes the process long and cumbersome. Ofwono (2014) also noted that the fact that there must be no doubt that the distressed company will be a successful concern if put under judicial management put a burden of proof on the applicant and this might scare some companies from applying for judicial management.

In Zimbabwe 180 days is given to the judicial manager to discharge his duties unless extended by the court, for example in Zimbabwe, considering the business environment and the performance of the financial sector and political atmosphere it would mean that the period of 180 days should be revised. The Companies Act (Chapter 24.03) section 314 also allow for the order to be discharged if the creditors decline to approve the judicial manager's proposals; if it appears on the application of the judicial manager that the purposes specified in the judicial management order cannot be achieved; or if the judicial manager has acted or would act in a manner that would be unfairly prejudicial to the interests of creditors of the company.

South Africa's Companies Act (Chapter 71) (2008) the rescue model is supported by the business rescue plan. The business rescue plan uses an administrator and practitioner in place of judicial manager who is also appointed by the court. The United Kingdom Cork Report (1984) states that the success of any business rescue model depends on the person who administers it. The United Kingdom Insolvency law has a provision for the removal of the appointed practitioner if there are no results. The creditors can also prevent the appointment of a practitioner with questionable ability. This differs with the Zimbabwean Company Act which does not specify the removal of the judicial manager if results are not forthcoming.

According to South African *Companies Act (Chapter 71) Section 128 and 129 (2008)*, if a company is in financial distress but there is a reasonable prospect of 'saving' the company or of preserving and continuing part of the business, or if the creditors' interests would not be favourably served by winding up, the company or its creditors may apply to court for an order that the company be placed under the judicial management of a person known as a judicial manager appointed by an order of court and may be removed from office by the Court as well as resigning with the leave of Court.

The South African *Companies Act (Chapter 71) (2008)* allow the Minister to impose reasonable conditions upon a person or association designated by him/her in terms of the Act regarding the execution of their function and prescribe minimum qualifications, such as, being a person of a better standing in legal, accounting or business management profession, for the admission of a person to the practice of a business rescue practitioner *Companies Act (Chapter 71) section 103 and 346, (2008)* The Minister designates one person or association to regulate the practice of persons as practitioners in terms of the *Companies Act (Chapter 71) (2008)*. The practitioners should possess sufficient human, financial and operational resources including adequate administrative procedural skills and have to be licensed to practice. This is in contrast with judicial management where there is no express provision for the discretion of the Minister in imposing minimum qualifications. This has led illegitimately qualified people to practice and ultimately proving the process of judicial management to be unsuccessful as shown by the use of liquidators as judicial managers.

In United Kingdom, according to the Insolvency Act (Chapter 45) Para 1 (2) (b) of schedule B1 (1986), the administration commenced at the appointment of the administrator. An administrator may be appointed by either an order of the court, or by the holder of a floating charge, or by the company or its directors (*Insolvency Act (Chapter 45) Para 2 of schedule B1 (1986)*). Every administrator must be a member of a recognised professional body that regulates and ensures that all the administrators have the necessary background educational qualifications and experience to perform their jobs effectively (*Insolvency Act (Chapter 45) section 391 (2) (1986)*). The company is also expected to show that it is unable to pay its debts or will become unable to service its obligations. An affidavit that contains a statement of the financial position of the company must accompany this application.

2.3. Other Options available to resuscitate distressed companies

2.3.1 Scheme of Arrangement

The Companies Act (Chapter 24:03) section 191 (1) provides for schemes of arrangement to be binding on all creditors and members of a company where a requisite majority is obtained (subject to confirmation by the court). Schemes of arrangement are most often used where it is desirable to compromise creditors' claims against an insolvent company in terms of section 191 (1) of the Companies Act (Chapter 24:03).

In Zimbabwe according to the Companies Act (Chapter 24:03) Section 191 to 199 (2003), an application of the scheme of a compromise or an arrangement between a company and its creditors/member or any class of them is submitted to the courts for approval. The court will assess whether the requisite majority representing seventy five percent of the creditors or members are satisfied, and if they are not satisfied they will decline the scheme. Once approved, the scheme will be lodged with the Registrar of Companies and it becomes binding to all creditors or members.

In case of a reconstruction in the form of amalgamation, the court makes a provisional order for the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transfer or company. Schemes of arrangements are very wide ranging and include any form of compromise or give-and-take agreements between debtors and creditors.

2.3.2 Bailout

Wright (2009) defined bailout as a situation in which a business, government, investor or individual offers money to a business that is in financial distress to revive the business. The bailout can be in the form of loan, bonds, stocks or cash. Usually these businesses employ a large workforce, leading to some people to believe that the economy would be unable to sustain such huge unemployment if the business folded.

Bailout facility according to Wright has various advantages and disadvantages, the advantages include among other things the fact that it guarantees continued employment to the staff in particular and hence reduces unemployment level in the nation at large. It has a multiplier effect on the economy of the country in that the lending institute enjoys the benefits through the returns on investment.

The New York Staff Report (2012) highlighted some of the disadvantages of bailout to include basically that the company being bailed out develops complacency and also encourages risky behaviour that will lead to more crisis since the distressed company will be anticipating assistance in time of need because it knows that there is a ready rescue package when it fails. Some conditions which might be set by lenders may be detrimental to the operational efficiency of the company which is already suffering from financial distress and hence could result in subsequent failure of the business. The New York Staff Report (2012) pointed out to another school of thought which suggested that if the bail facility is available, investors will not pull out their resources immediately when they expect a crisis since they know that bail out will mitigate their losses. Bagus et al (2012) indicated that Spain in 2012 issued US\$54 billion to bail out its banks and the government also partly guaranteed the assets of some banks in support of their acquisitions.

Zimbabwean Government also established a bailout facility through a Distressed Industries and Marginalised Areas Fund (DiMAF) to assist companies in financial distress in 2011 according to Zimbabwe Monthly Economic Review (2012). The Ministry of Finance introduced this facility as a revolving fund of US\$40 million which was meant to assist in the resuscitation of distressed local companies whose business operations is being threatened due to capitalization and funding constraints. The fund was applied towards working capital and acquisition of additional

machinery and equipment needed to enhance capacity and the resuscitation of their business operations. Zimbabwe Monthly Economic Review (2012) highlighted some of the challenges of this bail out system in Zimbabwe to include the conditions under which the funds are being accessed. According to this review companies that are under provisional liquidation are not allowed to benefit from DIMAF, even though many of the distressed companies fall under such a category. The repayment period of 12 months for DIMAF loans is short especially for a distressed company to earn any meaningful return to pay back. Zimbabwe Economic Review (2012) also argued that collateral security of first mortgage bonds over immovable property which is required by banks to unlock funding, is also a challenge to most of the distressed companies who survive on rented premises. The government was supposed to contribute US\$20 million with Old Mutual contributing the other US\$20 million towards the funding of DIMAF but the government failed to contribute its portion, which might be a reason why the lending conditions are largely private sector oriented. DIMAF failed to live up to expectations.

2.3.3 Liquidation

PricewaterhouseCoopers (2014) defined liquidation as the process by which an entity converts its assets to cash or other assets and settles its obligations with creditors in anticipation of ceasing all activities. Cash and other assets during this process are used to settle claims and any remaining assets are distributed to the owners of the entity.

Liquidation in Zimbabwe is explained in the Companies Act (Chapter 24:03) Section 199 to 298 (2003). Winding up is a form of liquidation that consists of voluntary winding up and compulsory winding up by the court. Voluntary winding up occurs when shareholders pass a resolution to liquidate. There are two types of voluntary winding up which are members' voluntary winding up which occurs when the shareholders are insolvent and creditors' voluntary winding up which occur when the company is insolvent.

Compulsory winding up is lodged by the company, the creditors, a contributory, the liquidator of the company, judicial manager of the company and Minister of Finance among others in accordance with Companies Act (Chapter 24.03) section 196 and 197. A company may also be compulsorily wound up by an order of court. Under section 253(1) of the Companies Act

24:03(2003), a petition to the court to wind up the company may be presented by the company itself; a creditor; a contributory, the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory; the liquidator of the company; a judicial manager; or various Ministers on specified grounds (by the Minister of Home Affairs on the grounds of the company being involved in activities prejudicial to national and/or security interests).

The Zimbabwean Companies Act (Chapter 24:03) section 206 highlight common circumstances that the court may order the winding up of a company as that the company has by special resolution resolved that it be wound up by the court; that the company did not commence business within a year from its incorporation or suspended its business for a whole year, that the company is unable to pay its debts, that the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, that the court is of opinion that it is just and equitable that the company be wound up, that the company has carried on activities in contravention of any written law that prohibits such activities or is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order or against national security or interest.

One of the most common reason a company is wound up is because it is deemed unable to pay its debts as they fall due as per Insolvency Act (Chapter 6:04) section 11 if a creditor has served on the company a statutory demand and the company has, for 3 weeks thereafter, neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor (which may include negotiation, or an instalment settlement plan), and the court may take into account the contingent and prospective liabilities of the company. The company is also presumed unable to pay its debts if execution or other process issued on a judgment or order of any court in favour of a creditor of the company is unsatisfied in whole or in part.

Any shares transfer during this period is prohibited and void unless sanctioned by the liquidator, and it is not permissible to change the status of the members thereafter; similarly, any disposition of the property of the company made after the commencement of the winding up by the court is void without the court's sanction.

A winding up order do not affect a secured creditor's right to deal with or realise his/her security over company assets but however, no creditor is allowed to take out or continue attachment or execution proceedings against the company after a winding up petition has been initiated as stated in the Companies Act (Chapter 24:03) section 213 (b).

In Singapore a company may wind up voluntarily by a special resolution and must lodge within 7 days after the passing of a resolution for voluntary winding up a copy of the resolution with the Registrar and within 10 days after the passing of the resolution, give notice of the resolution in the newspapers circulating in Singapore according to Companies Act (Chapter 50) section 290 . In a members' voluntary winding up, the directors of the company may make a statement pursuant to the Companies Act that the directors hold the view that the company will be able to pay its debts (if any) in full within a period not exceeding 12 months after the commencement of the winding up, upon which the shareholders would appoint a liquidator. If the directors do not make such a statement, it will be a creditors' voluntary winding up, in which case the directors must call a meeting of creditors in order to appoint the liquidator.

However, if the liquidator determines that the company will not be able to pay its debts in full within the period stated in the declaration made in accordance to the Companies Act (Chapter 50) section 295, a members' voluntary winding up may be converted into a creditors' voluntary winding up. The liquidator will then summon a meeting of creditors and present before them a statement of the assets and liabilities of the company, upon which the creditors would then decide on the next course of action, sometimes even appointing another person as the liquidator for the purpose of the winding up of the company.

A company may also be compulsorily wound up by an order of court. Under Section 253(1) of the Companies Act (Chapter 24:03) (2003), a petition to the court to wind up the company may be presented by the company itself; a creditor; a contributory, the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory; the liquidator of the company; a judicial manager; or various Ministers on specified grounds for an example by the Minister of Home Affairs on the grounds of the company being involved in activities prejudicial to national and/or security interests).

In South Africa, the advent of the new Companies Act (Chapter 71) (2008) brought with it a new addition of an alternative route to the traditional liquidation. In an attempt to modernise its business law and avoid the damaging effects of liquidation, South Africa has now adopted and developed a business rescue system similar to those found in foreign jurisdictions, most notably the United Kingdom and the United States.

One of the purposes of South African Companies Act (Chapter 71) section 115 is to "provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders".

There are advantages and disadvantages associated with the liquidation of companies. The advantages result from the process itself which ensures that every creditor is taken care of before the company finally closes shop. This provides a relief on the part of the members of the company as most of the work is handled by the courts. The other advantage is that assets are disposed of whilst they still have a reasonable value which in turn helps it to repay its debts.

The disadvantages include the fact that once under liquidation the company is not left with the option to revive Pricewaterhousecoopers (2014)

2.4 Empirical Literature

There were many companies that were placed under judicial management or facing liquidation in Zimbabwe. Companies which were put under judicial management in Harare included Cairns, Blue Ribbon Food, Steelnet, United Touring company and Morewear Industries among others. In most instances putting a company under judicial management creates a meaningful foundation for their turn around as the model protects the distressed company's assets.

Blue Ribbon Foods, the second largest food and milling company, was placed under judicial management after experiencing operational challenges in 2012. The total liabilities of the company amounted to US \$29 443 666 which made it fail to continue operating as a going concern according to the Blue Ribbon Judicial Management Report (2015). Some of the problems that caused Blue Ribbon Foods to be placed under judicial management were the general liquidity crunch which faced the country, which then caused loss in revenue and also the lack of funding. According to the Blue Ribbon Judicial Management Report (2015), the judicial manager

of the company employed the following strategies to be able to revive the company, that is arrange loan facilities secured by Blue Ribbon and its subsidiaries. The manager was to identify and negotiate with an investor in order to resuscitate the group of which Bakhresa was identified as an investor. The judicial manager was also going to dispose non-core assets including the sell of branches and to negotiate debt to equity swap with creditors.

Besides the DiMAF, bailout in Zimbabwe has also been demonstrated where by bankers who were owed funds by a distressed company came together to help revive the company with the aim of recovering their dues once the company is rejuvenated. According to CBZ Financial Report,(2011), Lobels Bread (Pvt) Ltd was rescued by the bankers who in fact were its creditors.

Its creditors agreed to what they termed a “Business Rescue Plan” to save the company from collapse. Lobels was indebted to the tune of US\$17 million. Of this amount, about US\$3 million was owed to trade creditors, including employees. A total of five banks, namely FBC Bank, CBZ Bank, NMBZ Bank, Metropolitan Bank and ReNaissance Merchant Bank (RMB) were owed US\$14 million in total loans, however the five banks drew up a Business Rescue Plan whose specifics included the appointment of financial and legal advisors to lead in the revival of the company CBZ Bank, the largest creditor which held the bulk of Lobels’ assets as security, was appointed the financial advisor in the transaction with law firm, DMH, being the legal advisors The crux of the Business Rescue Plan entailed courting a suitor who would bring in modern equipment and the working capital to turnaround the business. The new investor was to operate the business and pay off the existing creditors over a reasonable period of time from proceeds generated from operations. What this effectively meant was that the existing shareholders were to suffer substantial dilution to accommodate the new investor (bankers) or were to step aside to enable the new investor earn a good return on his/her investment. Since the intervention of the bankers, Lobels Bread was revived and has since rebranded its products in order to regain its lost market share.

An evaluation of judicial management as tool for the resuscitation of distressed companies in Zimbabwe is viewed differently by different scholars and industry technocrats. In Zimbabwe, captains of industry maintained that judicial management, in most cases, tends to favour secured creditors and statutory bodies such as Zimbabwe Revenue Authority at the expense of the vulnerable unsecured creditors. On the other hand scholars for example have subscribed to the

view that judicial management is costly as judicial management fees get first priority over other creditors, including those secured.

Scheme of arrangement produced results in the case of Red Star which entered into this resuscitating model with Star Africa Corporation. Star Africa Corporation, which controls 66, 31% of Red Star offered to pay minorities in cash or by way of its own shares. The minority buyout was prompted more by Red Star's failure to raise \$10 million required to recapitalise the business than by its controlling shareholder's desire to consolidate its shareholding. The scheme of arrangement allowed for the addressing of the company's negative shareholder equity. The scheme is not operating to the optimal although it is still running. This has seen employees being forced to go on leave and being recalled whenever there is production to be done Star Africa (2014) report.

In South Africa, Chapter 6 of the *Companies Act No 71 (2008)* was amended to incorporate the business legislation that contain the turnaround of distressed companies namely the new business rescue. The Act provides for the establishment of two imperative jurisdictional facts in order to achieve a successful business.

Kirkland and Ellis (2010) noted that Rodenstock Group, the leading German manufacturer of ophthalmic lenses and eye glass frames was successfully restructured by Kirkland & Elli International LLP (2010) through the new English Scheme of Arrangement. Rodenstock's creditors agreed to restructure its debt to pave way for further restructuring of German companies through scheme of arrangement. This led to the injection of € 40 million for restructuring of Rodenstock. Bridgepoint as shareholders were also made to hand over 49 % of interest in the company to facilitate recapitalisation through scheme of arrangement.

2.5 Legislation Gap

In Zimbabwe, the Companies Act (Chapter 24:03) has no provision for the tenure of judicial management, no stated qualifications for the office of a Judicial Manager, or requirement for a business plan prior to engagement of a judicial manager. In South Africa, the new Companies Act (Chapter 71) (2008) states that before a practitioner is appointed, he is supposed to present a

rescue plan to the shareholders who have to agree that the proposed strategy is likely to succeed before they engage the Business Rescue Practitioner for the task. In Australia's Companies Act 1961 and the UK Companies Act (Chapter 46) similar processes are followed and these are meant to ensure that the legislation for business rescue is as effective as possible and ensures that a high number of distressed companies survive should all the legal steps be taken by both management and the rescue practitioner.

2.6 Chapter Summary

The chapter discussed distressed companies, challenges of judicial and the legal framework of judicial management in Zimbabwe, regions and international countries that have judicial management in their legislation or similar options across the world. Also discussed in this chapter is an overview of other rescue methods like Bailout, Liquidation and Scheme of Arrangement. Success, failures and challenges of these other options were also discussed . The literature revealed that judicial management is not the only option that should be used to resuscitate distressed companies. The next chapter will discuss the research methods that were used and adopted from some of the literature review.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

Degu and Yigzaw (2006) defined a research as a scientific inquiry aimed at learning new facts, testing ideas including the systematic collection, analysis and interpretation of data to generate new knowledge and to answer certain questions or to solve some problems. Methodology according to Denzin and Lincoln (2008) refers to the way of gaining knowledge about the world and how to collect the research data. This chapter is focusing on the introduction, research design, qualitative research design, population, sample, data collection methods, data presentation and analysis plan and summary of the chapter.

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3.2 Research Approach

3.2.1 Mixed Methods Approach

Both qualitative and quantitative research methodology were used since each will bring a different insight to the research. To obtain qualitative data, interviews with judicial managers and officials from companies under judicial management will be contacted in this research. Questionnaires will also be send to respondents in the sample under study to obtain quantitative data.

3.2.2 Qualitative research

Qualitative research method is an approach that allows the examination of people's experiences in detail through the use of in-depth interviews and life histories (Hennink et al (2011). The main thrust of qualitative is to gain much understanding of underlying reasons, beliefs and motives. The outcome of qualitative research method is to develop an initial understanding to identify and explain behaviour, beliefs or actions (Hennink et al 2011).Ritchie et al (2014) mentioned some of the advantages of qualitative research method as that it can be used where the subject matter is new or complex such that it is then used to define terminology. Dawson (2002) indicated that besides the advantages of qualitative research method, the fact that the contact with the people is

not quick since the researcher have to make appointments with the respondent is considered to be a disadvantage of qualitative research method.

3.2.3 Quantitative research method

Quantitative research is defined by Hennink et al (2011) as a quantification of a research problem to measure and count issues and then generalise these issues to a broader population. Under qualitative research data are numbers or numerical data. The aim of quantitative research method is to identify prevalence averages and patterns in data and finally generalise it to the whole population (Hennink et al 2011). Unlike qualitative research method which uses in-depth interviews, observation and group discussion, quantitative research method however uses population surveys, opinion polls and exit interviews as a means of data collection. However, Ddebois (2016) noted that in quantitative data obtained for example through questionnaires there might be dishonesty since respondents may not be hundred percent truthful in responding to questions asked in an effort to avoid embarrassment and for privacy.

3.3 Research Design

Thomas (2010) defines a research design as an action plan for getting from the research questions to the conclusion. It gives an indication on how the research is to be carried out. The research design used to gather data is analytical survey technique. This technique is of relevance to the study since it seeks to analyse the challenges of judicial management as a resuscitation model for distressed companies and it provides for the improvement of the judicial management system in the future.

3.4 The Study Population

Hanlon and Larget (2011) defined population as all the individuals or units of interest to the researcher and to which the researcher will generalise the outcome to. Distressed companies under judicial management, scheme of arrangement and bailout in Harare represent the

population in this research. The research participants in this research covers judicial managers, directors, managers, employees and creditors. National Social Security Authority which is being owed contributions by the distressed companies is also considered to be part of the population. Harare district was chosen because it is easily accessible to the researcher and it is where most of the judicial managers are found.

3.5 Sample

Black (2010) defined sampling as a means of gathering important information about a population by measuring part of the population and generalising it to the whole population. A sample is part of the population and if taken properly it will be a representative of the population. The study will be carried on a sample because of limited resources like time and money. The sample will be analysed and then generalised to represent the whole population. Distressed companies in Harare which are under judicial management, scheme of arrangement and those which are under bailout were taken as a sample under this study. The tables below show the sample sizes which were drawn for both questionnaires and interviews

Table 3.1 Sample size for questionnaires.

Category	Population	Sample size	Percentage
Employees	30	25	83%
Total	30	25	83%

Table 3.2: Sample size for interviews

Category	Population	Sample size	Percentage
Judicial managers	5	4	80%
NSSA Management	5	4	80%
Total	10	8	80%

3.5.1 Sampling Procedure

The researcher put the population into different strata or sub-populations in order to come up with suitable sampling technique which reduce sampling error. Black (2010) defined stratified sampling as a process where y the population is divided into homogenous sub populations by using sex, geographic region or socio economic class. The following strata were identified by the researcher in this research (a) managing directors (b) senior management (c) junior management (d) employees (e) creditors. Quota and simple random sampling methods were used to pick participants from each stratum in this research.

3.5.2 Convenience Sampling

Convenience sampling according to Ilker et al (2016) is a type of non-probability or non-random sampling method where the elements of the target population which meet the required criteria are taken into consideration for the purpose of the study. In this study convenience sampling was used because it allows the researcher to take participants which are near, where there is easy accessibility and it allows the researcher to deal with participants who are willing to participate to overcome time and cost constraint.

3.6 Research Instruments

A research instrument is an instrument used to collect data. Such research instruments can be in the form of a questionnaire, scale rating and interviews. Questionnaires and interviews were used in this research to collect data. A questionnaire is a list of questions which the respondents is supposed to answer. During data gathering the researcher used both open ended and close ended questions. The use of questionnaire made it easy to collect data since the respondent was given the questionnaire and respond at his or her own time. Questionnaires were either e-mailed to respondents or hand delivered to those who were close to the researcher.

3.7 Justification for Using Questionnaires

There are many advantages associated with the use of questionnaires as compared to other data collection techniques. They can be used to collect data from many respondents fast and with less costs. The names of respondents are not disclosed on the questionnaires which makes respondent to be willing and comfortable to speak their minds. However, questionnaires have some limitations like the absence of probing for more data since the form is completed in the absence of the researcher.

3.8 Data Sources

The researcher used both primary and secondary data sources in this study as data sources, however primary data collected from the use of questionnaires and interviews was mostly relied on. Secondary data from judicial management reports and other material relating to distressed companies under judicial management, scheme of arrangement and bailout was also considered in this research.

3.8.1 Interviews

The researcher used the interviews to gather most of the qualitative data for the study. Close relationships with some respondents were established to obtain some data which is sensitive which the respondent might be unwilling to put in writing. The offices of the judicial managers, employee's from companies under judicial management and NSSA management were visited and interviewed as a means of data collection process.

3.8.1.1 Justification for using interviews

Hamza (2014) mentioned that interviews has some advantages like the opportunity to probe to obtain more information from the respondent, the ability to obtain personalised data and high response rate is obtained since respondents will be assisted to answer some of the questions where explanations are required.

3.9 Likert Scale

It is a scale which consists of statements in which the respondents will express their degree of response from strongly agreeing to strongly disagreeing (Cooper and Schindler, 2014). The Likert scale was used because to give room for the respondents to specify their insights to given questions and the response will be easy to interpret and analyse.

Table 3.3 Likert Scale

Item	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Weight	1	2	3	4	5

(Source: Bertram, 2014)

3.10 Data Collection Procedure

Data for the research was obtained from both primary and secondary sources. The primary sources included the use of questionnaires and personal interviews techniques. Secondary data sources used included internet, newspapers and judicial management reports.

3.11 Ethical Considerations

Webster et al (2014) defined ethics as how the researcher treat research participants well. Some of the ethical considerations mentioned by Webster et al are that the research should make reasonable demands, consent of the participants must be established before seeking participation of respondents and that participation of respondents should be voluntary. In this research participants were given enough information about the objectives of the research to enable them to make informed decisions whether to participate in this research or not. The issue of confidentiality was also guaranteed to the respondents since some judicial management data is sensitive.

3.12 Data Presentation and Analysis Plans

Data analysis is the process of bringing up order to the gathered data. Coding of data and checking for completeness is done to make sure the data is usable. Data analysis in this research is both qualitative and quantitative. Data analysis supporting tools like Statistical Package for Social Scientist (SPSS) version 12 and basic graphs, tables and charts are used to analyse data in this research.

3.13 Chapter Summary

This chapter looked at the research methods used in this study. The advantages and disadvantages of the questionnaires and interviews as primary data collecting instruments were discussed. The ethical principles were also upheld during the data gathering stage. The next chapter will focus on data presentation, analysis and interpretation.

CHAPTER 4

DATA ANALYSIS AND INTERPRETATION

4.0. Introduction

Using methods presented in chapter 3 the researcher gathered data which this chapter is going to analyse. The study used SPSS Version 12 to analyse the researched data. The research meant to explore the objectives of the study as stated below.

4.1 Research objectives

- To examine the challenges of judicial management as a tool for resuscitation of distressed companies.
- To discuss conditions necessary for effective business rescue by judicial management.
- To identify other options for resuscitating distressed companies.
- To discuss other options for resuscitating distressed companies

4.2 Response Rate

The researcher administered 25 questionnaires and managed to receive 20 responses which translated to 80% as tabulated below.

Table 4.1 Survey Response Rate

Questionnaire Distributed	Questionnaire Returned	Response
25	20	80%
Interviews Target	Interviews Conducted	Response
10 people	8 people	80%

Most of the people who were targeted were not able to complete the questionnaires in time due to other commitments and this negatively affected the timeous collection of data, however the researcher responded to this challenge by making some follow ups.

4.3 Characteristics of Respondents

Most of the employees who were targeted were accountants and employees. Out of the 5 accountants given the questionnaires, there was 4 completed questionnaires which were returned. Clerical employees who were given questionnaires were 20 and 15 completed cases were returned. Table 4.2 below show the responds rate of employees to questionnaires distributed.

Table 4.2 Employee position in the company.

Category	Questionnaires sent	Respondents	Percentage responds
Accountants	5	4	80%
General employees	20	15	75%
Total	25	20	80%

The respondents were analysed in three basic categories namely, position held in the organisation, the educational level and the length of service. All these factors directly impacted on the knowledge of respondents on issues of judicial management and the other strategies used in the resuscitation of distressed companies in Zimbabwe.

4.4 Organisational Position of Respondents

The respondents used in this study varied from the judicial managers, senior NSSA managers, junior manager and employees. The diversity of the respondents provided different views and experience on the strategies ideal for resuscitating companies which this study seeks to analyse.

4.5 Length of Service of Respondents

The analysis of length of service of the respondents was done to ascertain the period of service and experience of the respondents with judicial management issues and any other revival strategy. This provided useful information to assess judicial management and other relevant tools used in the revival of distressed companies. To also make sure that the views of different employees with different experience is obtained, the length of service of the employees was taken into consideration when the questionnaires were distributed. The table below shows the period of service of the employees and their respond rate.

Table 4.3 Length of service

Length of service in years	No. of questionnaires received	Responds rate
1-5	4	20%
6-10	8	40%
11-15	6	30%
16-20	1	6%
>20	1	4%
Total	20	100%

Figure 4.1: Length of Service of Respondents

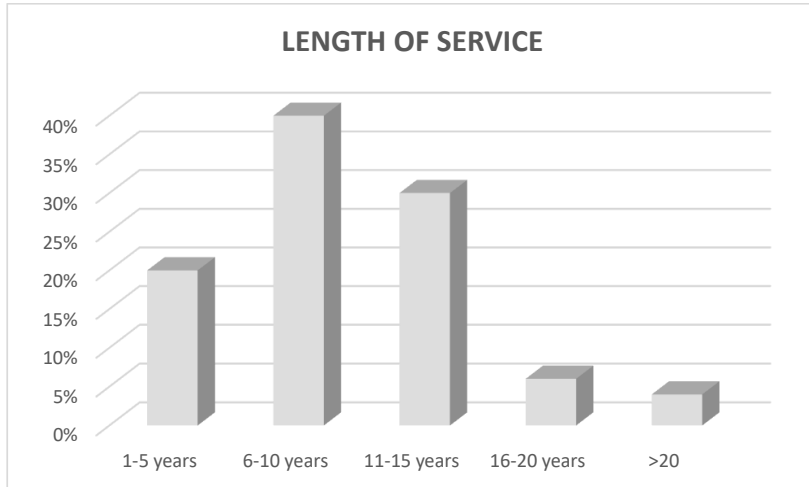


Figure 4.1 shows that the bulk of the respondents had been in employment between 1- 10 years. From the information above it can be assumed that people who responded had a good knowledge of the company since there are more people who are above 6 years in employment.

4.6. Education Level

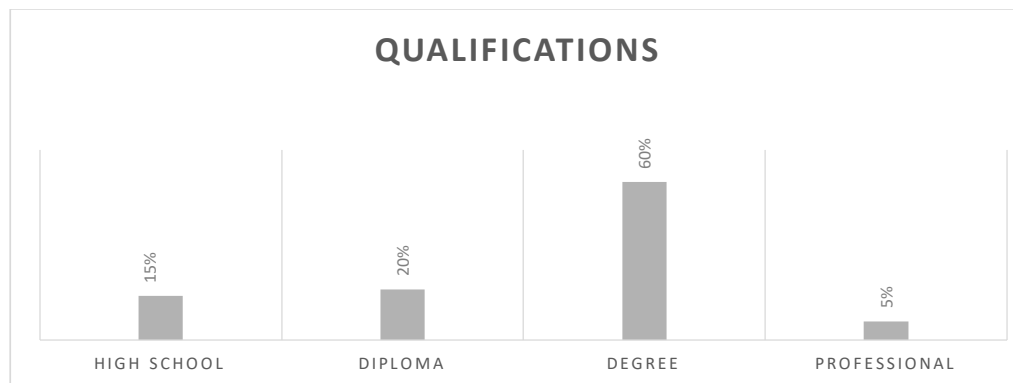
The data collected indicated that the respondents were of different educational level. The table below shows different levels of education of the respondents.

Table 4.4 Educational level

Qualifications	Data collected	Responds rate
High school	3	15%
Diploma	4	20%
Degree	12	60%
Professional qualification	1	5%
Total	20	100%

Figure 4.2 below shows that 60% of the respondents had university degrees, followed by 20% with diplomas, 15% with high school, and 5% with professional qualifications. This analysis highlights that private sector employs people qualified for the jobs.

Figure 4.2: Highest Education Level



The study revealed that highly educated human capital contributes immensely to the performance of the company.

The following paragraphs show an analysis of findings obtained from the research meant to analyse the effectiveness of judicial management as a tool to resuscitate distressed companies in Zimbabwe.

4.7 To examine the challenges of judicial management as a tool for resuscitation of distressed companies.

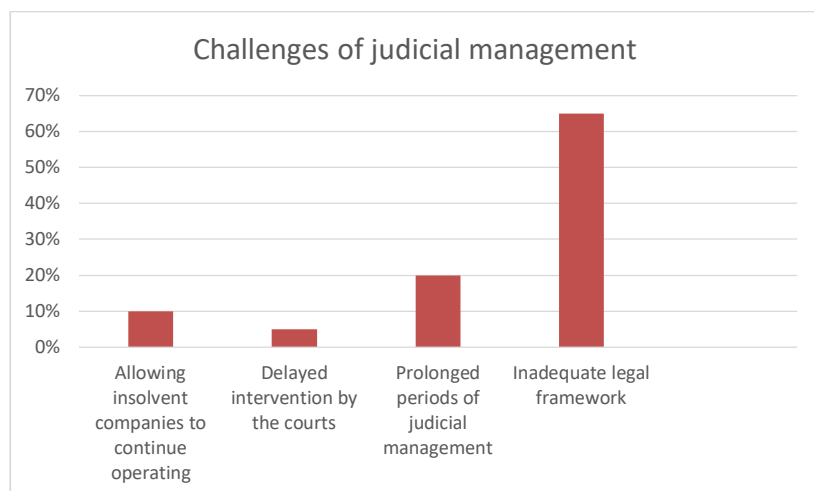
The researcher endeavoured to establish whether the judicial management process has no challenges. To do this a questionnaire with detailed questions seeking to establish the correct position was directed to the population to come up with views on the judicial management process used.

The data collected from the questionnaires and the interview indicated different challenges associated with the judicial management process. The table below shows the challenges of judicial management and the number of respondents who supported that there is indeed a challenge.

Table 4.5 Judicial management challenges.

	Allowing an insolvent companies to continue operating	Delayed intervention by the courts	Prolonged period of judicial management	Inadequate legal framework	Total
No.of respondents	2	1	4	13	20
Responds rate	10%	5%	20%	65%	100%

Figure 4.3 Challenges of judicial management.



From the comparative analysis of the challenges of judicial management as a resuscitation tool, four major factors were cited. The major reason, cited by 65% of the respondents was inadequate legal framework problems, followed by prolonged periods of judicial management (20%), continued operation by insolvent companies (10%) and finally, delayed intervention by the courts at 5%. This shows that most companies placed under judicial management fail to survive due to inadequate legal framework.

4.8 To analyse the effectiveness of judicial management as a resuscitation tool of distressed companies.

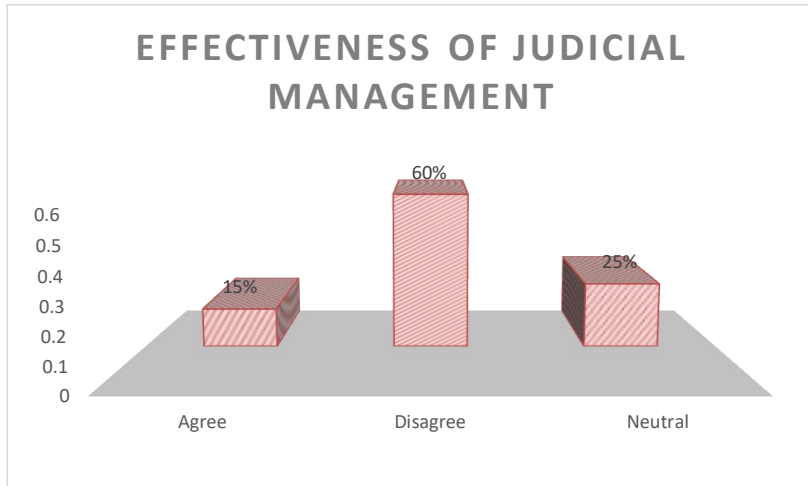
This question formed the thrust of the study. This study was motivated by the fact that most companies which were placed under judicial management failed to survive and with some taking longer than expected time to be revived. It was against, this background that the research implored views of the stakeholders on the extent to which they agree or disagree on the effectiveness of judicial management as a resuscitating tool for distressed companies.

Table 4.6 below shows the data collected from respondents and the extent to which they agree or disagree to the fact that judicial management is effective.

Table 4.6 Effectiveness of Judicial management

	Data collected	Responds rate
Agree	3	15%
Disagree	12	60%
Neutral	5	25%
Total	20	100%

Figure 4.4 Effectiveness of Judicial Management



Most of the respondents disagreed that judicial management is an effective intervention tool with 60% and 25% were indifferent about the effectiveness of the tool. (See figure 4.4). This was nevertheless the fact that there are other options like scheme of arrangement which also stand out against judicial management.

4.9 To discuss conditions necessary for effective business rescue by judicial management.

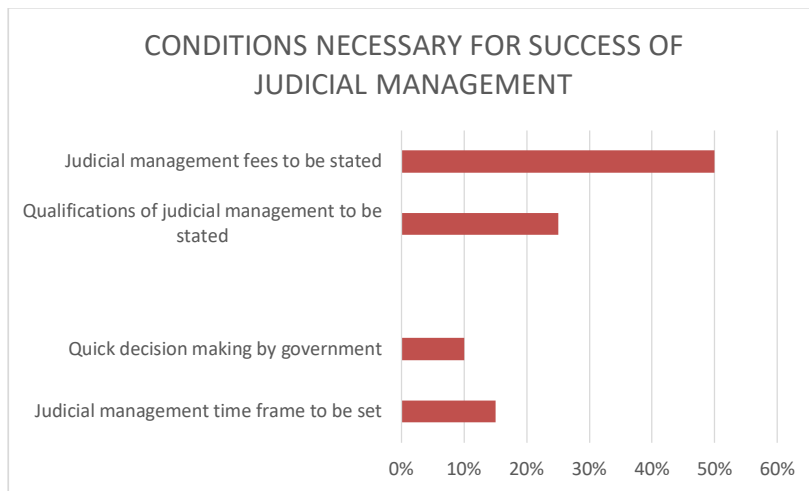
This objective aim at identifying the policy gaps which cause failure in the judicial management system in Zimbabwe. Among the constraints identified were legal factors and the judicial management fees with 50% of the respondents indicated that the main condition which need to be amended by the High court for judicial management to be effective is that of judicial management fees, there is high judicial management fees charged by the judicial manager even though the prospect of recovering is very low. This was followed by the quick decision making by the government, bureaucracy involved in making a decision to place a company under judicial management resulted in companies becoming worse before they get relief. The decision to place a company under judicial management is usually left until the performance of the company in question went down hence making it difficult to recover. Table 4.7 below displays the data indicating the conditions preferred by the respondents for judicial management to be effective.

Table 4.7 Judicial management conditions

Judicial management Conditions	Responde nts	Responds rate
Judicial management time frame to be set	3	15%
Quick decision making by government	2	10%
Qualifications of judicial management to be stated	5	25%
Judicial management fees to be stated	10	50%
Total	20	100%

The figure below highlights various conditions necessary for judicial management to be effective.

Figure 4.5 Conditions necessary for Success in Judicial Management



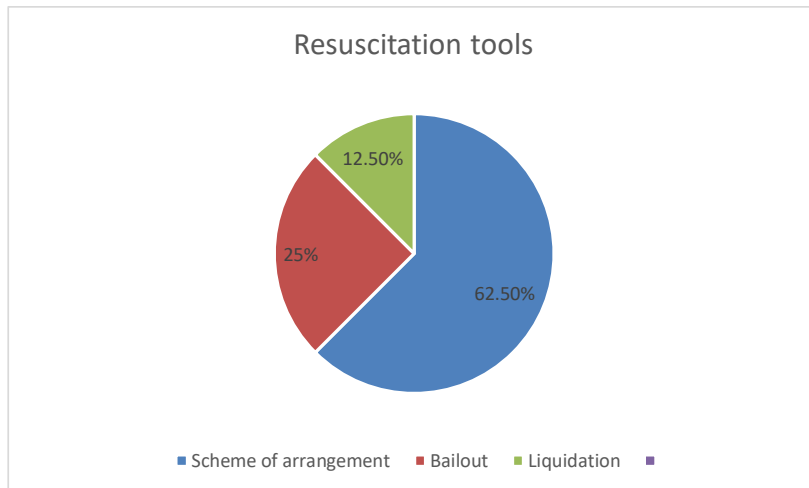
4.10 Other Resuscitation Tools Applied To Distressed Organisation

Besides the judicial management approach, there are other strategies which could be used in the course of resuscitating distressed companies. These include Liquidation, Scheme of Arrangement and Bailout facilities. Table 4.8 below illustrates the other options preferred by the respondents from the interviews conducted.

Table 4.8 Other resuscitation tools for distressed companies.

Resuscitation tool	Data collected	Response rate
Scheme of arrangement	5	62.5%
Bailout	2	25%
Liquidation	1	12.5%
Total	8	100%

Figure 4.6 Strategies which are used to resuscitated companies besides judicial management.



In Zimbabwe, from the interviews conducted it was established that in the absence of judicial management the scheme of arrangement is the most popular method of resuscitating distressed

companies after judicial management with 62.5 % of respondents followed by bailout with 25% and lastly liquidation at 12.5%.

4.11 Liquidation

The research sought to get views on the suitability of liquidation as an alternative strategy for resuscitation of distressed companies.

The response from the interviews contacted indicated that 45% of the respondents pointed to the fact that there was inadequate legal framework available to facilitate the liquidation of companies. 35% of the respondents argued that companies were allowed to operate when they were already insolvent and without any support. Liquidation comes when a company had lost all the value hence its effectiveness is compromised, 20% of the respondents were of the view that delay in intervention by courts upon being notified of the financial distress situation was one of the responsible factors which led companies to be liquidated in Zimbabwe.

4.12 Scheme of Arrangement

From the interview responses,70% of the respondents stated that the major reason why scheme of arrangement could be a better tool for distressed companies was that it allowed the companies more time to be rehabilitated. Scheme of arrangement allow creditors the option to convert their debt to equity. About 30% of the respondents were also of the view that the scheme of arrangement allow the company to be resuscitated without sending any fear to the market.

4.13 Interpretation of Results

4.13.1 Objective: To exam the challenges of judicial management as a tool for resuscitating distressed companies.

The research findings reveals the high cost of judicial management fees and the legal framework which has some short comings like the absence of the qualifications of the judicial in the Companies Act (Chapter24.03) as the merger as problems which hinder the effectiveness of judicial management in Zimbabwe.

4.13.2 Objective: To discuss conditions necessary for effective business rescue by judicial management.

For judicial management to be effective interviewed respondents pointed out that judicial managers must work together with the management of the company such that there is continuity in the way the business is operated. Judicial management period must also be set by the court to avoid a distressed company to be in the hands of the judicial manager for a long time even though there are no signs of success. All respondents agree that the current conditions are not necessary for the success of judicial management and however suggested that the legal framework need to be amended.

1.13.3 Objective : To identify other options for resuscitating distressed companies

The other options that were identified were scheme of arrangement, liquidation and bailout facility. The research found out that all the options were effective depending on how it is implemented. However, from the research it can be said that the most preferred method that could be applied was Scheme of Arrangement when compared to other options. However, the Scheme of Arrangement is not a remedy as it may collapse due to circumstances arising from poor strategy for turn around, disagreements between shareholders and creditors and a hostile economic environment.

Scheme of Arrangement however is not usually used in Zimbabwe and the most popular tool used in Zimbabwe according to the research is judicial management and liquidation. It therefore came out during the research that judicial management in the Zimbabwean context took precedent over liquidation and bailout. However the study showed that companies which were placed under judicial management as a result of a poor legal framework, lead to liquidation. In addition neglecting companies which are already insolvent, delays in intervention by the courts and prolonged periods of judicial management, lead companies to liquidate.

The bailout facility is one of the tools, which respondents agreed that it is a good option that could revive distressed companies. This option according to the research work well when it is handled by financial institutions rather than a government institution. The bailout facility referred to as DiMAF put in place to address issues related to financially distressed and marginalised companies from the research findings seem not to be enough since there are many companies which need that money and there is not enough funding from the government.

4.14 Summary

According to the research it was established that judicial management has some challenges and that the major constraint to the implementation of judicial management was that the judicial management process has some weaknesses which need to be corrected like the time taken by a judicial manager to resuscitate a company and the costs of judicial managers. Scheme of arrangement was also considered to be a better option to use in the absence of judicial management. The next chapter will give a summary, recommendations and conclusion to the research.

CHAPTER 5

SUMMARY, CONCLUSION AND RECOMMENDATION

5.0 Introduction

This chapter gives a summary of the findings of the research on the challenges of judicial management as a tool for resuscitating distressed institutions. It also gives conclusions and recommendations basing on the findings presented in the previous chapter on how the judicial management processes could be improved for better results. Suggestions for future research are also given in this chapter.

5.1 Summary

The research was aimed at analyzing the challenges of judicial management as a tool for resuscitating distressed companies. The researcher was motivated by an interest to find out how best the National Social Security, the Government, creditors and employees can benefit through judicial management. In chapter 1, the research problem, objectives and research questions were discussed to give an understanding of the research. Literature from other researchers on the subject of judicial management was also reviewed in chapter 2 to find out what other authors are saying about the subject under study. Various authors for example Hofisi (2015) and Musarurwa (2015) were cited in chapter 2 since they discussed much on the issue of judicial management advantages and disadvantages. Acts like Zimbabwe Companies Act (Chapter 24:03) and the South African Companies Act (Chapter 71) (2008) were mostly used in this research as sources of secondary data. In chapter 3 research methods which were necessary for carrying out this research were discussed. Data collected was presented, analyzed and interpreted in chapter 4 such that the researcher come up with conclusion and recommendations. Other options like scheme of arrangement and bailout were also discussed to find out why judicial management was popular to these other options.

However, having looked at what various authors, scholars and primary data collected say about financial distress, judicial management and what other nations have experienced, the researcher find out that judicial management has some challenges, there are certain conditions necessary for judicial management to be effective, there are other options which can be used to replace judicial management and that some of these options if properly implemented for example scheme of

arrangement can be better than judicial management. The primary data gathered was also analyzed and useful information was obtained to enable the researcher to derive up conclusions as well as recommendations, which are presented below.

5.3 Conclusions

The study exposed a number of strategies which can be used to revive companies such as Scheme of Arrangement and Bailouts. Distressed companies have many options to take in Zimbabwe instead of going through one resuscitation tool which is judicial management they can seek bailout or scheme of arrangement. From the research it was gathered that judicial management is not the only tool that can be used to resuscitate or improve the performance of distressed companies in Zimbabwe but however a lot of respondent concurred that the strategy is preferred to other resuscitation methods.

The study revealed that the most effective tool which could be used is the Scheme of Arrangement. Judicial management which is mostly applied in Zimbabwe is not well subscribed to by the industrialists and the companies which are financially distressed. However, this study observed that all the strategies fail due to other circumstances in the business operating environment. The research was successful since the researcher managed to establish that judicial management is not is not effective and also managed to get recommendations from the research.

5.4 Recommendations

It is against this background that the following suggestions or policy recommendations are made:

5.4.1 Conditions necessary for effective judicial management

- With respect to judicial management, the respondents from the interviews carried out mentioned that Government should speed the judicial management process to enable the creditors to recover their dues if the company is eventually liquidated in the process.

- Government should also cut down on the bureaucratic way of processing judicial management cases leading to the appointment of the judicial manager as stated in the Zimbabwe Companies Act (Chapter 24.03) S300.
- Government should stress on strategic partnership for distressed companies. This would reduce the costs associated with loss of confidence in the affected companies which is demonstrated by the decline in share prices. Furthermore the effect of direct staff costs and a reduction in funding would be greatly minimised if a proper strategic partner is engaged.
- Legislation on the tenure of judicial management should be revised to include a limit. This would stimulate a sense of purpose and focus in the process of revival. Open ended assignments should be reduced as they lead to unnecessarily prolonged periods thereby causing the deterioration of assets. In addition, the judicial manager's professional qualifications should be stated in the Zimbabwe Companies Act (Chapter 24.03) section 302(1).
- Government should consider exploring ways of amending the legislation to include provisions which give prominence to other strategies such as the Scheme of Arrangement, Bailout and liquidation. This should be in line with the popularity as shown in relation to the options by the respondents to this research.
- With respect to bailouts, this study recommends that there should be an effective allocation of the funds and that the repayment period be extended to beyond 12 month to enable distressed companies to recover (Zimbabwe Economic Review 2012). The Government, through its policies, must also strive to provide an enabling environment which creates conducive business for companies to operate. If the macroeconomic environment is not stable, characterised by high inflation, high interest.

5.5 Suggestions for Future Research

This research is not an end in itself. Future research is recommended to analyse the effectiveness of business rescue model as a solution to resuscitate distressed companies in Zimbabwe.

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APPENDIX A

Midlands State University
Faculty of Commerce
Department of Banking and Finance
P Bag 9055
Gweru



15 September 2016

To whom it may concern

RE: Research Project Assistance

My name is Gosha Paul, a final year student at Midlands State University studying an Honours Degree in Accounting. In partial fulfillment of this degree programme, I am carrying out a research on the analysis of the challenges of judicial management as a tool for resuscitating distressed companies in Harare District. Please find attached to this letter a questionnaire that will help me in data collection and your cooperation in completing this questionnaire is appreciated. Responses will be totally for academic purposes and high level of confidentiality will be observed. In order to maintain confidentiality please do not write your name on this questionnaire. I will be very grateful if your responses are received before 20 September 2016.

Your co-operation in this study will be greatly appreciated.

Yours Faithfully

Gosha Paul
Contact cell: 0773259082 Email:goshap@nssa.org.z

APPENDIX B

QUESTIONNAIRE

The questionnaire seeks to analyze the challenges of judicial management as a resuscitation tool for distressed companies. The answers you will give will help determine possible solution that distressed organization should pursue.

Demographics

1. Please indicate your qualifications

High School Diploma

University Degree and above Professional Qualification

2. Indicate the form of restructuring your organization is operating under

Judicial management

Bailout

Liquidation

Scheme of arrangement

3. Please indicate your position in the organization

Junior Manager

Employee

4. How long you have been in the organization?Years

Please indicate your answer for the following questions by a tick for the following questions where:

5= strongly agree; 4 = Agree; 3 =Neutral; 2= Disagree; 1= Strongly disagree

1. To what extent do you agree or disagree with the statement that judicial management has no challenges as a resuscitation tool for distressed companies?.

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

2. To what extent do you agree that judicial management challenges are internal?

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

3. Judicial management success is caused by judicial managers, to what extent do you agree with this statement?

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

4. There are certain conditions (eg the qualifications of the judicial manager)which affect the effectiveness of judicial management process which must be incorporated in the system for the process to be effective, to what extent do you agree with the statement?

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

5. The criteria used to place companies under judicial management is appropriate, do you agree or disagree with this statement?

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

6. Judicial management is effective in the current conditions (eg the judicial manager will work alone without former top management of the company)

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

7. There are other better rescuing strategies as compared to judicial management eg bailout, scheme of arrangement and liquidation

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

8. Given the features of distressed companies in Zimbabwe, to what extent do you agree or disagree that other resuscitation options can be appropriate and effective resuscitation tools.

Strongly Agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

9. Government and the court act promptly in putting companies suffering from financial distress under judicial management. How far do you agree or disagree with this statement?

Strongly agree **Agree** **Neutral** **Strongly Disagree** **Disagree**

10. To what extent do you agree or disagree that the criteria used by the High Court in making determination to place weak or distressed companies under judicial management is objective and well understood by companies.

Strongly Agree **Agree** **Partly Agree** **Disagree** **Strongly Disagree**

11. To what extent do you agree or disagree that the following factors contribute to the challenges of judicial management as a resuscitation tool for distressed companies in Zimbabwe?

1= Strongly agree; 2 = Agree; 3 =Neutral; 4= Disagree; 5= Strongly Disagree

	1	2	3	4	5
Allowing insolvent companies to continue operating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delayed intervention by the courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prolonged periods of judicial management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inadequate legal framework	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. Only judicial management system is effective, other options for distressed companies are not. To what extent do you agree with this statement?

Strongly agree	Agree	Neutral	Strongly Disagree	Disagree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any other comments

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THANK YOU

APPENDIX C

INTERVIEW GUIDE

1. What are the challenges associated with the use of judicial management as a resuscitation tool for distressed companies?
2. What are the necessary conditions for judicial management to be effective as a business rescue model?
3. What other strategies can be implemented in rescuing distressed companies?
4. How effective are the other options in resuscitating distressed companies?