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PERCEPTIONS OF COMPANY SECRETARIES ON SUITABILITY AND IMPLEMENTATION OF CREDITOR SCHEMES OF ARRANGEMENTS AS A FINANCIAL RESTRUCTURING TOOL: A CASE STUDY OF ZIMBABWE'S LISTED MANUFACTURING COMPANIES

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ABSTRACT

Creditor Schemes of Arrangements, as court sanctioned settlement compromise or arrangement between a company and its creditors or any class of creditors, are perceived in other jurisdictions as usable and supportable tools for companies in financial difficulty. Notwithstanding the documented financial challenges that listed manufacturing companies in Zimbabwe have been facing since 2012, the implementation rate of Creditor Schemes in Zimbabwe remains very low in the foreseeable future. Based on the findings of this study, company secretaries employed by manufacturing companies in Zimbabwe remain indifferent on the suitability of Creditors Schemes of Arrangement as restructuring financial tools. The study also determined that there is no relationship between the secretaries' professional background and their perception on the usability and supportability of the Creditors Schemes of Arrangement as restructuring financial tools.

KEYWORDS

creditor scheme of arrangement, restructuring tool, suitability, usability, supportability. Perception, financial distress.

INTRODUCTION

According to Harris *et al.* (2013), the global financial crisis that began in 2007 brought a substantial tightening in business lending conditions making the obtaining of debt finance much more difficult than had previously been the case. Amongst the companies faced with difficulty in the wake of the crisis was Lehman Brothers, one of the five largest US investment banks and a globally significant financial services firm operating in many countries. Lehman Brothers unsuccessfully sought a government bailout and eventually filed for the largest bankruptcy in the history of United States of America (Lasher, 2013). Lehman Brothers Australia Limited on the other hand resorted to a scheme of arrangements involving a class of creditors and third parties as a viable restructuring tool (Corrs Chambers Westgarth Lawyers, 2013). In relation to the case of Lehman Brothers Australia Limited; Prestwich and Ho (2013) concluded that schemes of arrangements are very powerful and flexible instruments. Wood (2007) defines a scheme of arrangement as a court sanctioned compromise or arrangement between the company and its shareholders or any class of them, or its creditors or any class of them. He further asserts that schemes have been widely resorted to in large cases of financial difficulty. Though schemes are relatively uncommon in jurisdictions like the USA, they are a feature in countries where the laws are heavily based on English Laws according to (Burling and Edward, 2011). Zimbabwe is cited among UK-related jurisdictions who's Companies Acts bear provisions for these schemes of arrangement. Within the list is also included other African countries such as; South Africa, Botswana, Lesotho, Namibia, and Swaziland. In addition to England itself, Australia, Bermuda, Cayman, Hong Kong, Ireland and Singapore also form part of the list (Wood, 2007). It also follows that the processes relating to schemes of arrangements in these jurisdictions are almost identical to that of the UK both from a legal and operational perspective. The Zimbabwe Companies Act (Chapter 24:03) empowers companies to enter into schemes of arrangements under a section on Management and Administration. Schemes are not a new legal concept but have been in use for over a century for a variety of purposes, including implementing takeovers and mergers. The usefulness of schemes had for some time been largely confined to insurance companies but is now recognised as a powerful restructuring tool by a wider range of companies (Windsor, 2009).

NEED FOR THE STUDY

The Zimbabwean macro- economic environment improved in 2009 when authorities replaced the local currency with multiple foreign currencies. The freedom of choice of currency signalled an end to hyperinflation, brought clarity in price discovery, a resurgence of financial institutions, business confidence and stability in price formulation (Bauer, 2013). Despite this unprecedented move and the renewed hope for economic growth and stability, the manufacturing sector however continued to report a host of challenges to their viability, most of which were financial. The Confederation of Zimbabwe Industries (CZI) identified lack of working capital, high operating costs and lack of energy and water, antiquated machinery, high labour costs and low domestic demand as key among the anomalies, constrains and challenges to the manufacturing sector (CZI Manufacturing Sector Survey 2013). Since 2009, StarAfrica Corporation Limited and PG Zimbabwe Limited were the only listed companies to have opted for Schemes of Arrangement involving creditors. Lifestyle Holdings Limited on the other hand, entered a Scheme of Arrangement with its shareholders, as part of its delisting process. The judicial manager of National Blankets Limited, an unlisted Zimbabwean Company domiciled in Bulawayo, was quoted attributing the company's recovery to the Distressed and Marginalised Areas Fund (DMAF) facility, a property disposal to National Social Security Authority (NSSA) and some Creditors' Scheme of Arrangement. For example, a specific endorsed scheme of arrangement gave National Blankets Limited a new lease of life which resulted in the stability that paved way for fresh investment into the Company (Mushawevato, 2014). The researchers noted that there is confirmation of Creditor's Schemes as a suitable tool by various sectors in other economies and even amongst unlisted local companies in Zimbabwe, while only a few locally listed manufacturing companies have implemented this financial restructuring tool. It is for these reasons that the researchers sought to undertake this study.

LITERATURE REVIEW

According to Finch (2002), Schemes of arrangements trace their roots to the Victorian legislation, with their usefulness including the reorganization of share capital, moratoria with creditors, takeover and merger transactions and altering the rights of policyholders creditors of insurance companies. The foregoing variety uses of Schemes and their ability to alter the rights of the company's shareholders, policyholders or creditors makes the procedure appropriate and available to both solvent and insolvent companies (Griffiths and Bull, 2009). Fisher (2000) associates a Scheme of Arrangements with a contract highlighting however that a Scheme may be brought into existence even without the assent of all the creditors who are to be bound by it; Scheme are also distinguished from mere agreements by parties in that they possess a statutory operation. In this regards, the author introduce the statutory nature of schemes. The extent to

which the rights can be altered and the purpose of the scheme is subjected to both the provisions of the Corporations Law and to those considerations of public policy which may militate against it being approved by the Court. (Fisher, 2000). In addition to complying with the public policy and the Corporation Law provisions, Fannon and Cuddihy (2010) highlighted that the court will not approve a scheme that is ultra vires the company. It follows therefore that the structuring of schemes should be done in consideration of the constitution, the Companies Act, or its equivalence and a Company's own Articles of Association. While acknowledging the existence of some limitations upon the structure of a scheme Fisher (2000) explains that the statutory procedures governing schemes nevertheless, permits great flexibility in devising suitable proposals for the re-organisation of a company's affairs.

Flexibility has emerged as a key feature of schemes as their terms not prescribed by legislation but only subjected to creditor approval and court sanction according to Katz and Shah (2012). Such flexibility has rendered them suitable for companies in distress as they may be able to negotiate creditors' settlements on a variety of terms according to Finch (2002). However, the fact that schemes are not a one-size-fits-all tool has brought in complications since Schemes have been tailored into increasingly complex arrangements where the needs of the company have to be balanced against any concerns expressed by courts and other parties (Freshfields Bruckhaus Deringer, 2013). According to Wood (2007) Schemes of Arrangements involving a company and its creditors 'Creditor Schemes', are useful procedures to secure compromise with creditors or a moratorium on debt. Fisher (2000) then identifies parties to such Creditor Schemes as only the company, on one part, and those of the company's creditors who are to be bound by it, on the other part.

Professor Tomasic (2013) states that companies are free to enter into privately arranged or court sanctioned compromise arrangement with each creditor individually. Privately arranged schemes are distinguished from court sanctioned schemes of arrangements in that the assistance of the courts is not required in the latter instance. Only a deed between the company, its creditors and the creditors inter se reflecting the arrangement is usually executed. On the other hand, a court sanctioned schemes of arrangement begins with an application to the court and also involve two court hearings. The application to the court by the company is to seek direction to call meetings of creditors. The next stage should be meetings of classes of creditors. The second and final court hearing comes after approval by the voting classes is obtained; it is at this stage when the court considers whether or not to sanction the scheme. Creditors are afforded the opportunity to attend court and challenge the scheme (Taylor Wessing, 2012). The final requirement is to deliver the court-sanctioned scheme for registration at the registrar of companies; after which, the Scheme cannot then be varied without court approval (Finch, 2002). The Australian Government's Department of Industry recognises that creditor schemes may also be informal and made between the company and its creditors. The main shortcoming of informal schemes is that other parties to the arrangement cannot do anything should a creditor refuse to participate or to be bound by the arrangement.

STATEMENT OF THE PROBLEM

Sections 191-194 of The Companies Act [Chapter 24:03] makes provisions for various Schemes of Arrangements including those schemes involving creditors. The successful use of Creditor Schemes by companies in financial challenges in similar economies where schemes are provided for is well documented and yet they remain underused in Zimbabwe according to Fitzpatrick *et al.* (2014). The Central African Stock Exchange Handbook of 2014 cites StarAfrica Corporation Limited and PG Zimbabwe Limited as the only two listed manufacturing companies to opt for Creditor's Schemes of Arrangements since 2009 while ten other listed companies delisted from the Stock Market in 2013 alone (Nyakazeya, 2013). Creditor Schemes of Arrangement therefore reflect a very low implementation rate for listed manufacturing companies in Zimbabwe and this rate could be traced to the disinclination of Company Secretaries employed by these corporates to recommend implementation of this financial restructuring tool. This reluctance could be explained by their perception on the suitability of Creditor Schemes within the Zimbabwean corporate framework. Therefore the study gathered empirical evidence relating to whether or not Company Secretaries consider Creditors Schemes of Arrangements to be a usable and supportable tool for use by listed manufacturing companies in financial difficulty.

OBJECTIVES OF THE STUDY

1. To ascertain whether or not Company Secretaries employed by listed manufacturing companies in Zimbabwe perceive Creditor Schemes of Arrangements as a suitable financial restructuring tool in terms of usability and supportability.
2. To establish whether or not a relationship exist between the Company Secretaries' perceptions on the usability and supportability of creditor schemes and their professional background.

HYPOTHESES

H1: Company Secretaries of listed manufacturing companies do perceive Creditor Schemes of arrangement as a suitable financial restructuring tool in terms of their usability and supportability.

H2: There is a significant relationship between the Company Secretaries' professional background and their perception on the suitability of Creditor Schemes of arrangement as a suitable financial restructuring tool in terms of usability and supportability.

METHODOLOGY

The researchers carried out a mixed research designed study, that is, both quantitative and qualitative research methodology in order to ascertain whether Company Secretaries employed by listed manufacturing companies perceive Creditors Schemes as a suitable option in Zimbabwe in terms of their usability and supportability. Descriptive statistics and ANOVA were used to analyse the data collected. A combination of Expert Review and Pilot Study were used to attest the research instrument's reliability and validity. Company Secretaries employed by 5 listed non-manufacturing companies served as respondents for the Pilot Study which scored a satisfactory Cronbach's Alpha of 0.719. For the main study, questionnaires were administered to 34 Company Secretaries employed by listed manufacturing companies in the Zimbabwe Stock Exchange.

SCOPE OF THE STUDY

The scope of the study is limited to the manufacturing companies listed in the Zimbabwe Stock Exchange in Harare, the capital city of Zimbabwe. As a result the findings of this study may not be generalisable outside the potential case study phenomenon that it represents.

ANALYSIS OF THE STUDY

TABLE 1: PERCEIVED SUITABILITY OF CREDITOR SCHEMES

	Mean	Standard Deviation	Verbal Interpretation
Perceived Usability of Creditor Schemes	3.1548	.66954	Indifferent
Perceived Supportability of Creditor Schemes	2.9107	.43686	Indifferent
Perceived Creditor Schemes' Suitability in terms of usability and supportability	3.0327	.48879	Indifferent

The statistics in Table 1 above indicates that company secretaries are overall indifferent as to whether or not Creditor Schemes of Arrangement are a suitable option for financial restructuring both in terms of usability and supportability. The overall or total mean of 3.0327 (SD=0.48879) lies within the 2.51-3.50 verbal interpretation region denoting or depicting indifference state of mind. Given the mean of 3.0327 in Table 1 above, Company Secretaries of listed manufacturing companies are indifferent on their perception of the suitability or unsuitability of the Creditor Schemes of arrangement in terms of both usability and supportability and hence the study fails to accept the hypothesis: Company Secretaries of listed manufacturing companies do perceive Creditor Schemes of arrangement as a suitable financial restructuring tool in terms of their usability and supportability.

TABLE 2: DESCRIPTIVE STATISTICS OF THE RELATIONSHIP BETWEEN PROFESSIONAL BACKGROUND AND PERCEIVED USABILITY OF CREDITOR SCHEMES

Perceived usability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
Legal	3	3.5833	.14434	.08333	3.2248	3.9419	3.50	3.75
Finance/Accounting	18	3.0833	.69795	.16451	2.7363	3.4304	1.75	4.00
Total	21	3.1548	.66954	.14611	2.8500	3.4595	1.75	4.00

Table 2 describes how the perceived usability mean of 3.1548 was distributed according to the professional background of the company secretaries. Respondents whose background is legal, generally disagreed that Creditor Schemes are a usable tool as reflected by a mean of 3.5833 (SD = 0.14434) which lies in between the Disagree mean range (3.51 - 4.50). On the other hand those of a financial/accounting background were in indifferent, evidenced by a mean of 3.0833(SD = 0.69795).

TABLE 3: DESCRIPTIVE STATISTICS ON THE RELATIONSHIP BETWEEN LEVEL OF EDUCATION AND PERCEIVED USABILITY OF CREDITOR SCHEMES

Perceived usability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
Degree	14	3.3304	.66254	.17707	2.9478	3.7129	1.75	4.00
Master Degree	7	2.8036	.57217	.21626	2.2744	3.3327	1.75	3.38
Total	21	3.1548	.66954	.14611	2.8500	3.4595	1.75	4.00

Table 3 statistics reflects a mean response on perceived suitability of 2.8036 (SD = 0.57217) for those with Master’s Degree compared to 3.3304 (SD=0.57217) for respondents with first degrees. Either means lie within the mean range (2.51 - 3.50) denoting or depicting the indifference state of mind.

TABLE 4: DESCRIPTIVE STATISTICS ON THE RELATIONSHIP BETWEEN LEVEL OF CURRENT EXPERIENCE AND PERCEIVED USABILITY OF CREDITOR SCHEMES

Perceived usability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
Less than 1 year	3	3.2083	.40182	.23199	2.2102	4.2065	2.75	3.50
1 year or more but less than 5 years	4	3.6875	.31458	.15729	3.1869	4.1881	3.25	4.00
5 year or more but less than 8 years	6	2.8333	.79713	.32543	1.9968	3.6699	1.75	4.00
8 year or more but less than 10 years	2	3.5000	.35355	.25000	.3234	6.6766	3.25	3.75
10 years or more	6	2.9792	.75588	.30859	2.1859	3.7724	1.75	3.62
Total	21	3.1548	.66954	.14611	2.8500	3.4595	1.75	4.00

Table 4 statistics describes how the perceived usability mean is distributed according to the current experience of respondents. Respondents with between one year and less than five years of current experience reflect a mean of 3.6875 (SD=0.31458) followed by those with between 8 and 10 years whose overall mean is 3.5000 (SD=.35355). Besides these two categories the rest fall deep within the indifference mean range as demarcated by the means 2.51 and 3.50.

TABLE 5: DESCRIPTIVE STATISTICS ON THE RELATIONSHIP BETWEEN PROFESSIONAL BACKGROUND AND PERCEIVED SUPPORTABILITY OF CREDITOR SCHEMES

Perceived supportability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
Legal	3	3.2917	.40182	.23199	2.2935	4.2898	3.00	3.75
Finance/Accounting	18	2.8472	.41911	.09879	2.6388	3.0556	2.25	3.75
Total	21	2.9107	.43686	.09533	2.7119	3.1096	2.25	3.75

Table 5 statistics indicates that company secretaries with legal background were indifferent in their perception as to whether Creditor Schemes are supportable or not as reflected by a mean of 3.2917 (SD=0.40182). Those secretaries with finance/accounting background also reflected an indifference disposition as reflected by a mean of 2.8472 (SD = 0.41911). Both means indicate that professional background does not influence the perceptions of company secretaries on the supportability of Creditor Schemes.

TABLE 6: DESCRIPTIVE STATISTICS ON THE RELATIONSHIP BETWEEN LEVEL OF EDUCATION AND PERCEIVED SUPPORTABILITY OF CREDITOR SCHEMES

Perceived supportability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
Degree	14	2.9643	.47136	.12598	2.6921	3.2364	2.25	3.75
Master Degree	7	2.8036	.36698	.13870	2.4642	3.1430	2.50	3.50
Total	21	2.9107	.43686	.09533	2.7119	3.1096	2.25	3.75

Table 6 statistics indicates that there is no relationship between the level of qualifications of the company secretaries and their perceptions on the supportability of Creditor Schemes. Company secretaries with Master’s degree scored a mean of 2.8036 (SD = 0.36698) while the mean for those with first degrees was 2.9643 (SD = 0.47136). Both means are consistent with the overall mean of 2.9107 (SD= 0.43686).

TABLE 7: DESCRIPTIVE STATISTICS ON THE RELATIONSHIP BETWEEN LEVEL OF CURRENT EXPERIENCE AND PERCEIVED SUPPORTABILITY OF CREDITOR

supportability	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
					SCHEMES			
Less than 1 year	3	2.7500	.43301	.25000	1.6743	3.8257	2.25	3.00
1 year or more but less than 5 years	4	3.3125	.38864	.19432	2.6941	3.9309	2.88	3.75
5 year or more but less than 8 years	6	2.8542	.42878	.17505	2.4042	3.3041	2.50	3.62
8 year or more but less than 10 years	2	2.6875	.26517	.18750	.3051	5.0699	2.50	2.88
10 years or more	6	2.8542	.47708	.19477	2.3535	3.3548	2.50	3.75
Total	21	2.9107	.43686	.09533	2.7119	3.1096	2.25	3.75

According to the statistics in Table 7, company secretaries with 8 years but less than 10 years of current experience had the least mean of 2.6875 (0.26517), while those with 1 year but less than 5 years of experience reflected the highest mean of 3.3125 (SD = 0.38864). However, all the means of the five categories fell within the indifference disposition range, indicating that no relationship exists between the length of current experience of the respondents and their perceptions on the supportability of Creditor Schemes. Hence the hypothesis: there is a significant relationship between the Company Secretaries' professional background and their perception on the suitability of Creditor Schemes of arrangement as a suitable financial restructuring tool in terms of usability and supportability was rejected.

FINDINGS AND SUGGESTIONS

The results above indicate that the implementation of the Creditor Schemes of Arrangement as financial restructuring tool remains low in the foreseeable future.

Suggestion 1: Company Secretaries employed by listed manufacturing companies in the Zimbabwe Stock Exchange are generally undecided on the suitability of Creditor Schemes of Arrangements as financial restructuring tool in terms of usability and supportability. Regulators and other relevant bodies should engage with company secretaries of listed companies, as practitioners, on matters of financial restructuring during times of financial distress.

Suggestion 2: The professional background, education levels, professional affiliations and current experience of the company secretaries employed by listed manufacturing companies does not influence their perceptions on the suitability of Creditor Schemes of Arrangement as indicated by all the p values which are greater than the required significant level of 0.05 at 95% confidence interval. The phenomenon here is impacting negatively on the professional development and training of company secretaries in Zimbabwe.

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