

# ***The Business Rescue Process***

***With reference to Chapter 6 of the draft Companies Bill, 2007***

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**Corporate Renewal Solutions / CRS Turnaround**

**Prepared for the Business Rescue Legislation Panel Discussion of  
the Turnaround Management Association – Southern Africa**

**3 May 2007**

***Restoring and sustaining corporate value***



# Business rescue fits between workout and liquidation

## Business rescue:

- Chapter 6 of the draft Companies Bill, 2007 to replace Judicial Management
- Operational by 2009?
- Future of section 311 Offers of Compromise?

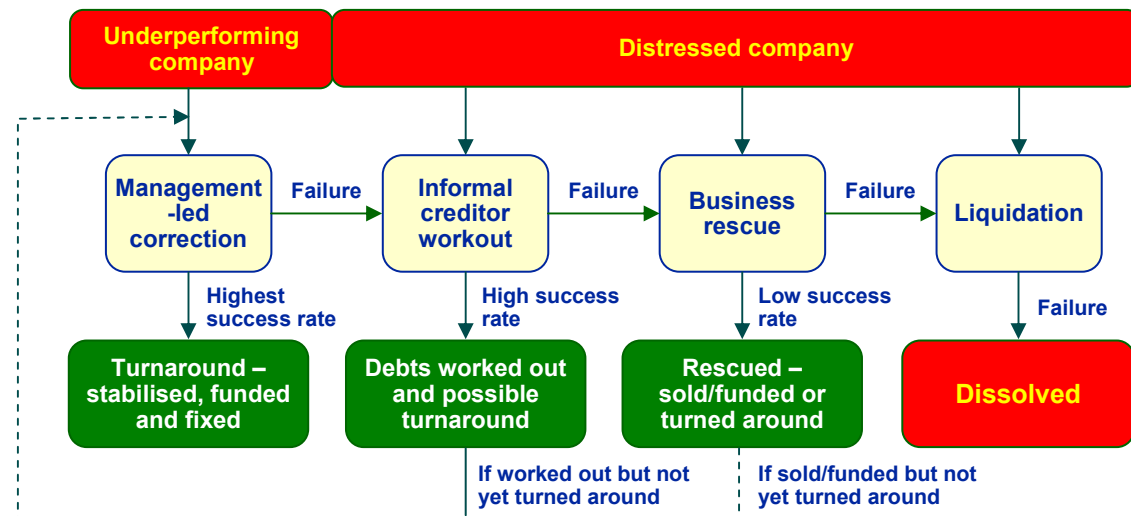
## Success rates (UK stats):

- Workout: 75% (Franks & Sussman)
- Business rescue: <47% (Frisby)

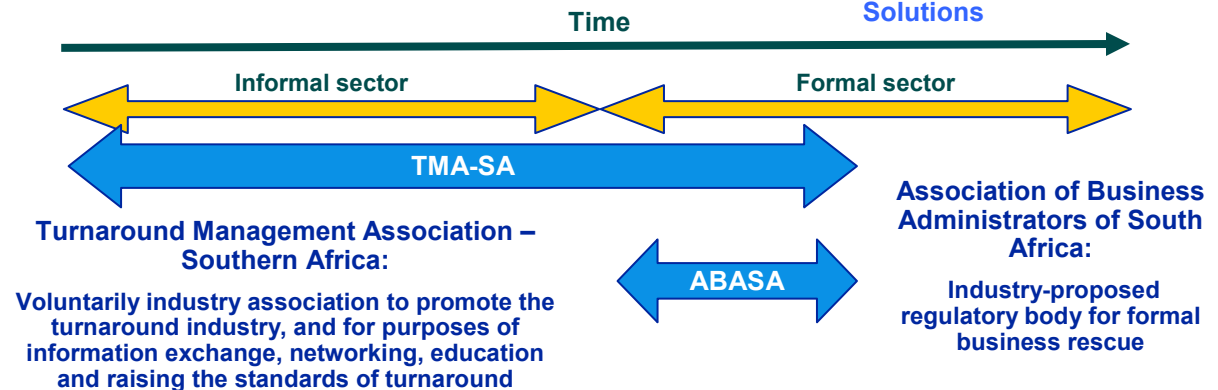
### UK experience:

*New business rescue legislation strengthened informal creditor workout activity*

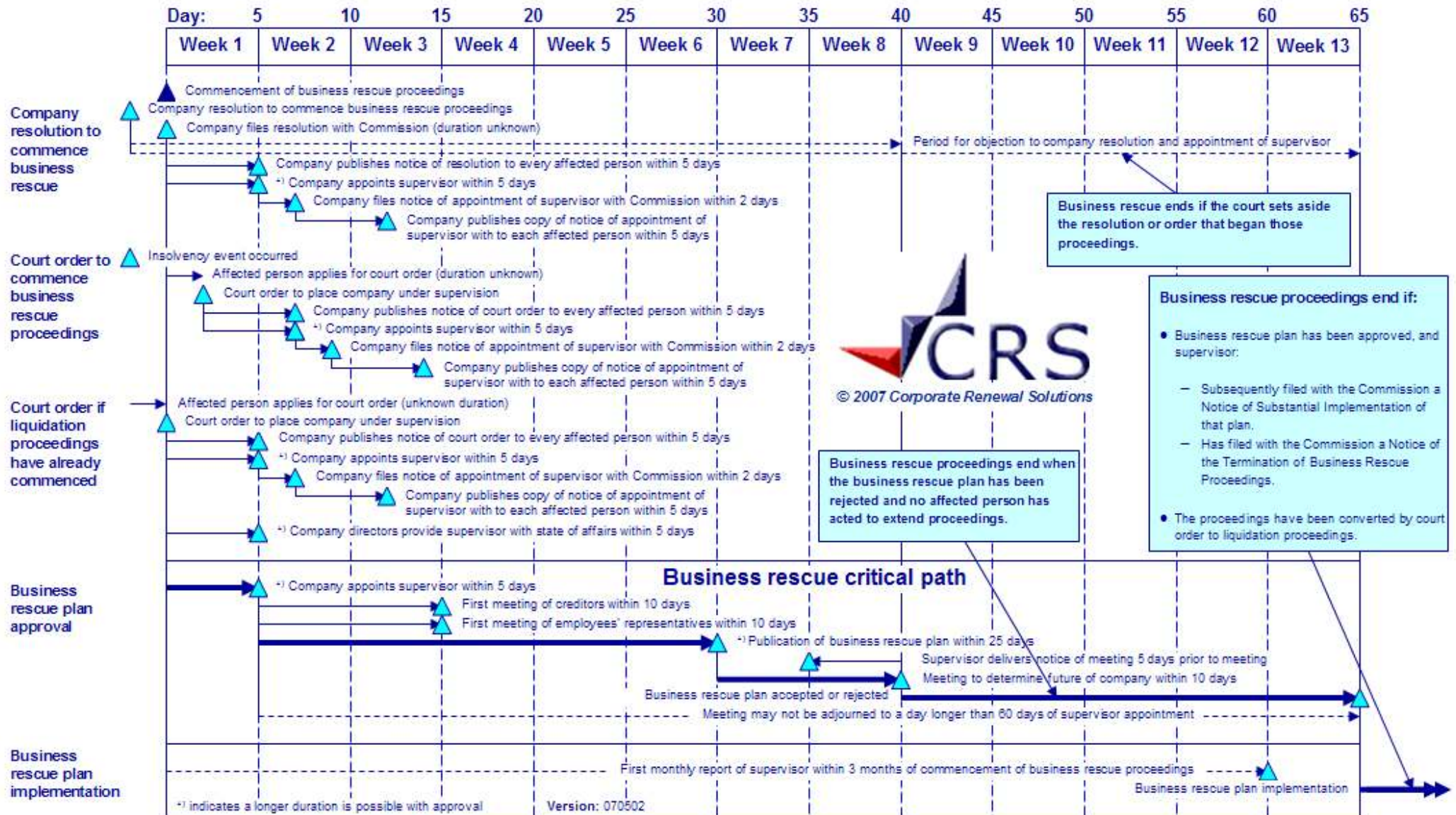
## Business Rescue and Industry Associations:



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# Business rescue timeline



3 The Trails  
127 Linden Rd.  
Sandown 2196  
Sandton

Cell: 082 853 1414  
Phone: 011 477 4414  
Fax: 086 510 6184  
Email: corp@corporate-renewal.co.za

Web sites:  
www.turnaround-sa.com  
www.corprenewal.co.za

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# It can take 65 days or longer for the business rescue plan to be accepted or rejected

For more information see [www.turnaround-sa.com](http://www.turnaround-sa.com)

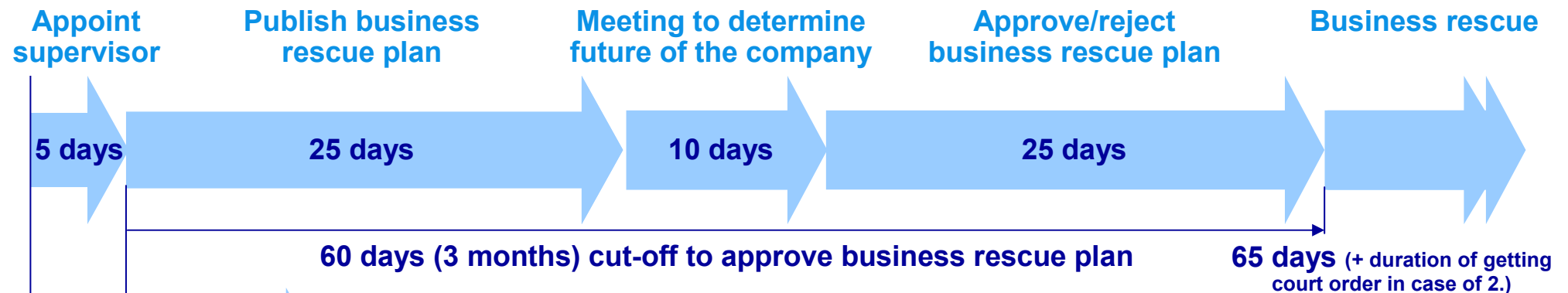
## Business Rescue Process Critical Path:

### Commencement:

1. Company resolution filed with Commission
2. Affected person applies for court order (critical path is longer than indicated below by the duration of getting court order)
3. Court order granted to place company, against which liquidation proceedings have begun, under supervision

### Conditions applying:

- Temporary moratorium on the rights of claimants against the company or in respect of property in its possession
- Suppliers to supply under same terms and conditions as before
- Company can suspend contracts; Post-commencement finance



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1<sup>st</sup> meetings of creditors and employees' representatives

### Company publishes:

- Notice of resolution/court order to affected persons
- Notice of appointment of supervisor with Commission
- Copy of notice of appointment of supervisor to affected persons

- *Timelines reasonable*
- *No explicit mention of emergency management as a supervisor role – crisis stabilisation should commence immediately!*

### Termination:

- a. Court sets aside resolution
- b. Business rescue plan rejected and no affected person act to extend
- c. and d. Supervisor files Notice of Substantial Implementation or Notice of Termination of Business Rescue Proceedings
- e. Conversion by court order to liquidation proceedings



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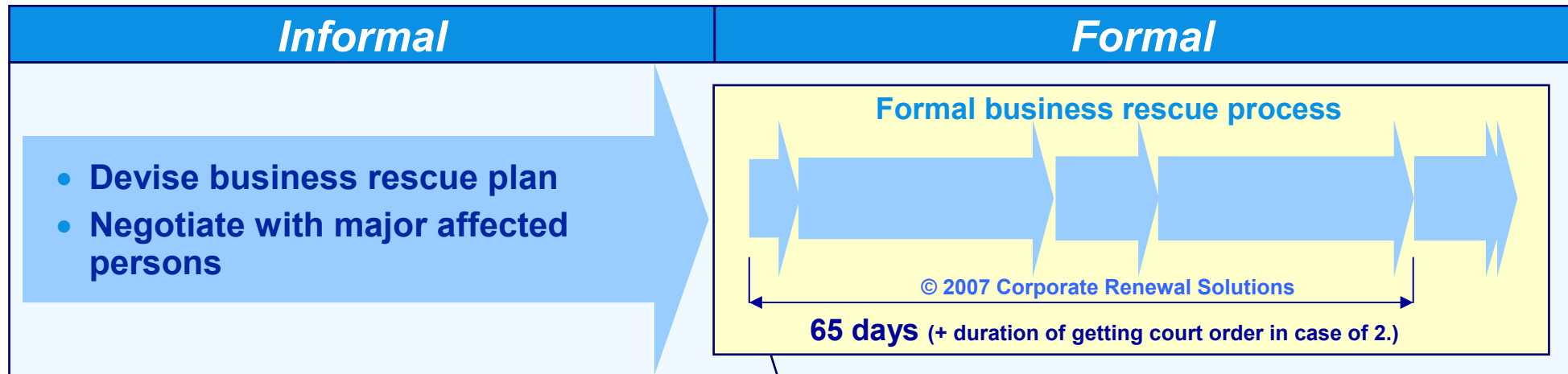
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# Pre-packaged business rescue is preferable to freefall business rescue

## Pre-packaged vs. free fall business rescue:



### Pre-packaged business rescue:

- Pre-packaged solution before insolvency sets in, when still in cash and / or with borrowing capacity:
  - Devise business rescue plan
  - Negotiate with major affected persons
  - Place company under supervision to gain legal protection and benefits
- Higher success rate, shorter formal process, higher claimholder recovery rate, lower cost

### Free-fall business rescue:

- Method of last resort, mostly dead on arrival
- Out of cash and borrowing capacity
- High chance of ending up in liquidation, except that now:
  - Supervisor fees are an additional cost
  - Action can be taken against past wrong-doing
  - Employees are better off
  - Secured and unsecured creditors are worse off

## Contact us about you questions on business rescue

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*Jan van der Walt*



**Corporate Renewal Solutions is a black economic empowered management consulting firm specialising in business transformation / turnaround of underperforming and business rescue of distressed businesses**

<b>Cell phone:</b>	<b>082 853 1414</b>
<b>Land line:</b>	<b>011 477 4414</b>
<b>Fax:</b>	<b>086 510 6184</b>
<b>Business transformation and management consulting web site:</b>	<b><a href="http://www.corprenewal.co.za">www.corprenewal.co.za</a></b>
<b>Turnaround web site:</b>	<b><a href="http://www.turnaround-sa.com">www.turnaround-sa.com</a></b>
<b>Email:</b>	<b><a href="mailto:corp@corporate-renewal.co.za">corp@corporate-renewal.co.za</a></b>



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