



# Status of Business Rescue Proceedings in South Africa

## June 2019

### Purpose of the Business Rescue Proceedings Report:

The purpose of this report is to provide a statistical overview of the status of business rescue proceedings within South Africa based on applications submitted to the Companies and Intellectual Property Commission.

The report below covers the period of 1 May 2011 (inception of Chapter 6 of the Companies Act, 2008) to 30 June 2019. This report does not provide statistical comparisons with previous years. For the yearly comparisons, refer to previous reports.

### \*Notes to report:

- For purposes of determining the volume of proceedings started, invalid filings are disregarded since in such instances the proceedings never commenced.
- Practice note 3 of 2014 were issued during July 2014. Such practice note indicates the documentary and content requirements for CoR123.1, CoR125.2 and CoR125.3.

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**1. Business Rescue Proceedings Status:**

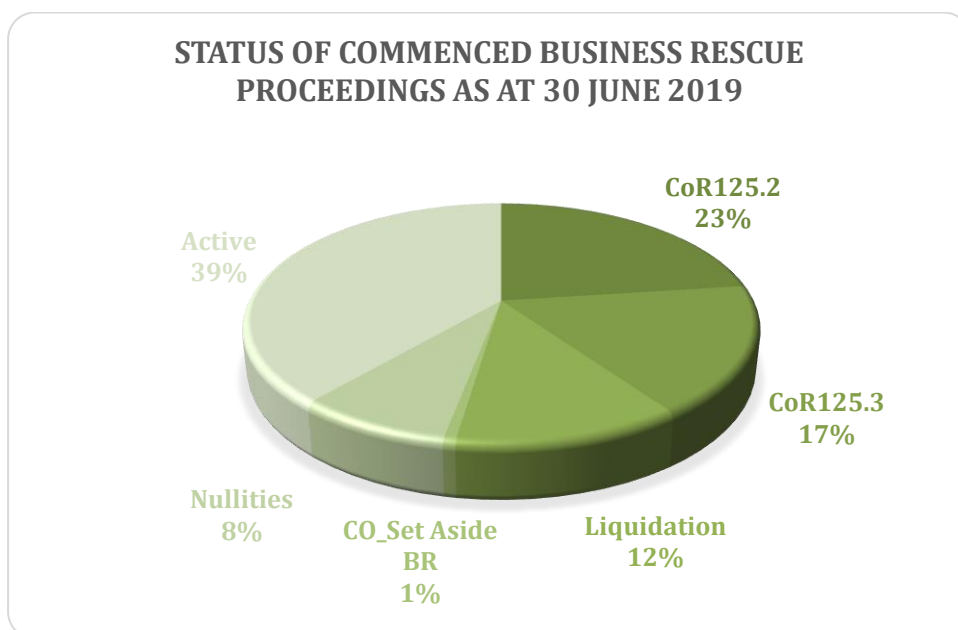
The below table reflects the status of commenced business rescue proceedings from inception of business rescue on 1 May 2011 to June 2019.

Operational BR Proceeding Applications	Total	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018-2019	2019-2020
<b>Business Rescue Proceedings Started</b>	<b>382</b>	<b>440</b>	<b>409</b>	<b>413</b>	<b>481</b>	<b>375</b>	<b>362</b>	<b>349</b>	<b>87</b>	<b>3298</b>
<b>Invalid filings</b>	61	27	24	42	12	6	5	1	0	178
<b>Business Rescue Proceedings Ended</b>	<b>326</b>	<b>311</b>	<b>284</b>	<b>280</b>	<b>312</b>	<b>231</b>	<b>172</b>	<b>105</b>	<b>2</b>	<b>2023</b>
CoR125.2	75	115	88	87	147	102	87	54	1	756
CoR125.3	83	106	102	92	72	63	35	18	0	571
Liquidation	58	57	67	71	69	47	26	5	0	400
CO_Set Aside BR	2	5	6	4	0	2	2	1	0	22
Nullities	108	28	21	26	24	17	22	27	1	274
<b>Active as at 30 June 2019</b>	<b>56</b>	<b>129</b>	<b>125</b>	<b>133</b>	<b>169</b>	<b>144</b>	<b>190</b>	<b>244</b>	<b>85</b>	<b>1275</b>
<b>Active ast at 31 March 2019</b>	<b>57</b>	<b>129</b>	<b>126</b>	<b>133</b>	<b>174</b>	<b>155</b>	<b>204</b>	<b>285</b>	<b>1263</b>	<b>N/A</b>

From the 3298 cases (invalid filings are not included since the proceedings never commenced) for which business rescue proceedings commenced:-

- 274 proceedings were declared a nullity;
- 756 proceedings was terminated by way of filing a Notice of Termination (CoR125.2);
- 571 proceedings was substantially implemented by way of filing a Notice of Substantial Implementation (CoR125.3);
- 400 proceedings ended up directly in liquidation;
- 22 proceedings the court set aside the business rescue proceedings; and
- 1275 proceedings is still in business rescue.

Graph 1 indicates the percentage comparison between the different statuses of commenced business rescue proceedings from inception up until 30 June 2019.



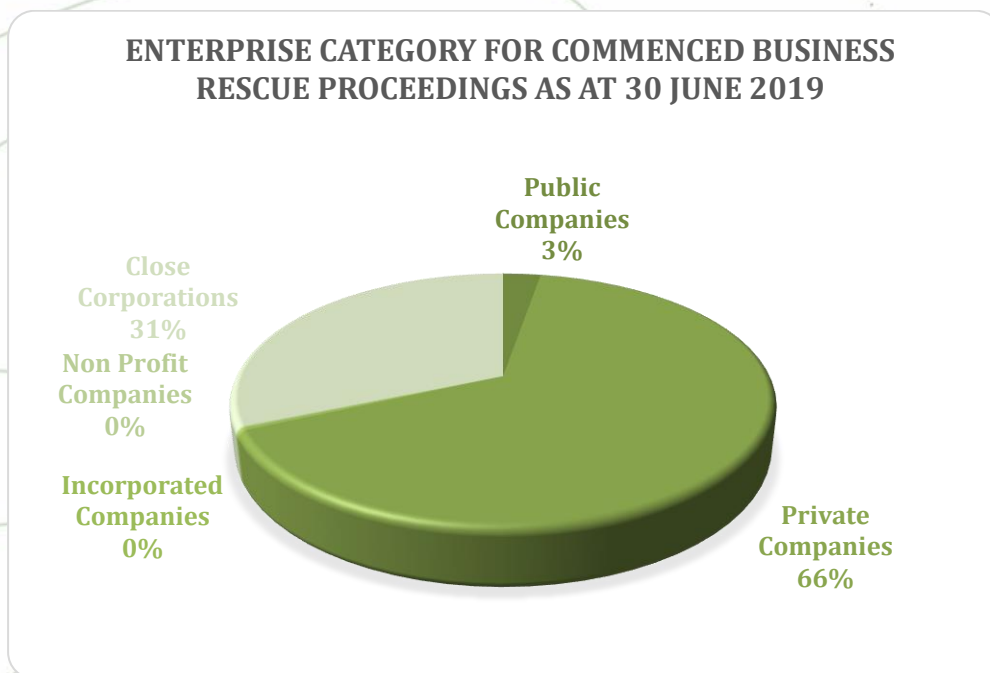


## 2. Business Rescue Proceedings Started Per Category Of Entity:

The below table indicates the volume of commenced business rescue proceedings for each entity category.

BR proceedings started	Total	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015-2016	2016-2017	2017 -2018	2018-2019	2019-2020
Public Companies	89	53	9	7	8	5	3	2	2	0
Private Companies	2160	240	281	257	266	297	238	252	265	64
Incorporated Companies	11	0	3	0	2	1	2	2	1	0
Non Profit Companies	6	0	0	2	0	1	2	1	0	0
Close Corporations	1032	89	147	143	137	177	130	105	81	23
<b>Total</b>	<b>3217</b>	<b>382</b>	<b>440</b>	<b>409</b>	<b>413</b>	<b>481</b>	<b>379</b>	<b>363</b>	<b>350</b>	<b>87</b>

Graph 2 indicates the percentage comparison for the different entity categories of commenced business rescues.



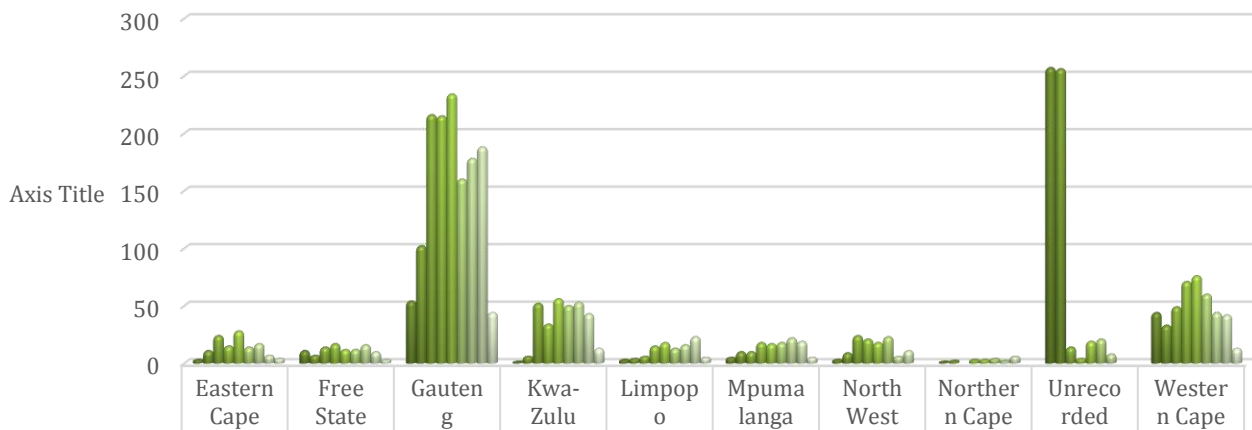
Business rescue is mostly utilised by private companies. 66% of entities applying for business rescue are private companies while only 31% are close corporations.

### 3. Business Rescue Proceedings Started Per Province:

The below table and graph 5 indicate the volume of commenced business rescue proceedings for each of the nine provinces.

Province (start BR)	Total	2011 - 2012	2012 - 2013	2013 -2014	2014 -2015	2015-2016	2016-2017	2017 -2018	2018-2019	2019-2020
Eastern Cape	123	3	11	24	15	28	14	17	7	4
Free State	102	11	7	14	17	12	12	16	10	3
Gauteng	1391	54	102	216	215	234	160	178	188	44
Kwa-Zulu Natal	308	1	6	52	34	56	50	53	43	13
Limpopo	103	3	4	6	15	18	13	16	23	5
Mpumalanga	124	5	10	10	18	17	18	22	19	5
North West	115	3	9	24	21	18	23	6	11	0
Northern Cape	21	1	2	0	3	3	4	2	6	0
Unrecorded	579	257	256	14	4	19	21	8	0	0
Western Cape	432	44	33	49	71	76	60	44	42	13
<b>Total Per Financial Year</b>	<b>3298</b>	<b>382</b>	<b>440</b>	<b>409</b>	<b>413</b>	<b>481</b>	<b>375</b>	<b>362</b>	<b>349</b>	<b>87</b>

**BREAKDOWN OF ENTITIES STARTING BUSINESS RESCUE PROCEEDINGS AS PER 30 JUNE 2019**



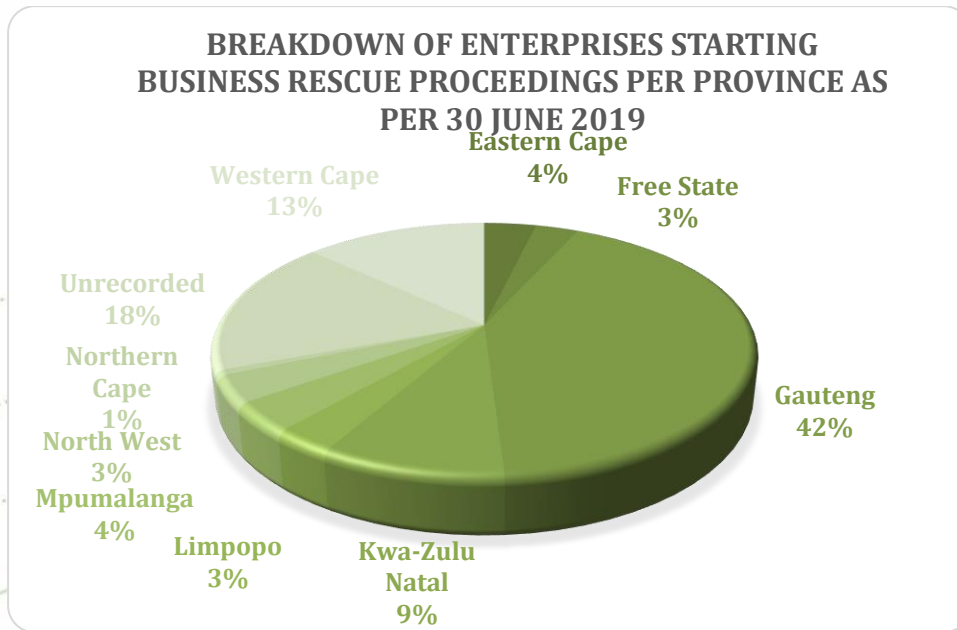
	Eastern Cape	Free State	Gauteng	Kwa-Zulu Natal	Limpopo	Mpumalanga	North West	Northern Cape	Unrecorded	Western Cape
■ 2011-2012	3	11	54	1	3	5	3	1	257	44
■ 2012-2013	11	7	102	6	4	10	9	2	256	33
■ 2013-2014	24	14	216	52	6	10	24		14	49
■ 2014-2015	15	17	215	34	15	18	21	3	4	71
■ 2015-2016	28	12	234	56	18	17	18	3	19	76
■ 2016-2017	14	12	160	50	13	18	23	4	21	60
■ 2017-2018	17	16	178	53	16	22	6	2	8	44
■ 2018-2019	7	10	188	43	23	19	11	6		42
■ 2019-2020	4	3	44	13	5	5				13



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Graph 3 reflects the overall breakdown for each of the nine provinces as from inception of business rescue expressed as a percentage.



#### 4. Notice of Termination (CoR125.2) Filed:

##### 4.1. Breakdown of Notice of Termination (CoR125.2) Filed:

The below table indicates the volume of CoR125.2 filed for commenced business rescue proceedings. It should be noted that a CoR125.2 may be received during a specific financial year but the filing of the document will be recorded against the year for which the business rescue proceedings commenced. Example, the CoR125.2 may be filed January 2015 but the proceedings commenced during the 2011-2012 financial year and therefore the CoR125.2 will be recorded against the 2011-2012 financial year in the below table.

Termination Type	Total	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017 - 2018	2018-2019	2019-2020
Termination	18	18	6	2	0	0	0	0	0	0
Termination - court order	0	0	0	0	0	0	1	1	0	0
Termination - Liquidation	19	19	50	28	18	44	32	28	23	0
Termination - Not Distressed	35	35	54	49	61	98	65	55	29	1
Termination - other	0	0	0	1	6	0	1	1	1	0
Termination - Plan not accepted	3	3	5	7	1	5	2	2	1	0
Termination - Plan not published	0	0	0	1	1	0		0	0	0
Termination - set aside	0	0	0	0	0	0	1	0	0	0
<b>Total Terminations filed as at 30 June 2019</b>	<b>75</b>	<b>75</b>	<b>115</b>	<b>88</b>	<b>87</b>	<b>147</b>	<b>102</b>	<b>87</b>	<b>54</b>	<b>1</b>
<b>Total Terminations filed as at 31 March 2019</b>	<b>721</b>	<b>75</b>	<b>115</b>	<b>88</b>	<b>87</b>	<b>143</b>	<b>99</b>	<b>79</b>	<b>35</b>	<b>N.A</b>

\*Notes:

Termination = reason for termination not specified

Termination – Liquidation = BRP terminates proceedings in order for entity to start liquidation proceedings

Termination – Not distressed = BRP terminates proceedings due to the fact that entity is not financially distressed

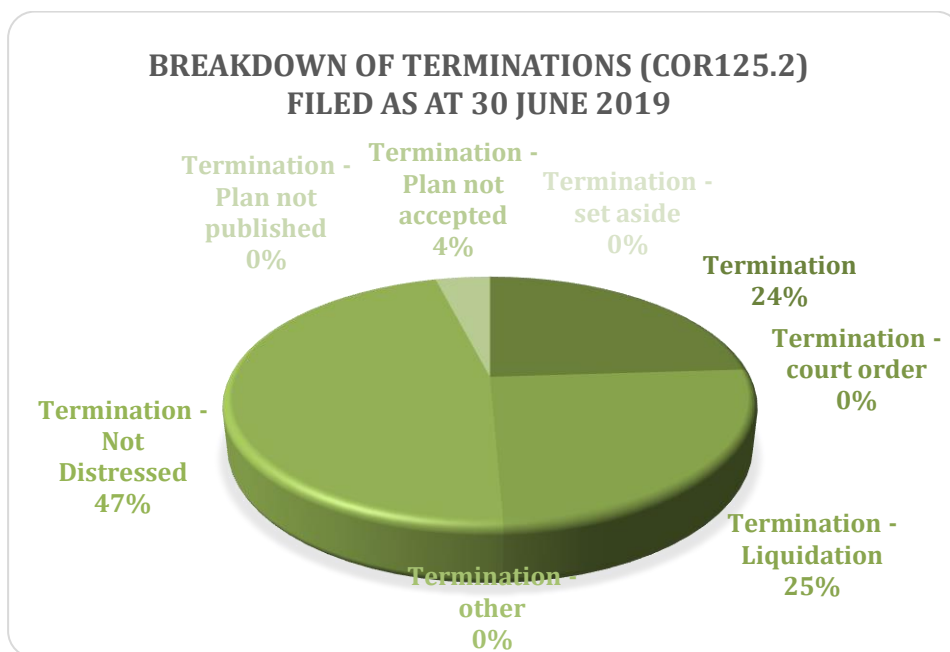
Termination – Plan not accepted = BRP notifies CIPC that plan was not accepted and no further action was taken by an affected person to extend the proceedings

Termination – Other = Is for terminations whereby the BRP notifies CIPC that proceedings are being terminated but does not fall within the main reasons e.g. BRP terminates for personal reasons, that he is removing/resigning himself from the matter due to director deviating from plan, business can trade itself out of distress.

Termination – Plan not published = BRP notified CIPC that the plan was not published in order for it to be considered for approval

Termination – Court Order = BRP approached the courts for an order terminating the business rescue since the proceedings commenced by order of court

Graph 4 reflects the overall breakdown of the main reasons for terminations submitted as at 30 June 2019.



#### 4.2. Age analysis on Terminations (CoR125.2) filed:

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
As at 30 June 2019	12.86 months	23.28%	5.03%	6.88%	6.08%	58.73%
As at 31 March 2019	12.79 months	23.74%	5.32%	6.76%	6.33%	57.84%
As at 31 March 2018	11.00 months	26.27%	5.80%	6.88%	7.25%	53.80%
As at 31 March 2017	9.29 months	26.29%	5.33%	8.10%	7.89%	52.45%
As at 31 March 2016	8.23 months	29.02%	4.73%	9.15%	8.83%	48.26%

#### 4.3. Liquidation Status of Business Rescue Proceedings Terminated (CoR125.2) (as at 31 March 2019):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.2 was filed on 31 March 2019. There is a clear increase in the volume of entities that has gone into liquidation and deregistration compared with 2017-2018 after a CoR125.2 has been filed. This is due to the increase in entities commencing liquidation due to insolvency.

Status Description	2017-2018	2018-2019
AR Deregistration	33%	35.73%
AR Final Deregistration	11%	10.37%
Provisional Liquidation	2%	2.02%
Final Liquidation	6%	7.49%
Voluntary Insolvent Liquidation	1%	6.77%
Dissolved	2%	2.31%

**2018-2019**  
Liquidation = 18.88%  
Deregistration = 46.11%  
In business = 32.42%

**2017-2018**  
Liquidation = 11.15%  
Deregistration = 44.43%  
In business = 40.77%

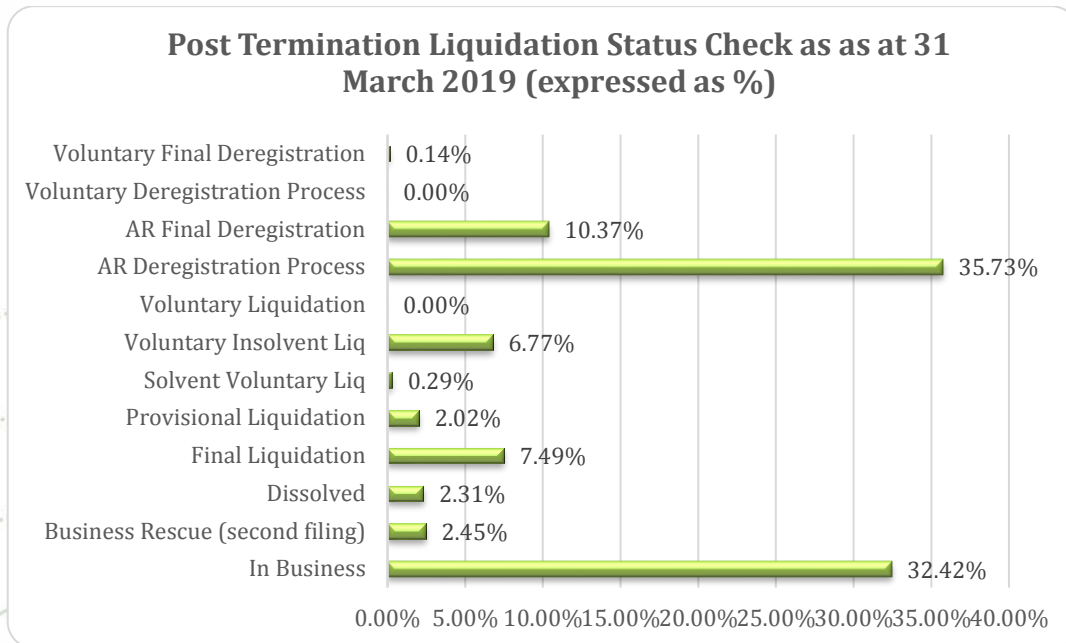




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Graph 5 reflect the status of proceedings which were terminated as per the date the status check was done for that particular financial year.



\* Notes:

It was identified that some entity statuses were not correctly updated upon the filing of the CoR125.2 and therefore some entity statuses reflect as in business rescue on the register. This is being investigated in order to correct.

**5. Substantial Implementations (CoR125.3) filed:**

**5.1. Age analysis on Substantial Implementations (CoR125.3) filed:**

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
As at 30 June 2019	16.18 months	6.13%	3.50%	4.03%	4.55%	81.79%
As at 31 March 2019	16.04 months	6.27%	3.41%	4.12%	4.66%	81.54%
As at 31 March 2018	14.60 months	6.92%	3.56%	3.77%	5.24%	80.50%
As at 31 March 2017	13.55 months	7.83%	4.04%	4.29%	5.56%	78.28%
As at 31 March 2016	12.31 months	9.39%	4.21%	4.85%	5.50%	76.05%

**5.2. Liquidation Status of Business Rescue Proceedings On Proceedings Substantially Implemented (CoR125.3) (as at 31 March 2019):**

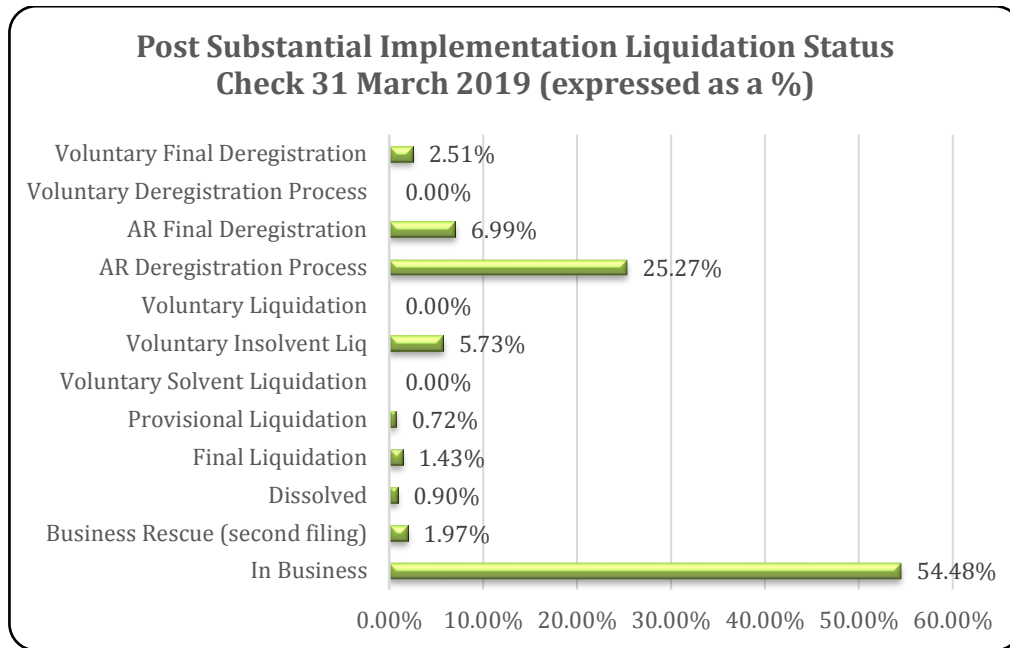
An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.3 was filed. As with CoR125.2, there is a clear increase in the volume of entities that has gone into liquidation and deregistration compared with 2017-2018 after a CoR125.3 was filed. This is due to the increase in entities commencing liquidation due to insolvency.

Status Description	2017-2018	2018-2019
AR Deregistration	23%	25.27%
AR Final Deregistration	6%	6.99%
Provisional Liquidation	1%	0.72%
Final Liquidation	2%	1.43%
Voluntary Insolvent Liquidation	2%	5.73%
Dissolved	0%	0.90%

**2017-2018**  
**Liquidation = 4.17%**  
**Deregistration = 29.39%**  
**In business = 61.40%**

**2018-2019**  
**Liquidation = 8.78%**  
**Deregistration = 32.26%**  
**In business = 54.48%**

Graph 6 reflects the status of proceedings which were substantially implemented as per the date the status check was done.



**6. Liquidation Documents Filed:**

The below table indicates the volume of liquidation applications and court orders filed for entities which commenced business rescue proceedings without the proceedings being terminated or business rescue plan being substantially implemented. It should be noted that a liquidation application or court order may be received during a specific financial year but the filing of the document will be recorded against the year for which the business rescue proceedings commenced. Example, the liquidation application may be filed January 2015 but the proceedings commenced during the 2011-2012 financial year and therefore the liquidation application will be recorded against the 2011-2012 financial year in the below table

Liquidation Type	Total	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015-2016	2016-2017	2016 - 2017	2018-2019	2019-2020
Dissolved	7	3	4	0	0	0	0	0	0	3
Final Liquidation	233	24	28	50	44	43	28	13	3	24
Provisional Liquidation	126	10	15	15	27	25	19	13	2	10
Voluntary Liquidation	15	3	10	2	0	0	0	0	0	3
Voluntary Insolvent Liquidation	1	1	0	0	0	0	0	0	0	1
Voluntary Solvent Liquidation	17	17	0	0	0	0	0	0	0	17
<b>Total Liquidations as at 30 June 2019</b>	<b>399</b>	<b>58</b>	<b>57</b>	<b>67</b>	<b>71</b>	<b>68</b>	<b>47</b>	<b>26</b>	<b>5</b>	<b>58</b>
<b>Total Liquidations as at 31 March 2019</b>	<b>392</b>	<b>57</b>	<b>57</b>	<b>67</b>	<b>71</b>	<b>68</b>	<b>44</b>	<b>24</b>	<b>4</b>	<b>N/A</b>

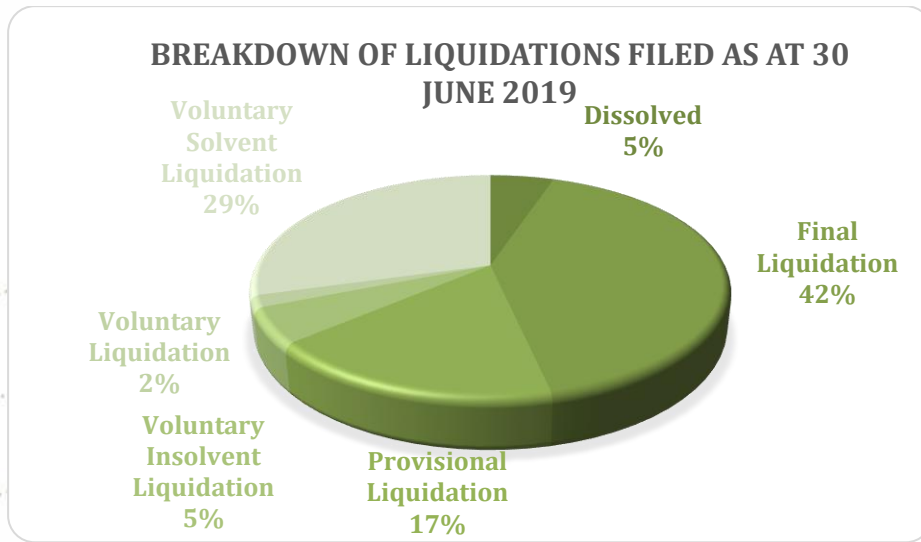




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Graph 7 reflects the overall breakdown of liquidations filed for commenced business rescue proceedings up until 30 June 2019.

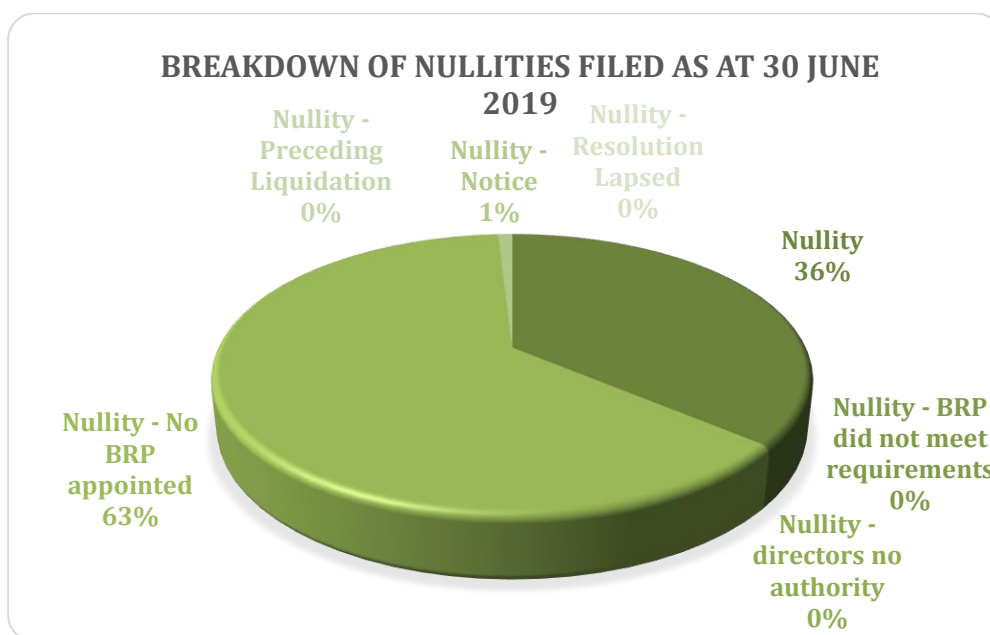


**7. Nullities filed:**

From the 3298 business rescue proceedings which commenced, 271 was declared a nullity. Therefore, 8.31% of all commenced proceedings ended in a nullity.

Nullity	Total	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Nullity - BRP did not meet requirements	86	39	14	6	15	4	6	2	0	0
Nullity - directors no authority	136	0	0	0	0	0	0	0	20	0
Nullity - No BRP appointed	0	0	0	2	0	0	0	0	0	0
Nullity - Notice	23	68	10	7	3	14	11	16	7	1
Nullity - Preceding Liquidation	2	1	4	6	6	4	0	2	0	0
Nullity - Resolution Lapsed	1	0	0	0	1	2	0	2	0	0
Nullity	5	0	0	0	1	0	0	0	0	0
<b>Total Nullities</b>	<b>271</b>	<b>108</b>	<b>28</b>	<b>21</b>	<b>26</b>	<b>24</b>	<b>17</b>	<b>22</b>	<b>27</b>	<b>1</b>

Graph 8 indicates the breakdown of the reasons for nullities up until 30 June 2019.

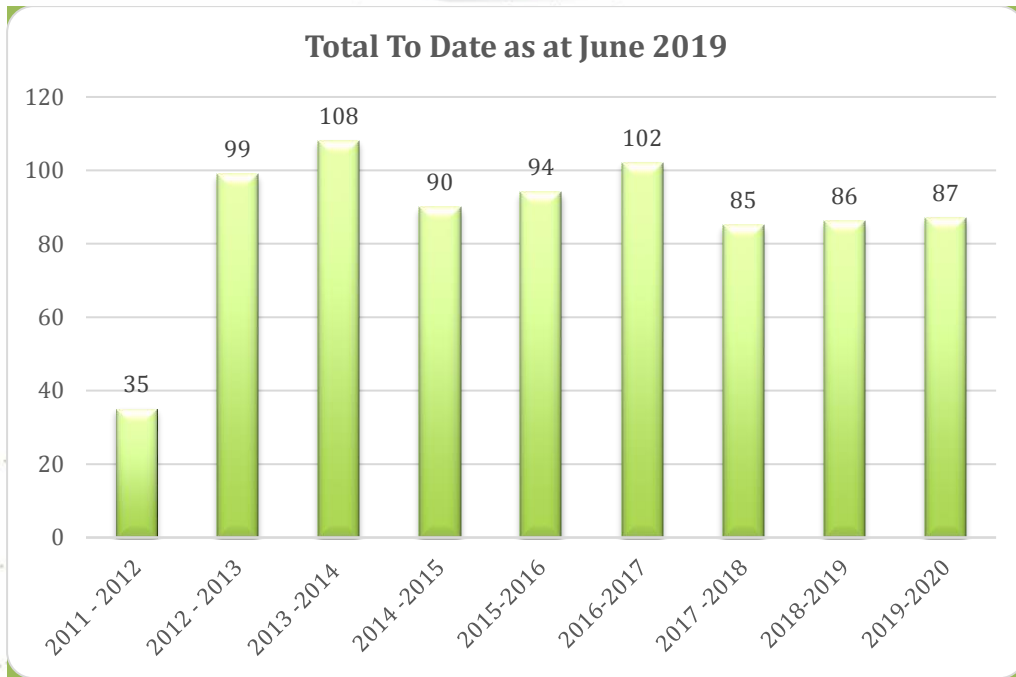


#### 8. Total Recorded Matters:

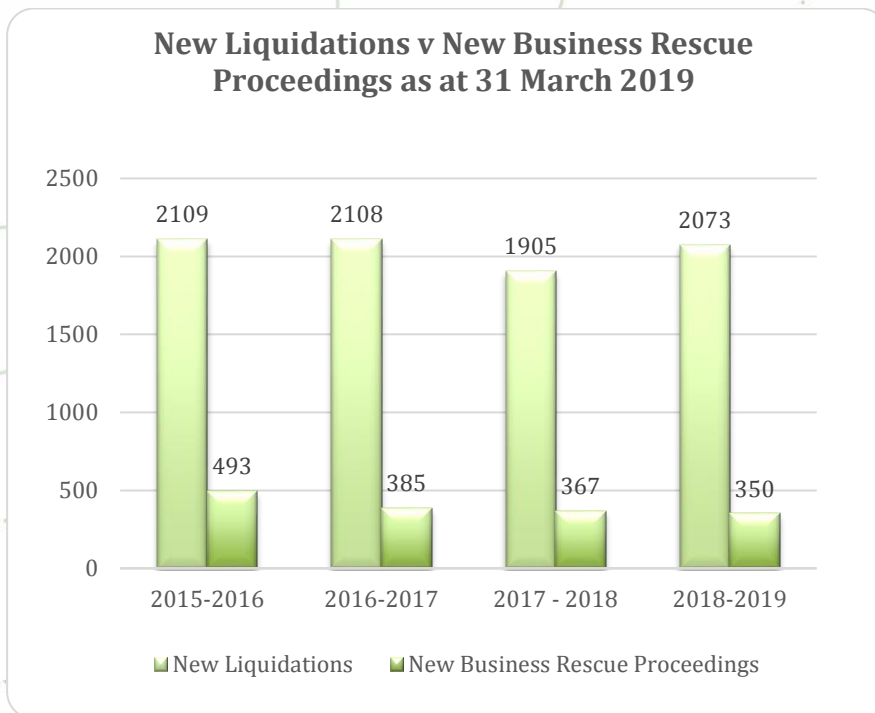
The below table reflects the volume of commenced business rescue proceedings from inception of business rescue up until March 2018.

Month	Total	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015-2016	2016-2017	2017 -2018	2018-2019	2019-2020
January	232	60	18	36	28	20	19	25	26	0
February	288	39	37	34	24	47	28	31	48	0
March	280	29	42	30	49	39	30	30	31	0
April	217	2	32	31	23	40	27	16	18	28
May	294	6	44	44	34	32	40	27	41	26
June	275	27	23	33	33	22	35	42	27	33
July	282	16	21	43	31	67	39	26	39	0
August	346	33	57	44	54	55	41	33	29	0
September	313	66	53	30	35	35	29	35	30	0
October	301	21	46	47	43	57	33	32	22	0
November	294	35	49	28	34	51	33	46	18	0
December	176	48	18	9	25	16	21	19	20	0
<b>Total Per Financial Year</b>	<b>3298</b>	<b>382</b>	<b>440</b>	<b>409</b>	<b>413</b>	<b>481</b>	<b>375</b>	<b>362</b>	<b>349</b>	<b>87</b>

Graph 9 reflects the overall breakdown of the volume of new matters recorded for each financial year. There is a clear decrease in new matters being reported compared with with the previous two reporting periods.



Graph 11 reflects the volume of new liquidation matters being reported compared with the volume of new business rescue proceeding matters. There is a clear increase in new liquidation matters



**9. Business Rescue Proceedings Started Per Industry:**

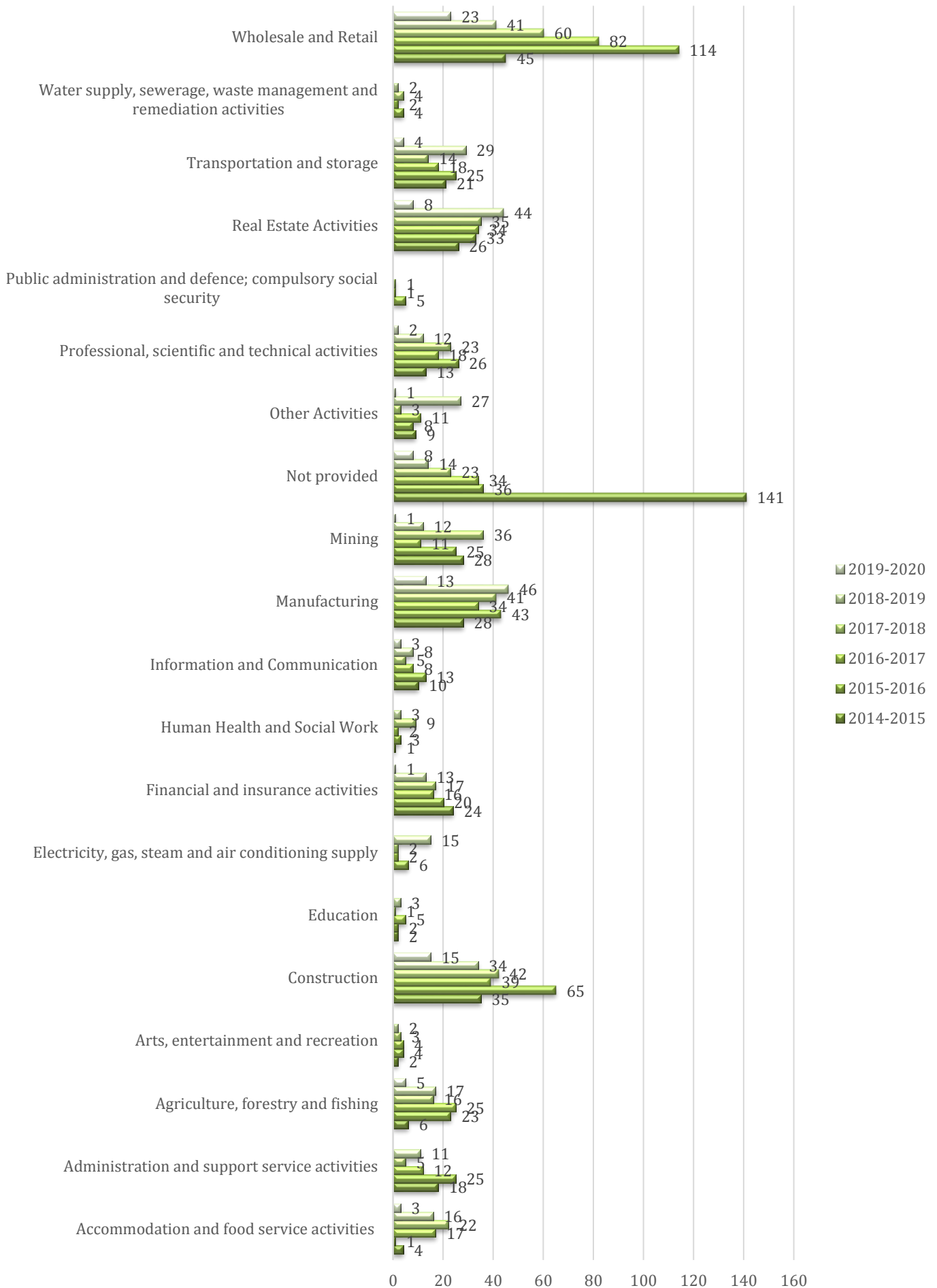
The below table indicates the volume of commenced business rescue proceedings for each of the classified industries.

Industry	Total	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Accommodation and food service activities	63	4	1	17	22	16	3
Administration and support service activities	71	18	25	12	5	11	
Agriculture, forestry and fishing	92	6	23	25	16	17	5
Arts, entertainment and recreation	15	2	4	4	3	2	
Construction	230	35	65	39	42	34	15
Education	13	2	2	5	1	3	
Electricity, gas, steam and air conditioning supply	25		6	2	2	15	
Financial and insurance activities	91	24	20	16	17	13	1
Human Health and Social Work	18	1	3	2	9	3	
Information and Communication	47	10	13	8	5	8	3
Manufacturing	205	28	43	34	41	46	13
Mining	113	28	25	11	36	12	1
Not provided	256	141	36	34	23	14	8
Other Activities	59	9	8	11	3	27	1
Professional, scientific and technical activities	94	13	26	18	23	12	2
Public administration and defence; compulsory social security	7		5	1	1		
Real Estate Activities	180	26	33	34	35	44	8
Transportation and storage	111	21	25	18	14	29	4
Water supply, sewerage, waste management and remediation activities	12		4	2	4	2	
Wholesale and Retail	365	45	114	82	60	41	23
<b>Grand Total</b>	<b>2067</b>	<b>413</b>	<b>481</b>	<b>375</b>	<b>362</b>	<b>349</b>	<b>87</b>

Graph 9 indicates the consolidated percentage contribution of business rescue proceedings for each industry.



## Industry



\*Notes:

As from 1 August 2014 the primary industry within which the entity is conducting business is recorded. No information available on industry prior to such date.