

Status of Business Rescue Proceedings in South Africa

December 2015

1. 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 September 2015. This report does not provide statistical comparisons with previous years. For the yearly comparisons, refer to March 2015 report.

*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.

2. 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 31 December 2015.

Operational BR Proceeding Applications	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015-2016	total
Business Rescue Proceedings Started	383	443	413	416	383	2038
Invalid filings	60	25	21	41	9	156
Business Rescue Proceedings Ended	295	250	207	141	53	946
CoR125.2	67	83	61	52	13	276
CoR125.3	69	88	77	35	15	284
Liquidation	50	45	47	29	11	182
CO_Set Aside BR	3	8	3	2	0	16
Nullities (Proceedings started but was declared a nullity)	106	26	19	23	14	188
Active as at 31 December 2015	88	193	206	275	330	1092
Active as at 30 September 2015	95	202	217	311	248	1073
Active as at 30 June 2015	96	201	217	314	97	925
Active as at 31 March 2015	102	207	230	344	N/A	883
Active as at 31 December 2014	225	235	261	295	N/A	1016

From the 2038 cases (invalid filings are not included since the proceedings never commenced) for which business rescue proceedings commenced:-

- 188 proceedings became a nullity in law;
- 276 proceedings was terminated by way of filing a Notice of Termination (CoR125.2);
- 284 proceedings was substantially implemented by way of filing a Notice of Substantial Implementation (CoR125.3);

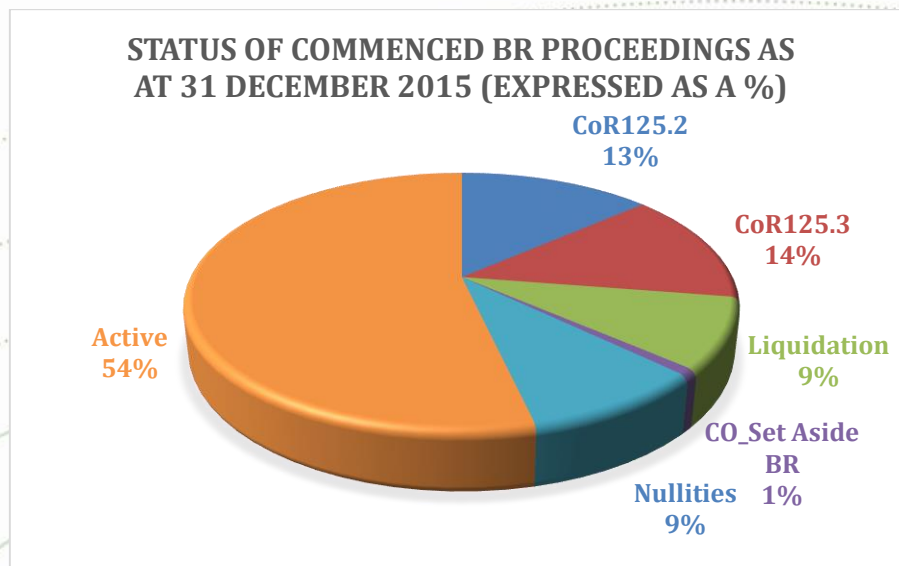


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- 182 proceedings ended up directly in liquidation without a Notice of Termination (CoR125.2) being filed;
- 16 proceedings the court set aside the business rescue proceedings; and
- 1092 proceedings is still in business rescue.

Diagram 1 indicates the percentage comparison between the different statuses of commenced business rescue proceedings.



3. 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
Public Companies	82	53	10	7	8	4
Private Companies	1272	241	282	260	266	223
Incorporated Companies	6	0	3	0	2	1
Non Profit Companies	3	0	0	2	0	1
Close Corporations	674	89	148	144	140	153
Total	2037	383	443	413	416	382

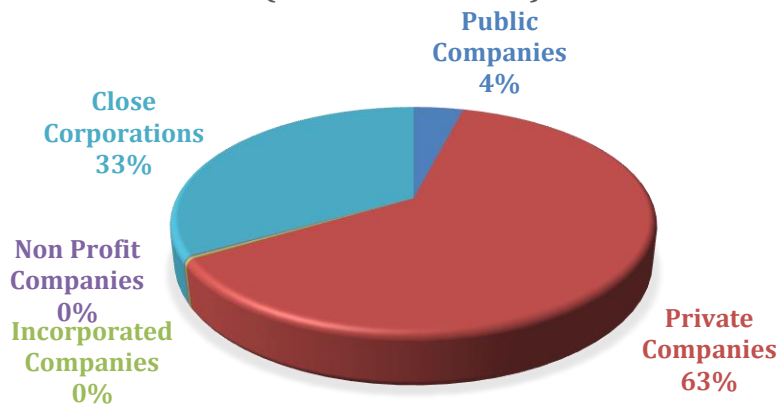
Diagram 2 indicates the percentage comparison for the different entity categories of commenced business rescues.



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**CATEGORY OF ENTITIES STARTING BR
PROCEEDINGS AS AT 31 DECEMBER 2015
(EXPRESSED AS %)**



Business rescue is mostly utilised by private companies. 63% of entities applying for business rescue are private companies while only 33% are close corporations.

4. Business Rescue Proceedings Started Per Province:

The below table indicates the volume of commenced business rescue proceedings for each of the nine provinces.

Province (start BR)	Total per Province	2011 - 2012	2012 - 2013	2013 -2014	2014 -2015	2015-2016
Gauteng	775	53	102	218	216	186
Free State	61	11	7	14	17	12
Northern Cape	9	1	2	0	3	3
Eastern Cape	75	3	11	24	16	21
Western Cape	269	44	33	50	72	70
North West	69	3	9	24	21	12
Limpopo	40	3	4	6	15	12
Mpumalanga	57	5	11	10	18	13
Kwa-Zulu Natal	135	1	6	53	34	41
Not Provided	547	259	258	14	4	12
Total Per Financial Year	2037	383	443	413	416	382



BREAKDOWN OF ENTITIES STARTING BR PROCEEDINGS AS AT 31 DECEMBER 2015 PER PROVINCE (EXPRESSED IN VOLUME)

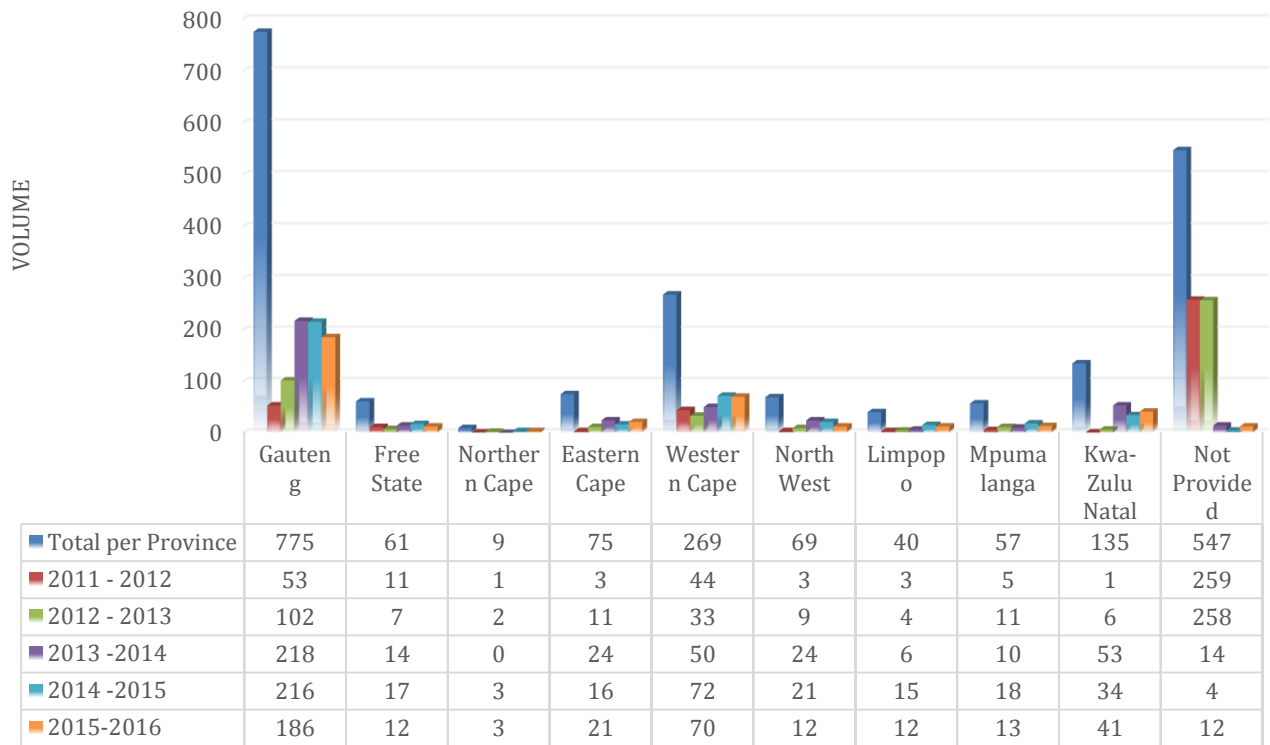
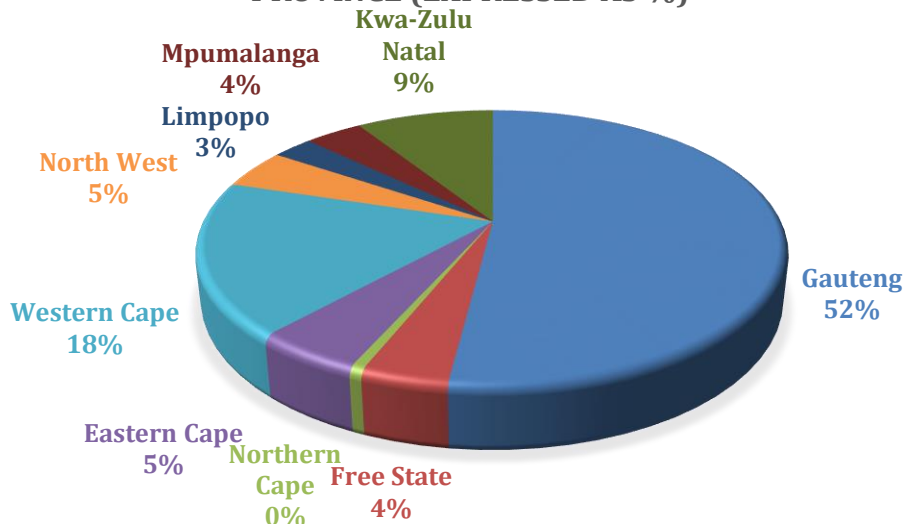


Diagram 3 reflects the overall breakdown for each of the nine provinces as from inception of business rescue expressed as a percentage. It is clear from the diagrams that 52% of businesses commencing business rescue, resides with Gauteng. Gauteng is followed by the Western Cape (18%) and then Kwa-Zulu Natal (9%).

BREAKDOWN OF ENTITIES STARTING BR PROCEEDINGS AS AT 31 DECEMBER 2015 PER PROVINCE (EXPRESSED AS %)



5. Notice of Termination (CoR125.2) Filed:

5.1. 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
Termination - Unspecified	119	44	26	24	23	2
Termination - Liquidation	81	16	34	20	8	3
Termination - Not distressed	56	4	19	10	16	7
Termination - Plan not accepted	15	3	4	6	1	1
Termination - BRP personal	5	0	0	1	4	0
Total Terminations filed as at 31 December 2015	276	67	83	61	52	13
Total Terminations filed as at 30 September 2015	245	65	81	60	36	3
Total Terminations filed as at 30 June 2015	244	64	82	60	36	2
Total Terminations filed as at 31 March 2015	226	65	81	58	22	N/A
Total Terminations filed as at 31 December 2014	201	59	80	55	7	N/A

***Notes:**

Termination = reason for termination not specified

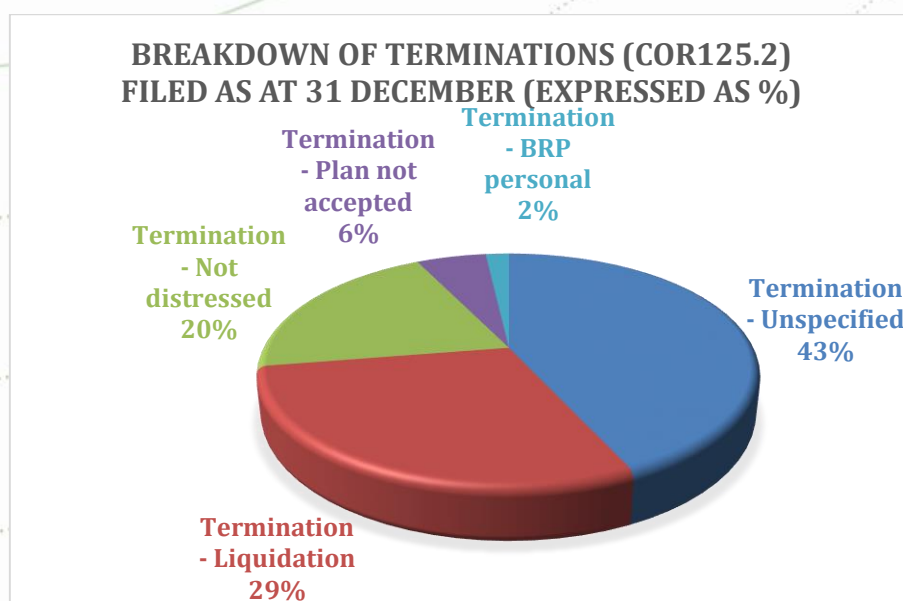
Termination – Liquidation = BRP terminates proceedings in order for entity to start liquidation proceedings

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 – Set aside = BRP notifies CIPC that a court has ordered the setting aside of the business rescue proceedings

Diagram 4 reflects the overall breakdown of the main reasons for terminations being submitted.



5.2. Age analysis on Terminations (CoR125.2) filed:

The average period for the filing of a CoR125.2 is 7 months. 32% of terminations are filed within 2 months; 4 % in the third month, 10% in the fourth month, 5% in the fifth month and 49% in month six or thereafter.

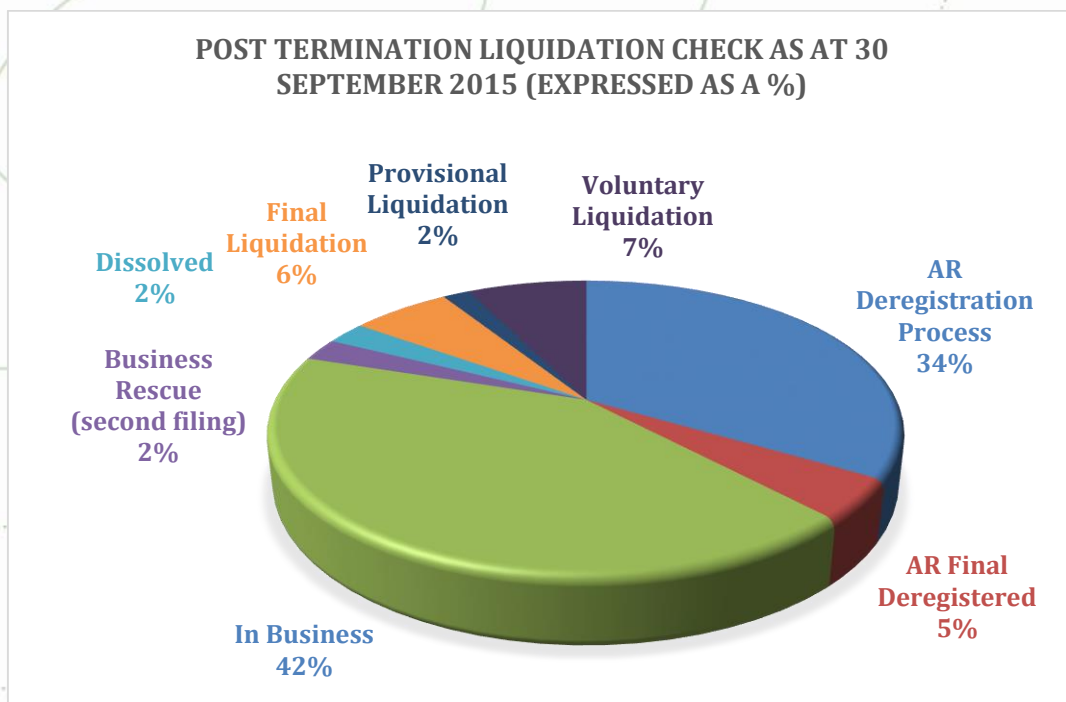
The filing period is the same as December 2014 and therefore there is no improvement in the rate with which practitioners file a CoR125.2.

5.3. Liquidation Status of Business Rescue Proceedings Terminated (CoR125.2) (as at 30 September 2015):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.2 was filed. 18% of the entities went into liquidation and 38% is either in annual return deregistration (“in deregistration process”) or finally deregistered (“final deregistered”) for non-compliance with annual returns. Only 42% has an “in business” status.

- 34% - AR Deregistration;
- 5% – AR Final Deregistered;
- 2% – Provisional Liquidation;
- 6% – Final Liquidation;
- 7% – Voluntary Liquidation; and
- 2% – Dissolved

Diagram 5 reflects the current status of proceedings which were terminated.



6. Substantial Implementations (CoR125.3) filed:

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

The average period for the filing of a CoR125.3 on commenced business rescue proceedings is 12 months. 10% of substantial implementations are filed within 2 months, 5% in the third month, 5% in the fourth month, 5% in the fifth month, and 76% in the sixth month or thereafter.

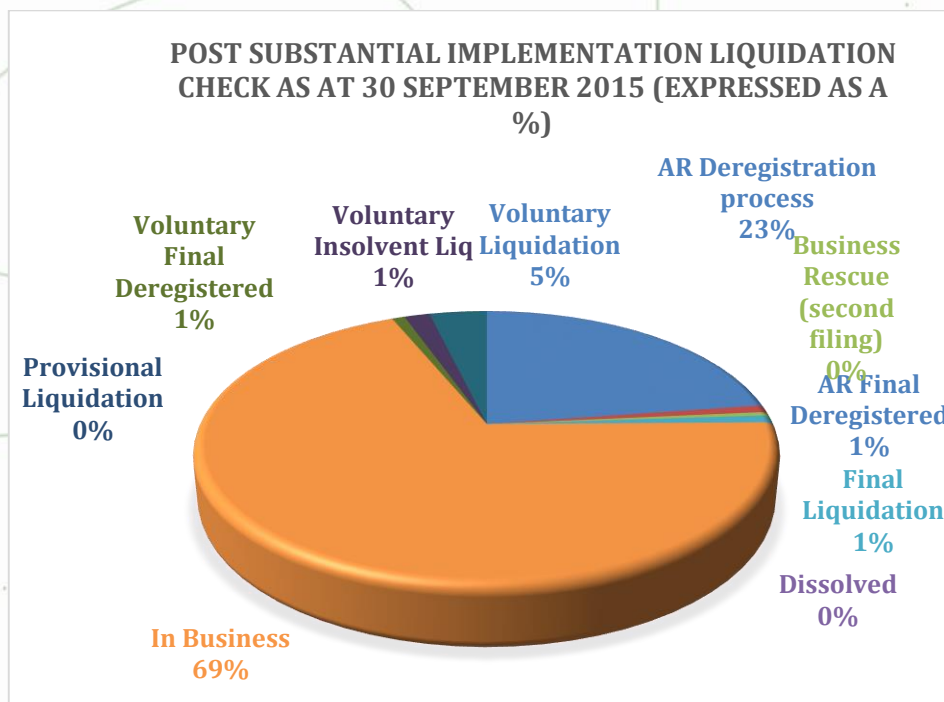
The filing period increased from 10 months in December 2014 and therefore there is no improvement in the rate with which practitioners file a CoR125.3.

6.2. Liquidation Status of Business Rescue Proceedings On Proceedings Substantially Implemented (CoR125.3) (as at 30 September 2015):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.3 was filed. 6% of the entities went into liquidation and 24% is either in annual return deregistration (“in deregistration process”) or finally deregistered (“final deregistered”) for non-compliance with annual returns. 69% has an “in business” status. It is interesting to note that only 1 entity refiled for business rescue after the previous proceedings was substantially implemented.

- 23% - AR Deregistration;
- 1% – AR Final Deregistration;
- 0% – Provisional Liquidation;
- 1% – Final Liquidation;
- 5% – Voluntary Liquidation; and
- 0% – Dissolved

Diagram 6 reflects the current status of proceedings which were substantially implemented.



7. Liquidation Documents Filed:

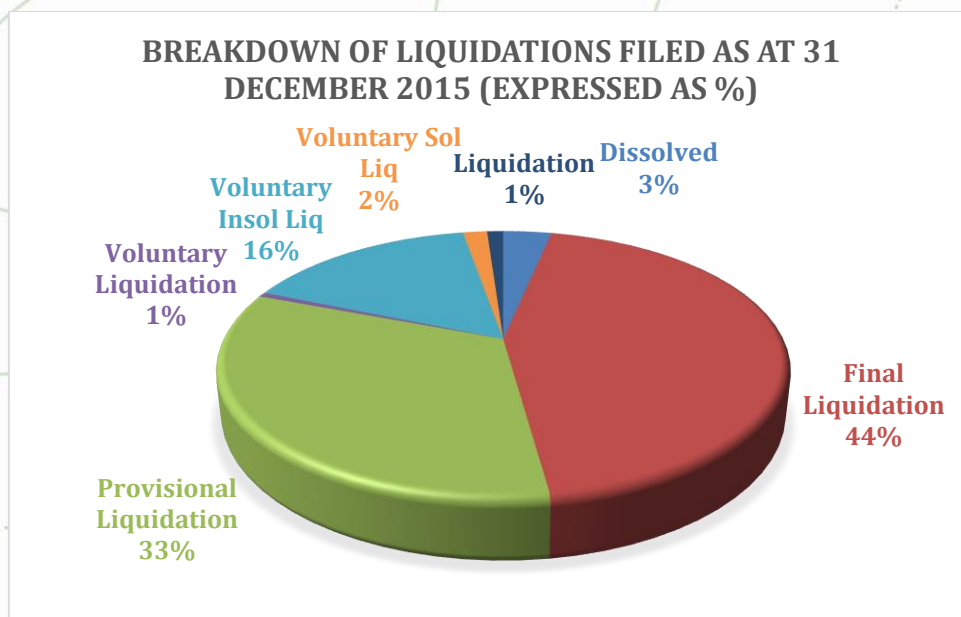
7.1 Breakdown of Liquidations Filed:

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.2 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
Dissolved	6	2	4	0	0	0
Final Liquidation	81	18	17	36	6	4
Provisional Liquidation	60	9	12	9	23	7
Voluntary Liquidation	1	1	0	0	0	0
Voluntary Insolvent Liquidation	29	17	10	2	0	0
Voluntary Solvent Liquidation	3	3	0	0	0	0
Liquidation	2	0	2	0	0	0
Total Liquidations as at 31 December 2015	182	50	45	47	29	11
Total Liquidations as at 30 September 2015	165	50	45	43	25	2
Total Liquidations as at 30 June 2015	162	50	45	43	24	0
Total Liquidations as at 31 March 2015	155	49	44	41	21	0
Total Liquidations as at 31 December 2014	141	46	42	41	12	N/A

Diagram 7 reflects the overall breakdown of the main liquidation statuses for entities which commenced business rescue proceedings.



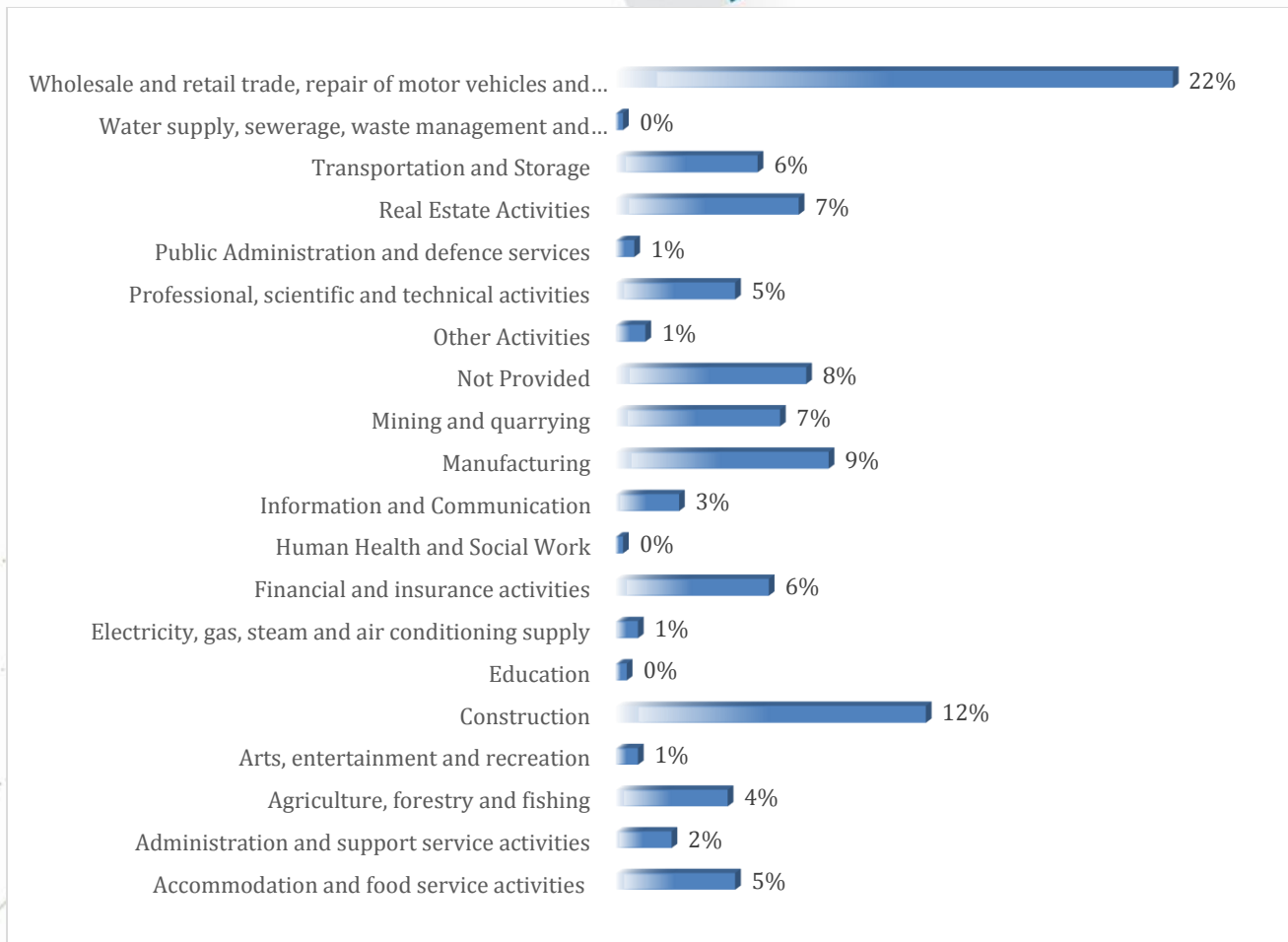
8. Nullities filed:

From the 2038 business rescue proceedings which commenced, 188 was declared a nullity. Therefore, 9.2% of all commenced proceedings ended in a nullity.

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	%
Accommodation and food service activities	32	15	17	5%
Administration and support service activities	15	12	3	2%
Agriculture, forestry and fishing	30	7	23	4%
Arts, entertainment and recreation	6	2	4	1%
Construction	83	34	49	12%
Education	3	2	1	0%
Electricity, gas, steam and air conditioning supply	6	0	6	1%
Financial and insurance activities	41	24	17	6%
Human Health and Social Work	2	0	2	0%
Information and Communication	17	7	10	3%
Manufacturing	57	25	32	9%
Mining and quarrying	44	26	18	7%
Not Provided	51	25	26	8%
Other Activities	8	4	4	1%
Professional, scientific and technical activities	32	13	19	5%
Public Administration and defense services	5	0	5	1%
Real Estate Activities	49	26	23	7%
Transportation and Storage	38	21	17	6%
Water supply, sewerage, waste management and remediation activities	2	0	2	0%



***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