

Status of Business Rescue Proceedings in South Africa

December 2016

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 31 December 2016. 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.

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 30 June 2016.

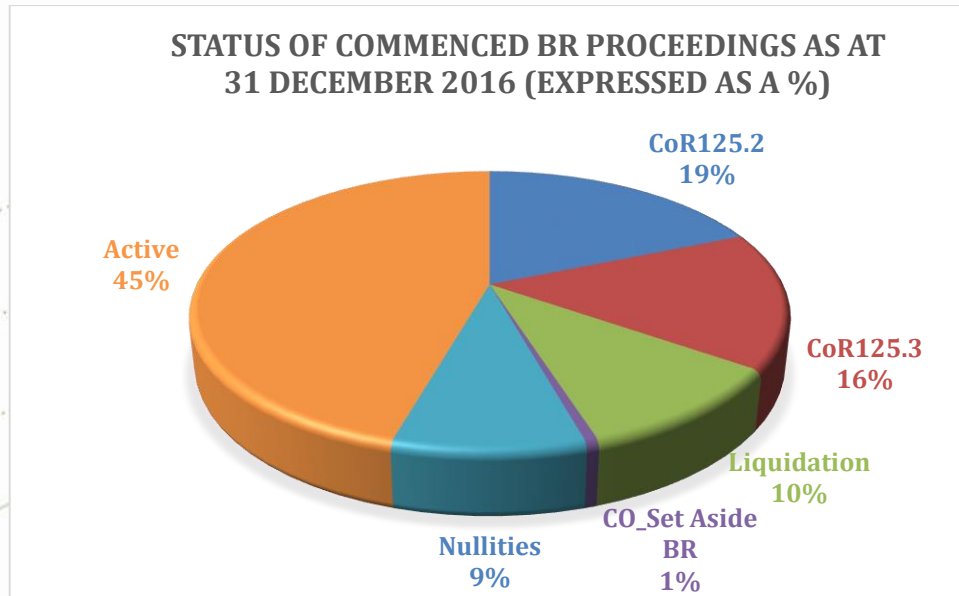
Operational BR Proceeding Applications	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	Total
Business Rescue Proceedings Started	382	440	410	413	481	296	2422
Invalid filings	61	27	23	42	12	6	171
Business Rescue Proceedings Ended	312	272	240	210	225	60	1319
CoR125.2	72	96	74	70	117	25	454
CoR125.3	78	97	90	68	45	7	385
Liquidation	54	46	53	44	39	16	252
CO_Set Aside BR	2	6	3	3	0	0	14
Nullities (Proceedings started but was declared a nullity)	106	27	20	25	24	12	214
Active as at 31 December 2016	70	168	170	203	256	236	1103
Active as at 30 June 2016	83	179	184	236	336	101	1119
Active as at 31 March 2016	86	181	189	250	422	1129	N/A
Active as at 31 December 2015	88	193	206	275	330	1092	N/A
Active as at 30 June 2015	96	201	217	314	97	925	N/A

From the 2422 cases (invalid filings are not included since the proceedings never commenced) for which business rescue proceedings commenced:-

- 214 proceedings became a nullity in law;
- 454 proceedings was terminated by way of filing a Notice of Termination (CoR125.2);
- 385 proceedings was substantially implemented by way of filing a Notice of Substantial Implementation (CoR125.3);
- 252 proceedings ended up directly in liquidation without a Notice of Termination (CoR125.2) being filed;
- 14 proceedings the court set aside the business rescue proceedings; and

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- 1103 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:

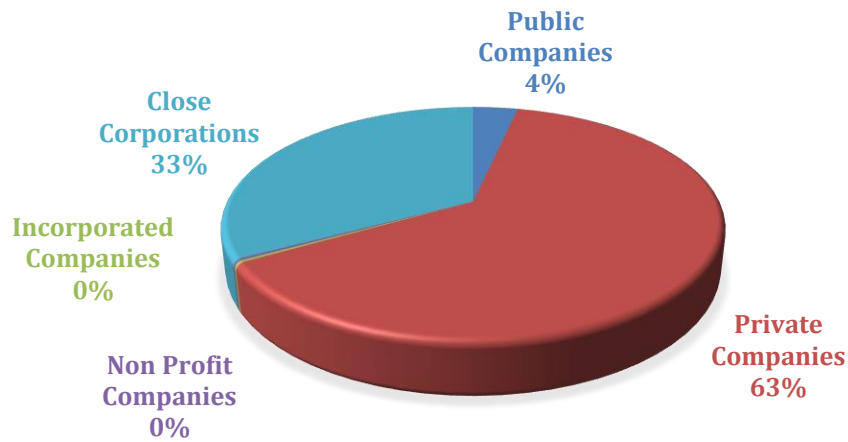
The below table indicates the volume of commenced business rescue proceedings for each entity category.

BR proceedings started	Total	2011 - 2012	2012 - 2013	2013 -2014	2014 -2015	2015-2016	2016-2017
Public Companies	84	53	9	7	8	5	2
Private Companies	1532	240	281	257	265	297	192
Incorporated Companies	6	0	3	0	0	1	2
Non Profit Companies	7	0	0	2	2	1	2
Close Corporations	793	89	147	144	138	177	98
Total as at 31 December 2016	2422	382	440	410	413	481	296

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



**CATEGORY OF ENTITIES STARTING BR PROCEEDINGS
AS AT 31 DECEMBER 2016 (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	2016-2017
Gauteng	943	53	102	216	215	234	123
Free State	73	11	7	14	17	12	12
Northern Cape	12	1	2	0	3	3	3
Eastern Cape	92	3	11	24	15	28	11
Western Cape	325	44	33	49	71	76	52
North West	93	3	9	24	21	18	18
Limpopo	59	3	4	6	15	18	13
Mpumalanga	73	5	10	10	18	17	13
Kwa-Zulu Natal	186	1	6	53	34	56	36
Not Provided	566	258	256	14	4	19	15
Total Per Financial Year	2422	382	440	410	413	481	296



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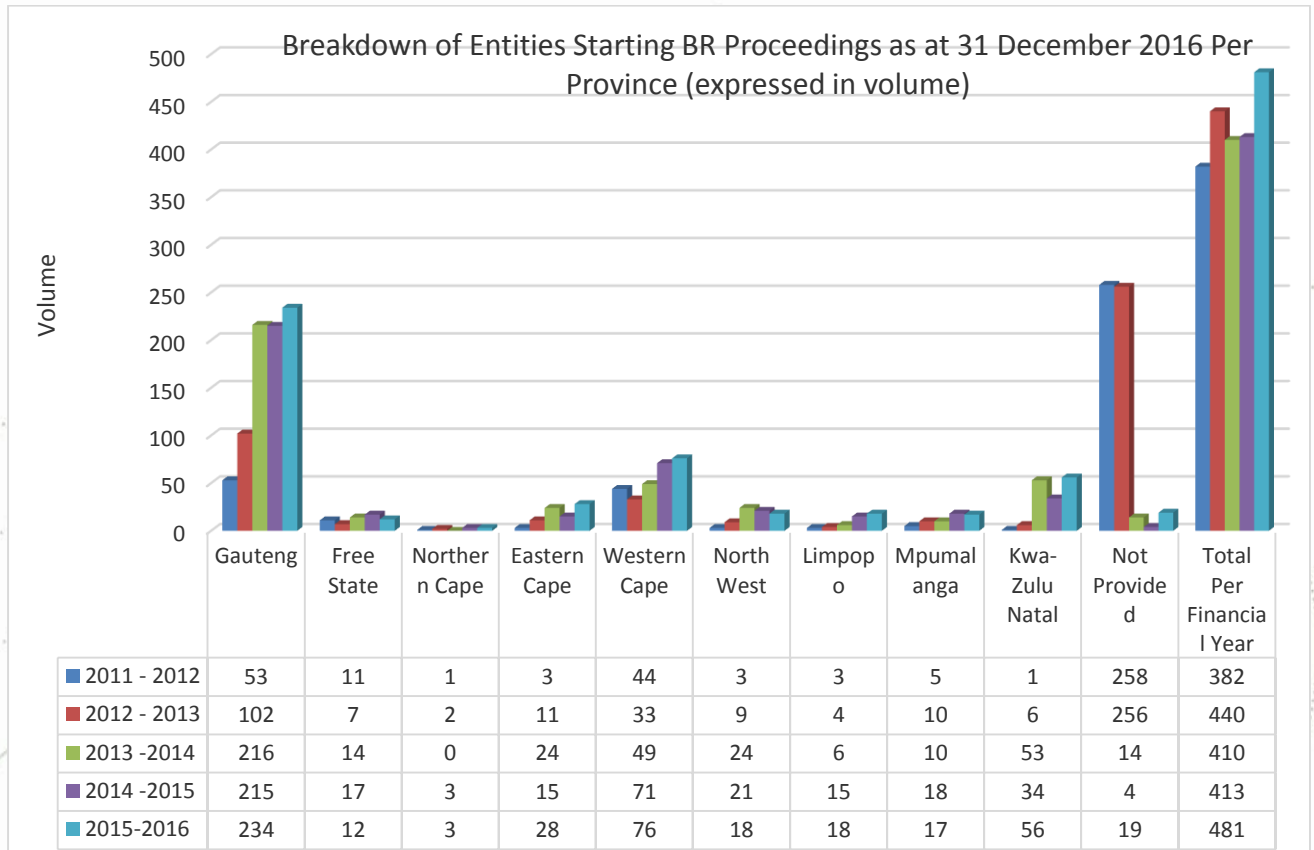
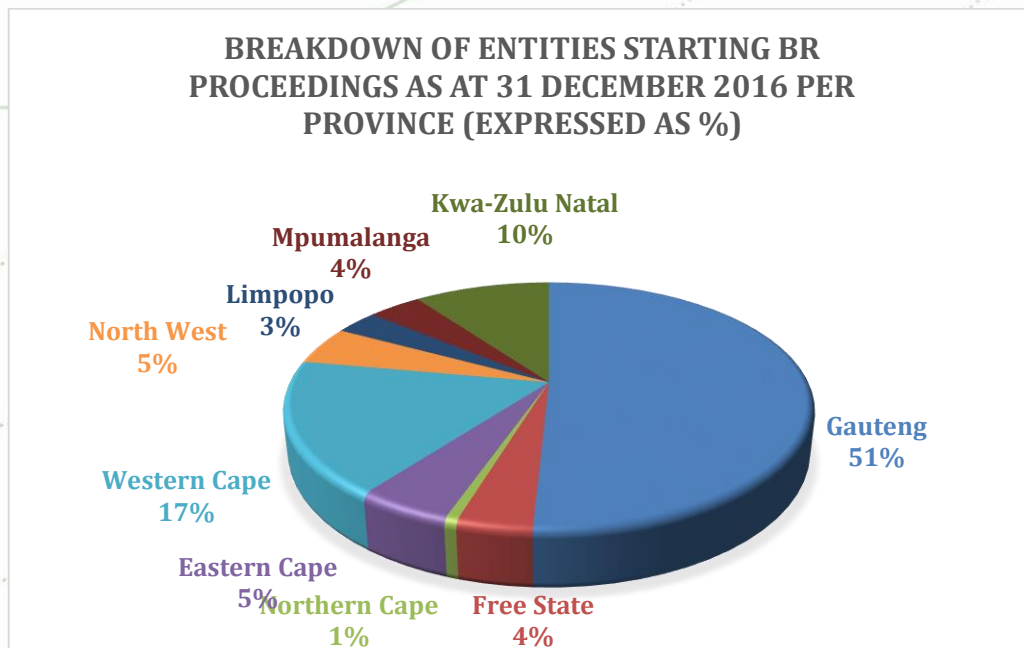


Diagram 3 reflects the overall breakdown for each of the nine provinces as from inception of business rescue expressed as a percentage. It is clear from the diagrams that 51% of businesses commencing business rescue, resides with Gauteng. Gauteng is followed by the Western Cape (17%) and then Kwa-Zulu Natal (10%).



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	2016- 2017
Termination - Unspecified	146	46	27	25	27	15	6
Termination - Liquidation	138	16	43	21	11	37	10
Termination - Not distressed	143	7	21	20	27	60	8
Termination - Plan not accepted	21	3	5	7	0	5	1
Termination - BRP personal	5	0	0	1	4	0	0
Termination - Plan not published	1	0	0	0	1	0	0
Total Terminations filed as at 31 December 2016	454	72	96	74	70	117	25
Total Terminations filed as at 30 June 2016	368	64	88	70	63	80	3
Total Terminations filed as at 31 March 2016	319	69	88	68	58	36	N/A
Total Terminations filed as at 31 December 2015	276	67	83	61	52	13	N/A
Total Terminations filed as at 30 June 2015	244	64	82	60	36	2	

***Notes:**

Termination = reason for termination not specified

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

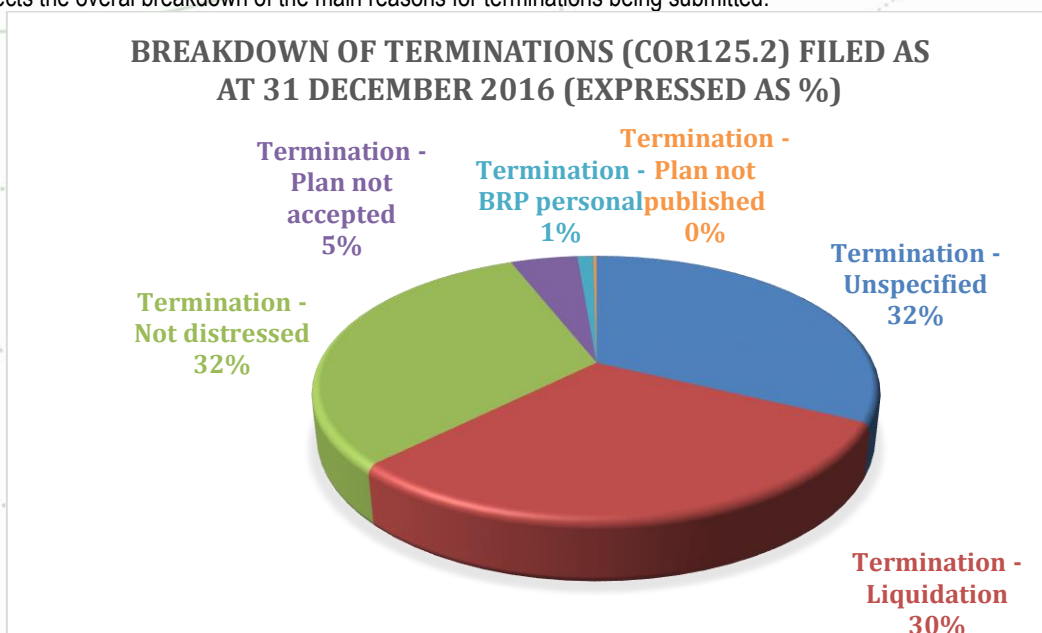
Termination – Not distressed = BRP terminates proceedings due to the fact that entity is not financially distressed

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 – person = BRP notifies CIPC that he is removing/resigning himself from the matter due to personal reasons

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

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 8.16 months. 26.37% of terminations are filed within 2 months; 4.40% in the third month, 9.34% in the fourth month, 9.07% in the fifth month and 50.82% in month six or thereafter.

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
As at 31 December 2016	9.29 months	26.49%	4.86%	8.17%	7.95%	52.54%
As at 31 October 2016	8.15 months	28.08%	4.93%	8.87%	8.13%	50.00%
As at 30 September 2016	8.15 months	28.14%	5.03%	8.79%	8.29%	49.75%
As at 30 June 2016	8.16 months	26.37%	4.40%	9.34%	9.07%	50.82%
As at 31 March 2016	8.23 months	29.02%	4.73%	9.15%	8.83%	48.26%
As at 31 December 2015	7 months	32%	4%	10%	5%	49%

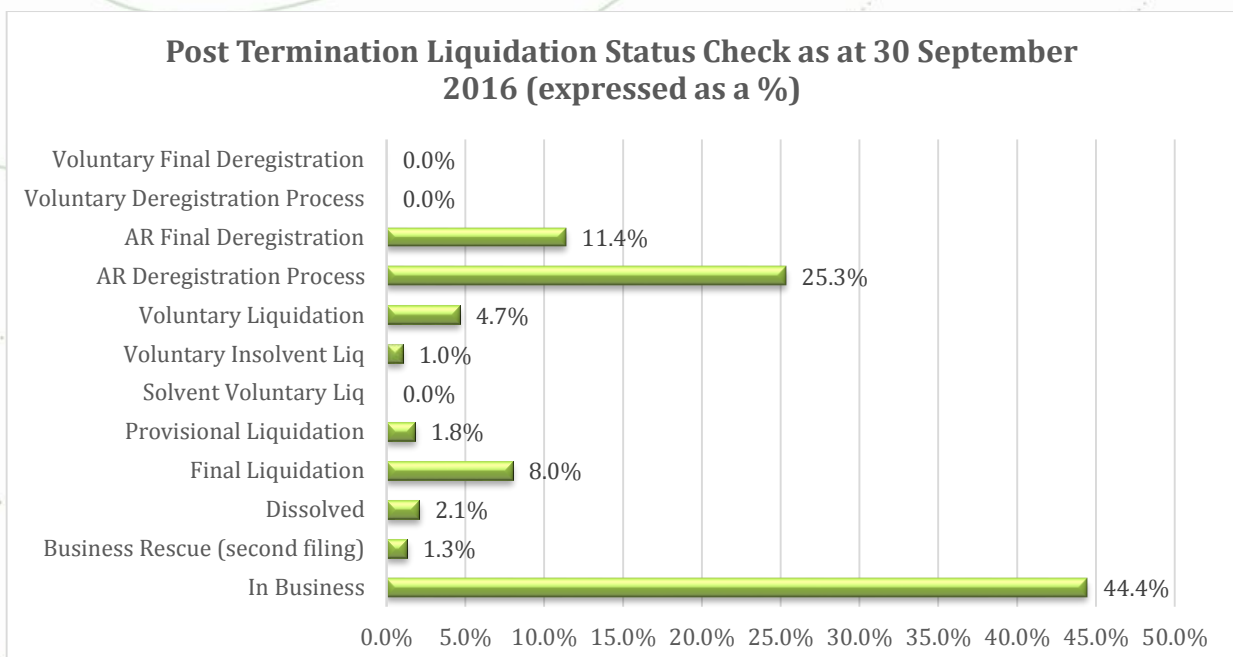
5.3. Liquidation Status of Business Rescue Proceedings Terminated (CoR125.2) (as at 30 September 2016):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.2 was filed. 17.62% of the entities went into liquidation and 36.79% is either in annual return deregistration ("in deregistration process") or finally deregistered ("final deregistered") for non-compliance with annual returns. Only 44.6% has an "in business" status.

- 25% - AR Deregistration;
- 11% – AR Final Deregistered;
- 2% – Provisional Liquidation;
- 8% – Final Liquidation;
- 6% – Voluntary Liquidation; and
- 2% – Dissolved

Liquidation = 17.57%
Deregistration = 36.69%
In business = 44.44%

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



* 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.

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 13.31 months. 7.41% of substantial implementations are filed within 2 months, 3.70% in the third month, 4.63% in the fourth month, 4.94% in the fifth month, and 79.32% in the sixth month or thereafter.

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
As at 31 December 2016	13.58 months	8.05%	3.64%	3.90%	5.71%	78.70%
As at 31 October 2016	13.91 months	8.24%	3.85%	4.12%	5.49%	78.30%
As at 30 September 2016	13.83 months	8.12%	3.92%	4.20%	5.60%	78.15%
As at 30 June 2016	13.31 months	7.41%	3.70%	4.63%	4.94%	79.32%
As at 31 March 2016	12.31 months	9.39%	4.21%	4.85%	5.50%	76.05%
As at 31 December 2015	12 months	10%	5%	5%	5%	76%

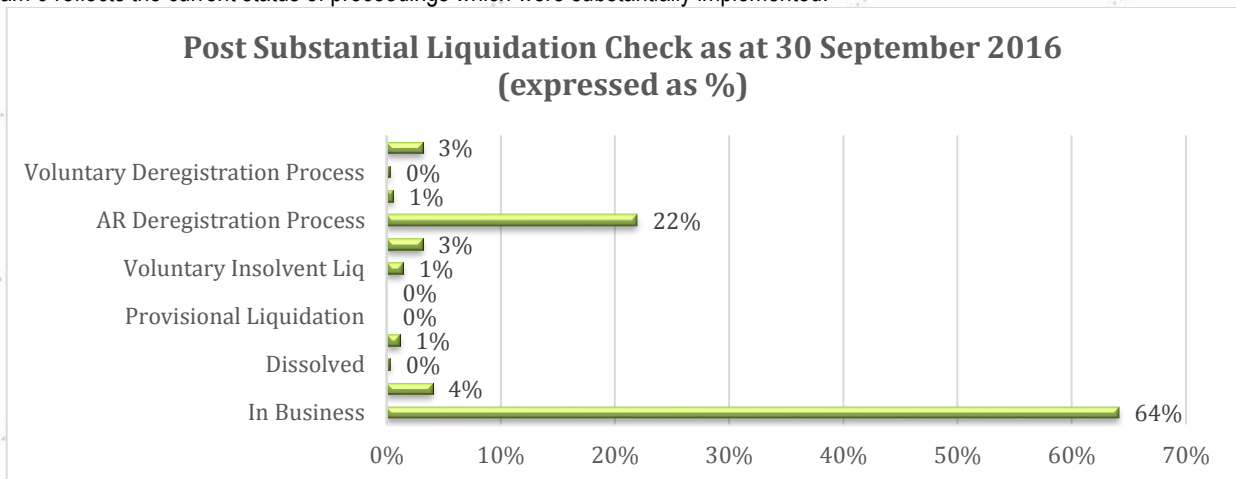
6.2. Liquidation Status of Business Rescue Proceedings On Proceedings Substantially Implemented (CoR125.3) (as at 30 September 2016):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.3 was filed. 5.71% of the entities went into liquidation and 22.57% is either in annual return deregistration ("in deregistration process") or finally deregistered ("final deregistered") for non-compliance with annual returns. 65% has an "in business" status.

- 22% - AR Deregistration;
- 1% - AR Final Deregistration;
- 0% - Provisional Liquidation;
- 1% - Final Liquidation;
- 4% - Voluntary Liquidation
- 0% - Dissolved

Liquidation = 5.98%
Deregistration = 22.51%
In business = 64.10%

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



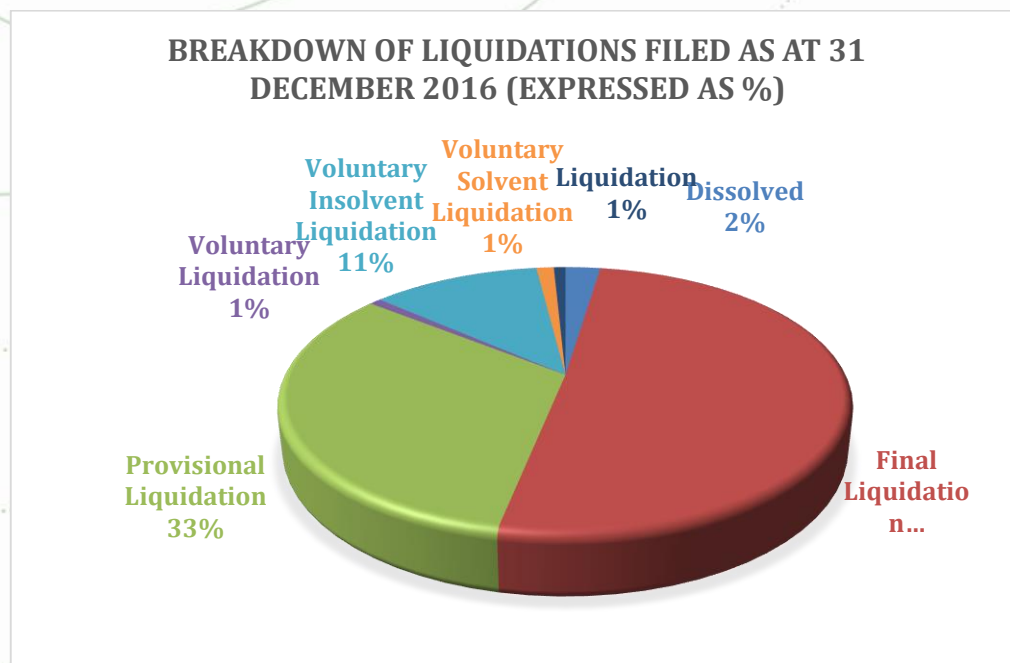
7. Liquidation Documents Filed:

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 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
Dissolved	6	2	4	0	0	0	0
Final Liquidation	128	21	17	39	19	23	9
Provisional Liquidation	82	10	12	12	25	16	7
Voluntary Liquidation	2	1	1	0	0	0	0
Voluntary Insolvent Liquidation	29	17	10	2	0	0	0
Voluntary Solvent Liquidation	3	3	0	0	0	0	0
Liquidation	2	0	2	0	0	0	0
Total Liquidations as at 31 December 2016	252	54	46	53	44	39	16
Total Liquidations as at 30 June 2016	211	52	48	52	36	23	0
Total Liquidations as at 31 March 2016	197	50	47	52	34	14	N/A
Total Liquidations as at 31 December 2015	182	50	45	47	29	11	N/A
Total Liquidations as at 30 June 2015	162	50	45	43	24	0	N/A

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



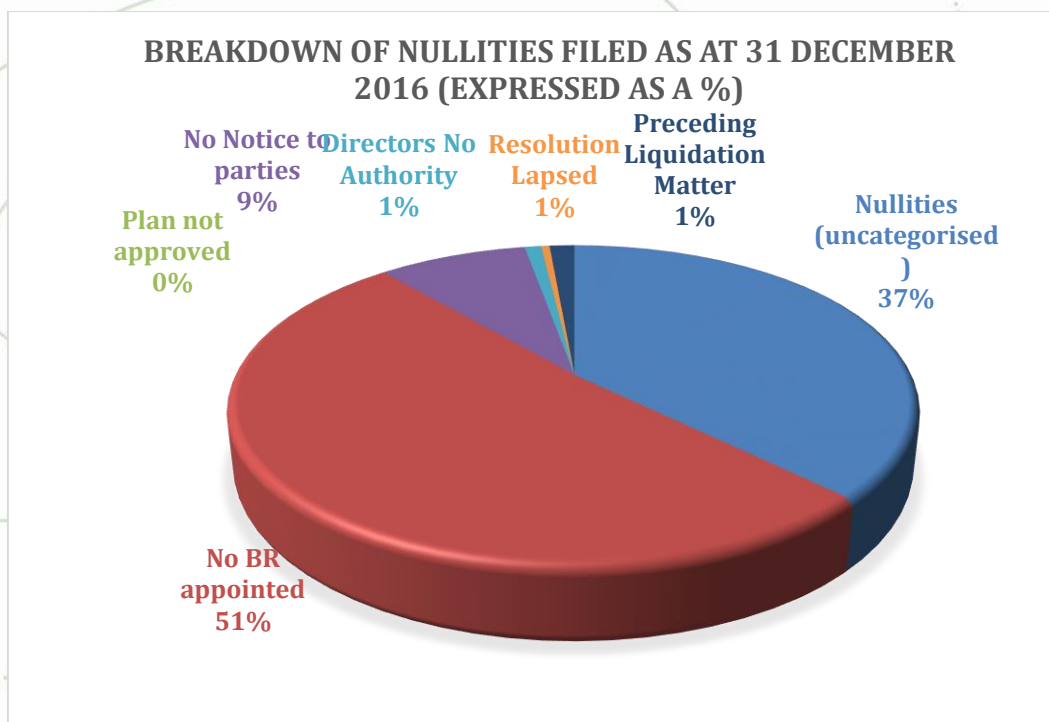


8. Nullities filed:

From the 2244 business rescue proceedings which commenced, 198 was declared a nullity. Therefore, 9% of all commenced proceedings ended in a nullity.

Nullities	Total	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Nullities (uncategorised)	80	38	14	6	15	4	3
No BR appointed	110	67	10	7	3	14	9
Plan not approved	0	0	0	0	0	0	0
No Notice to parties	18	1	3	5	5	4	0
Directors No Authority	2	0	0	2	0	0	0
Resolution Lapsed	1	0	0	0	1	0	0
Preceding Liquidation Matter	3	0	0	0	1	2	0
Total Nullities	214	68	13	7	10	20	9

Diagram 8 indicates the breakdown of the reason for nullities.





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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	%
Accommodation and food service activities	11	3	1	12	1%
Administration and support service activities	54	19	26	7	6%
Agriculture, forestry and fishing	46	6	24	23	5%
Arts, entertainment and recreation	9	2	4	4	1%
Construction	110	34	64	30	12%
Financial and insurance activities	34	2	20	14	4%
Manufacturing	60	0	43	28	7%
Mining and quarrying	40	24	25	11	4%
Professional, scientific and technical activities	29	0	26	15	3%
Real Estate Activities	57	0	33	29	6%
Wholesale and retail trade, repair of motor vehicles and motorcycle	168	28	114	59	18%
Transportation and Storage	62	26	25	15	7%
Information and Communication	35	146	13	6	4%
Education	12	7	2	4	1%
Human Health and Social Work	16	13	3	1	2%
Other Activities	15	0	7	9	2%
Public Administration and Defense	31	26	5	1	3%
Electricity, gas, steam and air conditioning supply	28	21	6	2	3%
Not Provided	44	0	36	24	5%

