

Status of Business Rescue Proceedings in South Africa

March 2018

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 March 2018. 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 March 2018.

Operational BR Proceeding Applications	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	Total
Business Rescue Proceedings Started	382	440	409	413	481	379	363	2867
Invalid filings	61	27	24	42	12	6	5	177
Business Rescue Proceedings Ended	320	298	269	250	288	184	82	1691
CoR125.2	71	106	82	82	138	79	44	602
CoR125.3	82	102	97	77	67	47	8	480
Liquidation	57	56	63	61	59	40	16	352
CO_Set Aside BR	2	6	6	4	0	2	2	22
Nullities (Proceedings started but was declared a nullity)	108	28	21	26	24	16	12	235
Active as at 31 March 2018	62	142	140	163	193	195	281	1176
Active as at 31 March 2017	70	167	169	201	248	286	1141	
Active as at 31 March 2016	86	181	189	250	422	1129	N/A	

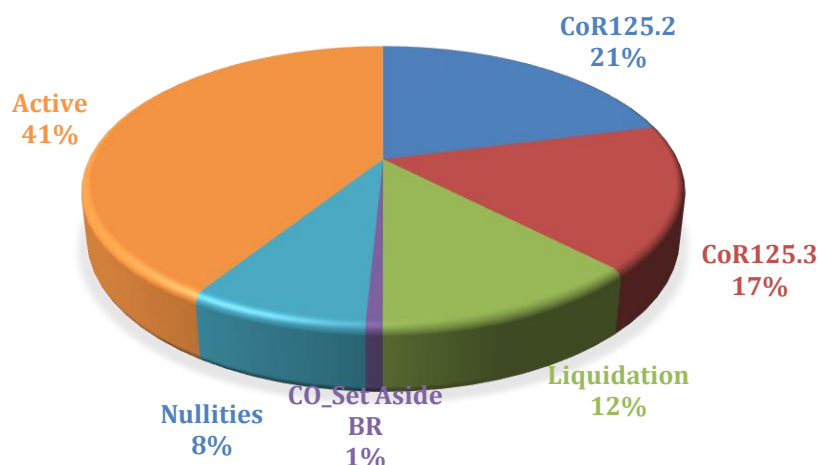
From the 2867 cases (invalid filings are not included since the proceedings never commenced) for which business rescue proceedings commenced:-

- 235 proceedings became a nullity in law;
- 602 proceedings was terminated by way of filing a Notice of Termination (CoR125.2);
- 480 proceedings was substantially implemented by way of filing a Notice of Substantial Implementation (CoR125.3);
- 352 proceedings ended up directly in liquidation;
- 22 proceedings the court set aside the business rescue proceedings; and
- 1176 proceedings is still in business rescue.

Graph 1 and 2 indicate the percentage comparison between the different statuses of commenced business rescue proceedings for the 2017-2018 and 2016-2017 financial years individually.

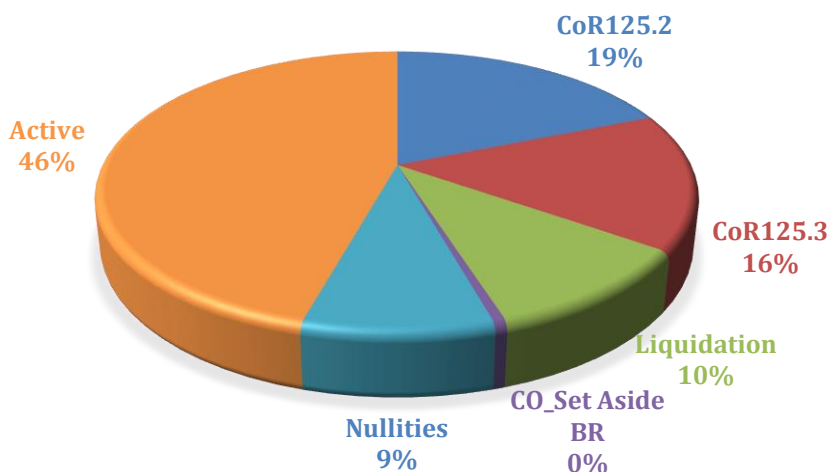
2017-2018

**STATUS OF COMMENCED BR PROCEEDINGS AS AT
31 MARCH 2018 (EXPRESSED AS A %)**



2016-2017

**STATUS OF COMMENCED BR PROCEEDINGS AS
AT 31 MARCH 2017 (EXPRESSED AS A %)**



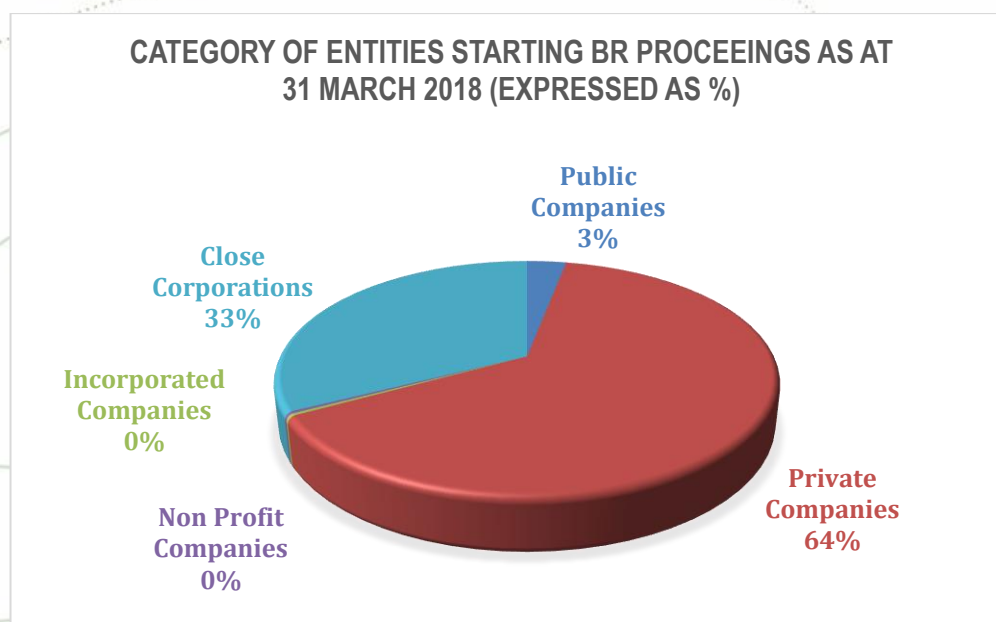
During 2017-2018 more applications ending business rescue were filed compared with the previous financial year, which results in less “active” business rescue proceeding matters on record. The reason for the increased filing of applications ending business rescue may be due to the continued follow up by the Practitioners unit on outstanding matters and status reports.

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	2017 -2018
Public Companies	87	53	9	7	8	5	3	2
Private Companies	1834	240	281	257	266	297	241	252
Incorporated Companies	8	0	3	0	0	1	2	2
Non Profit Companies	8	0	0	2	2	1	2	1
Close Corporations	930	89	147	143	137	177	131	106
Total	2867	382	440	409	413	481	379	363

Graph 3 indicates the percentage comparison for the different entity categories of commenced business rescues.



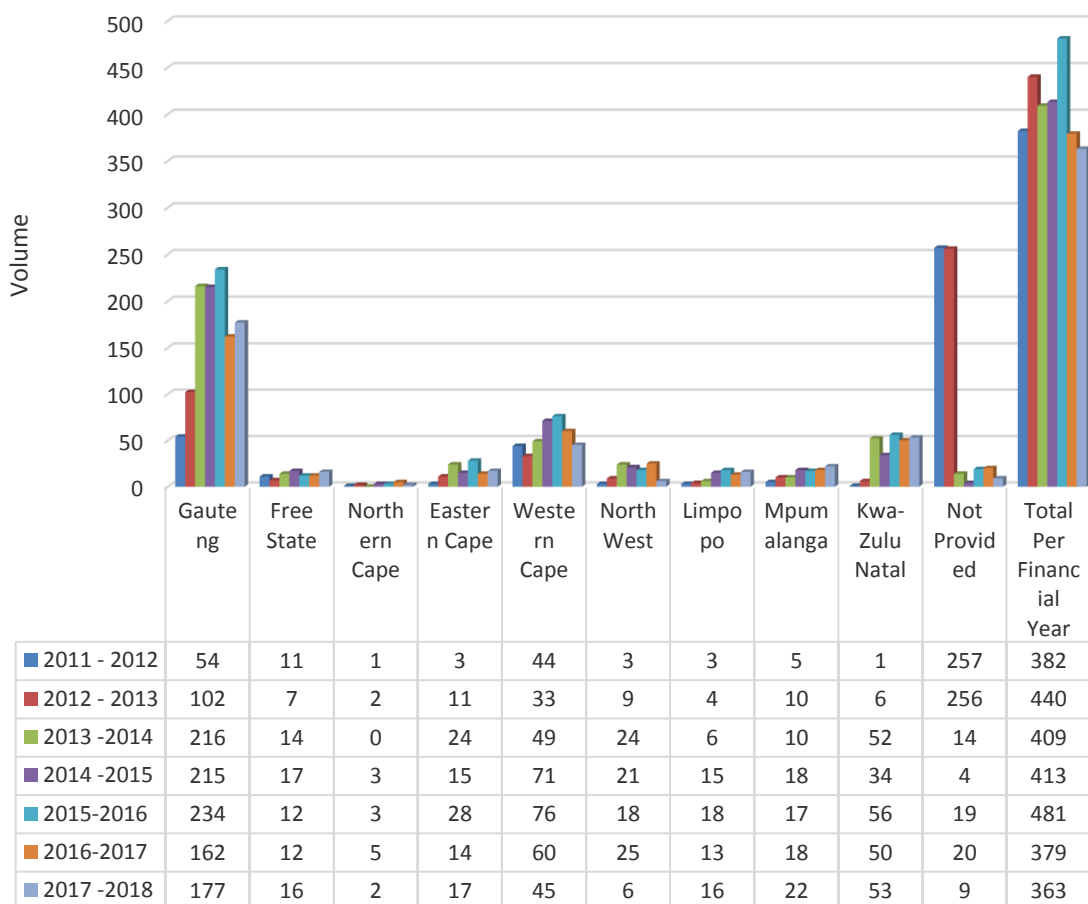
Business rescue is mostly utilised by private companies. 64% of entities applying for business rescue are private companies while only 33% are close corporations. Compared with the 2016-2017 financial year this has not changed.

4. Business Rescue Proceedings Started Per Province:

The below table and graph 4 indicate the volume of commenced business rescue proceedings for each of the nine provinces.

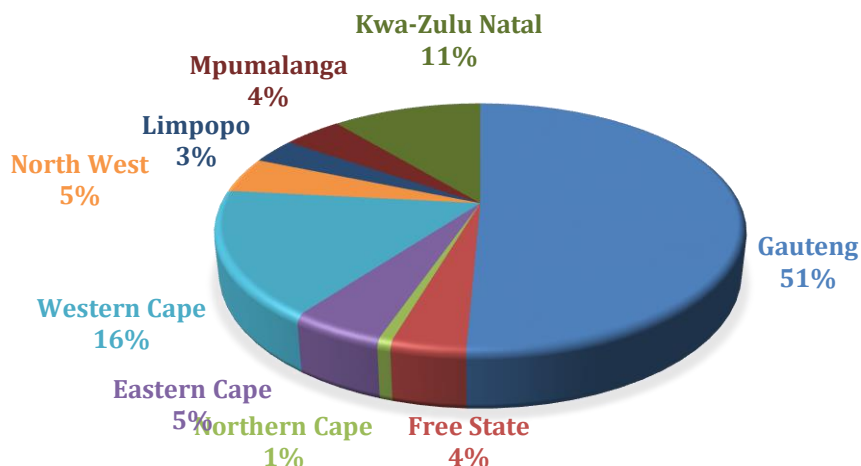
Province (start BR)	Total	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Gauteng	1160	54	102	216	215	234	162	177
Free State	89	11	7	14	17	12	12	16
Northern Cape	16	1	2	0	3	3	5	2
Eastern Cape	112	3	11	24	15	28	14	17
Western Cape	378	44	33	49	71	76	60	45
North West	106	3	9	24	21	18	25	6
Limpopo	75	3	4	6	15	18	13	16
Mpumalanga	100	5	10	10	18	17	18	22
Kwa-Zulu Natal	252	1	6	52	34	56	50	53
Not Provided	579	257	256	14	4	19	20	9
Total Per Financial Year	2867	382	440	409	413	481	379	363

Breakdown of Entities Starting BR Proceedings as at 31 March 2018 Per Province (expressed in volume)



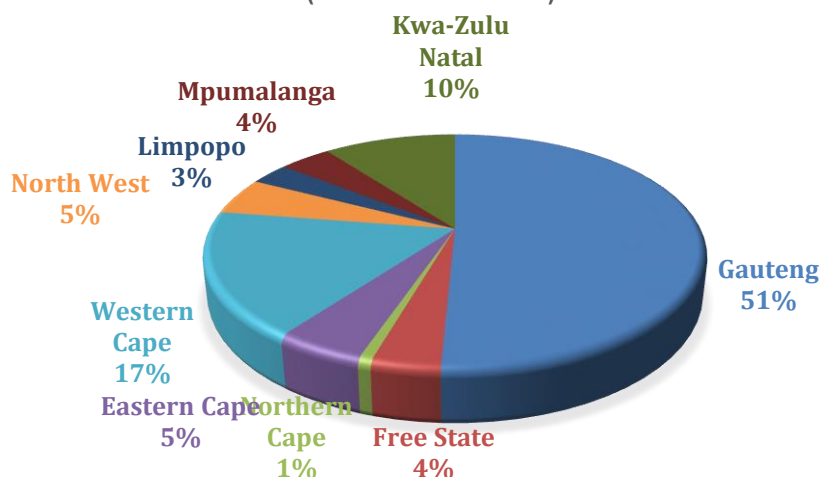
2017-2018

**BREAKDOWN OF ENTITIES STARTING BR PROCEEDINGS AS
AT 31 MARCH 2018 PER PROVINCE (EXPRESSED AS %)**



2016-2017

**BREAKDOWN OF ENTITIES STARTING BR
PROCEEDINGS AS AT 31 MARCH 2017 PER PROVINCE
(EXPRESSED AS %)**



Graph 5 and 6 above reflect the overall breakdown for each of the nine provinces as from inception of business rescue expressed as a percentage for the 2017-2018 and 2016-2017 financial year. It is clear from the graphs that % per province is relatively stable with slight increases in Western Cape and Kwa-Zulu Natal compared with 2016-2017 financial year.

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	2017-2018
Termination - Unspecified	28	18	6	2	0	0	1	1
Termination - Liquidation	193	19	46	28	19	42	25	14
Termination - Not distressed	350	31	49	43	57	91	51	28
Termination - Plan not accepted	24	3	5	7	1	5	2	1
Termination - BRP personal	5	0	0	1	4	0	0	0
Termination - Plan not published	2	0	0	1	1	0	0	0
Total Terminations filed as at 31 March 2018	602	71	106	82	82	138	79	44
Total Terminations filed as at 31 March 2017	471	72	96	74	72	120	37	N/A
Total Terminations filed as at 31 March 2016	319	69	88	68	58	36	N/A	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

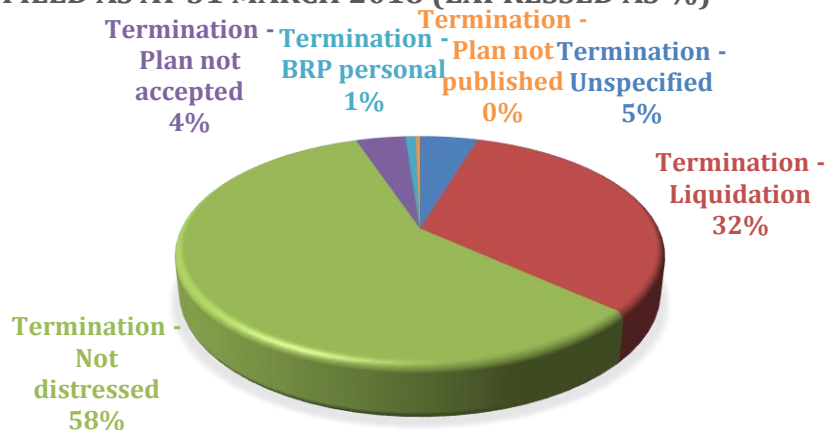
Termination – Plan not accepted = BRP notifies CIPC that plan was not accepted and no further action was taken by an affected person to extend the proceedings

Termination – 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

Graph 7 reflects the overall breakdown of the main reasons for terminations being submitted.

BREAKDOWN OF TERMINATIONS (COR125.2) FILED AS AT 31 MARCH 2018 (EXPRESSED AS %)



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

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
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%

5.3. Liquidation Status of Business Rescue Proceedings Terminated (CoR125.2) (as at 31 March 2018):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.2 was filed on 31 March 2018. 11.15% of the entities went into liquidation and 44.43% is either in annual return deregistration ("in deregistration process") or finally deregistered ("final deregistered") for non-compliance with annual returns. Only 40.77% has an "in business" status.

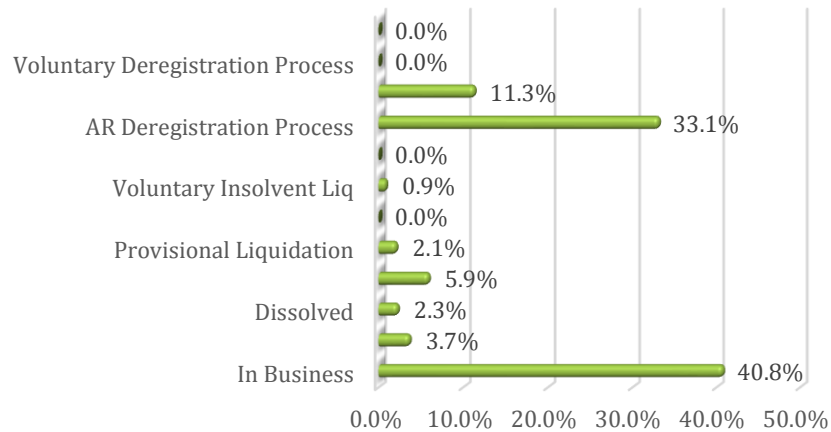
- 33% - AR Deregistration;
- 11% - AR Final Deregistered;
- 2% - Provisional Liquidation;
- 6% - Final Liquidation;
- 1% - Voluntary Liquidation; and
- 2% - Dissolved

Liquidation = 11.15%
Deregistration = 44.43%
In business = 40.77%

Graph 8 and 9 reflect the status of proceedings which were terminated as per the date the status check was done for that particular financial year.

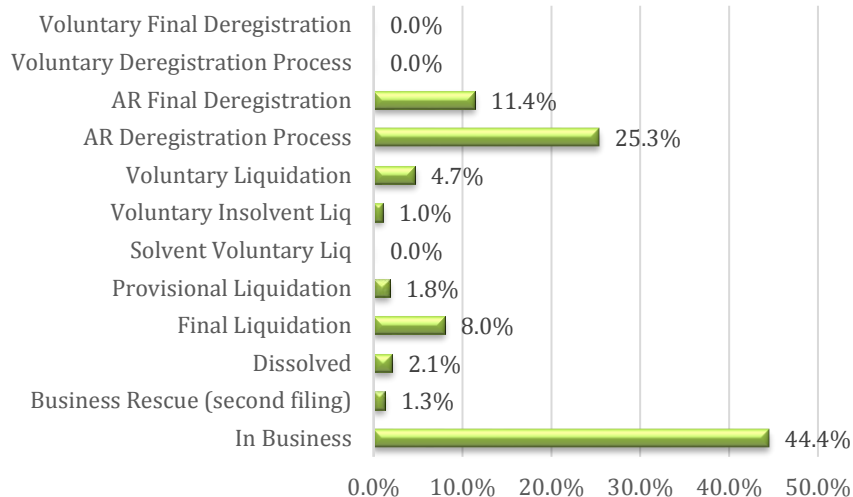
2017-2018

**Post Termination Liquidation Status Check as
as 31 March 2018 (expressed as %)**



2016-2017

**Post Termination Liquidation Status Check as
at 30 September 2016 (expressed as a %)**



*** Notes:**

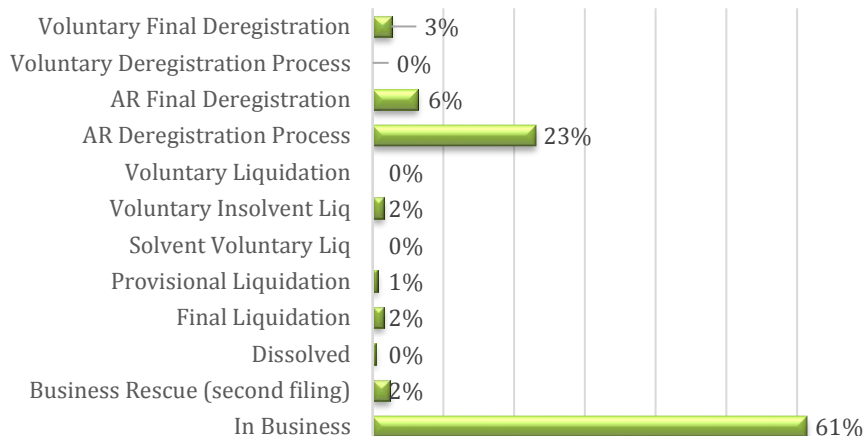
It was identified that some entity statuses were not correctly updated upon the filing of the CoR125.2 and therefore some entity statuses reflect as in business rescue on the register. This is being investigated in order to correct.

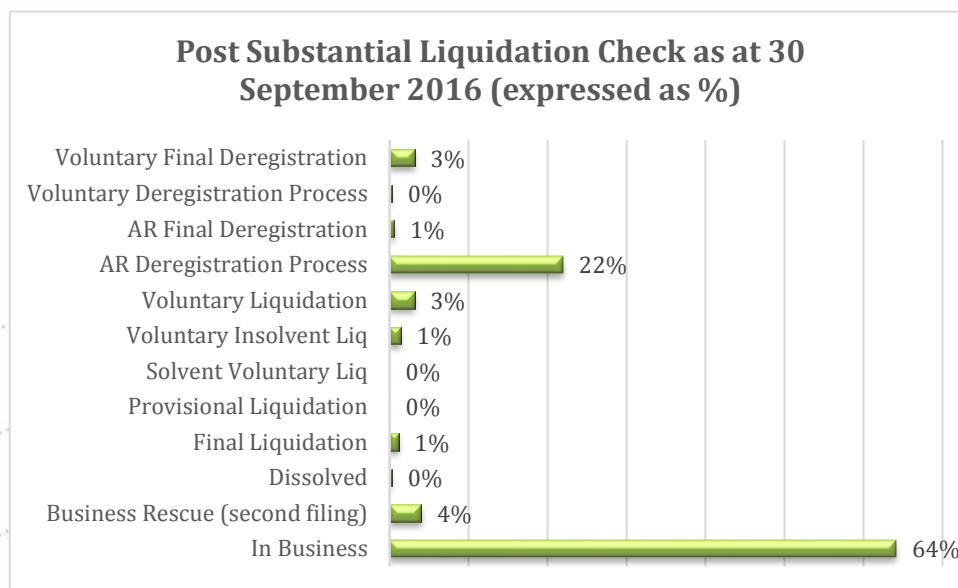
6. **Substantial Implementations (CoR125.3) filed:**
6.1. **Age analysis on Substantial Implementations (CoR125.3) filed:**

Age Analysis	Average Period	2 Months	3 Months	4 Months	5 Months	6+ Months
As at 31 March 2018	14.60 months	6.92%	3.56%	3.77%	5.24%	80.50%
As at 30 September 2017	14.06 months	7.27%	3.86%	3.86%	5.23%	79.77%
As at 30 August 2017	13.94 months	7.42%	3.94%	3.94%	5.10%	79.42%
As at 31 July 2017	13.95 months	7.35%	3.79%	4.03%	5.21%	79.62%
As at 30 June 2017	13.93 months	7.67%	3.84%	4.08%	5.28%	79.14%
As at 31 March 2017	13.55 months	7.83%	4.04%	4.29%	5.56%	78.28%
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%

2017-2018

**Post Substantial Liquidation Check as at 31
March 2018 (expressed as %)**





6.2. Liquidation Status of Business Rescue Proceedings On Proceedings Substantially Implemented (CoR125.3) (as at 31 March 2018):

An analysis was conducted on the liquidation status of business rescue proceedings for which a CoR125.3 was filed. 4.17% of the entities went into liquidation and 29.39% is either in annual return deregistration ("in deregistration process") or finally deregistered ("final deregistered") for non-compliance with annual returns. 61.40% has an "in business" status.

- 23% - AR Deregistration;
- 6% – AR Final Deregistration;
- 1% – Provisional Liquidation;
- 2% – Final Liquidation;
- 2% – Voluntary Liquidation
- 0% – Dissolved

Liquidation = 4.17%
Deregistration = 29.39%
In business = 61.40%

Graph 10 and 11 reflect the status of proceedings which were substantially implemented as per the date the status check was done for that particular financial year.

7. Liquidation Documents Filed:

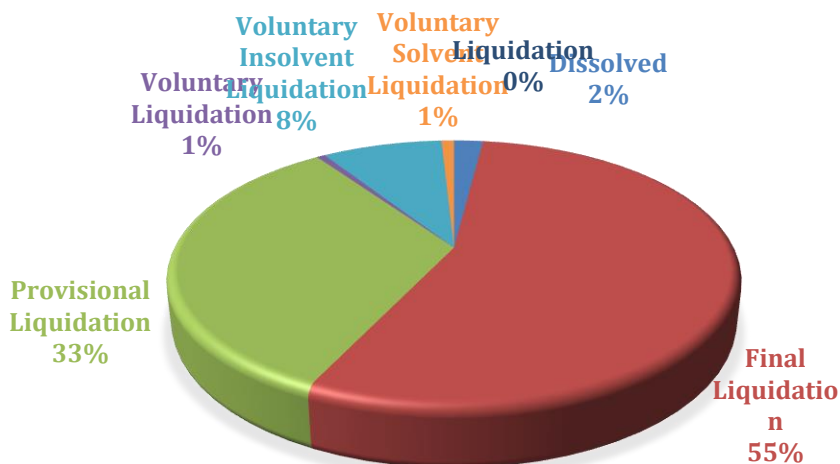
The below table indicates the volume of liquidation applications and court orders filed for entities which commenced business rescue proceedings without the proceedings being terminated or business rescue plan being substantially implemented. It should be noted that a liquidation application or court 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	2017-2018
Dissolved	7	3	4	0	0	0	0	0
Final Liquidation	194	23	26	46	35	37	21	6
Provisional Liquidation	117	10	15	15	26	22	19	10
Voluntary Liquidation	2	1	1	0	0	0	0	0
Voluntary Insolvent Liquidation	29	17	10	2	0	0	0	0
Voluntary Solvent Liquidation	3	3	0	0	0	0	0	0
Liquidation	0	0	0	0	0	0	0	0
Total Liquidations as at 31 March 2018	352	57	56	63	61	59	40	16
Total Liquidations as at 31 March 2017	259	54	46	53	44	42	20	
Total Liquidations as at 31 March 2016	197	50	47	52	34	14	N/A	

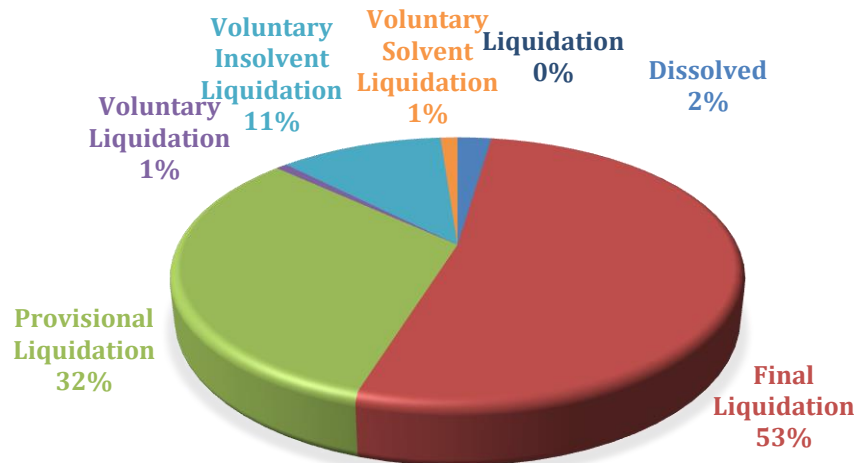
Graph 12 and 13 reflects the overall breakdown of the main liquidation statuses for entities which commenced business rescue proceedings for the 2017-2018 and 2016-2017 financial year.

2017-2018

BREAKDOWN OF LIQUIDATIONS FILED AS AT 31 MARCH 2018 (EXPRESSED AS %)



**BREAKDOWN OF LIQUIDATIONS FILED AS AT 31
MARCH 2017 (EXPRESSED AS %)**



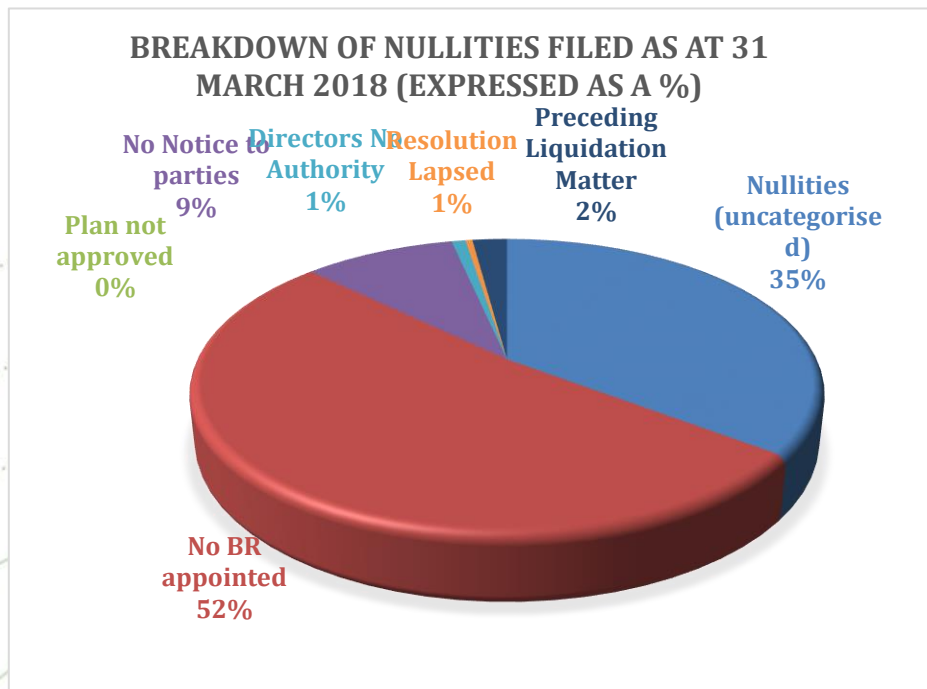
8. Nullities filed:

From the 2867 business rescue proceedings which commenced, 235 was declared a nullity. Therefore, 8.2% of all commenced proceedings ended in a nullity.

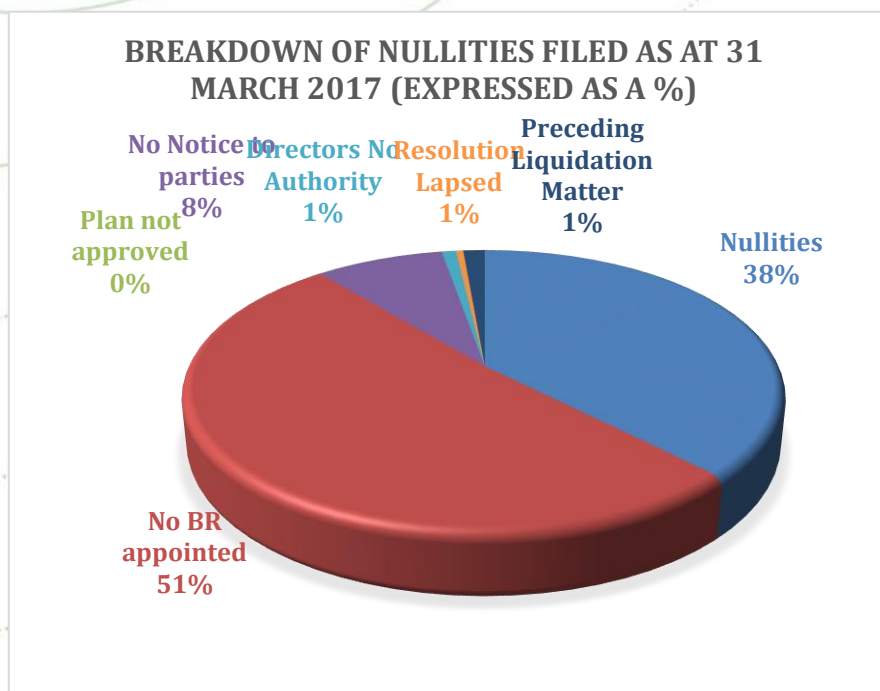
Nullities	Total	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2016-2017
Nullities (uncategorised)	83	39	14	6	15	4	5	0
No BR appointed	122	68	10	7	3	14	11	9
Plan not approved	0	0	0	0	0	0	0	0
No Notice to parties	22	1	4	6	6	4	0	1
Directors No Authority	2	0	0	2	0	0	0	0
Resolution Lapsed	1	0	0	0	1	0	0	0
Preceding Liquidation Matter	5	0	0	0	1	2	0	2
Total Nullities	235	69	14	8	11	20	11	12

Graph 14 and 15 indicate the breakdown of the reasons for nullities for the 2017-2018 and 2016-2017 financial year.

2017-2018



2016-2017



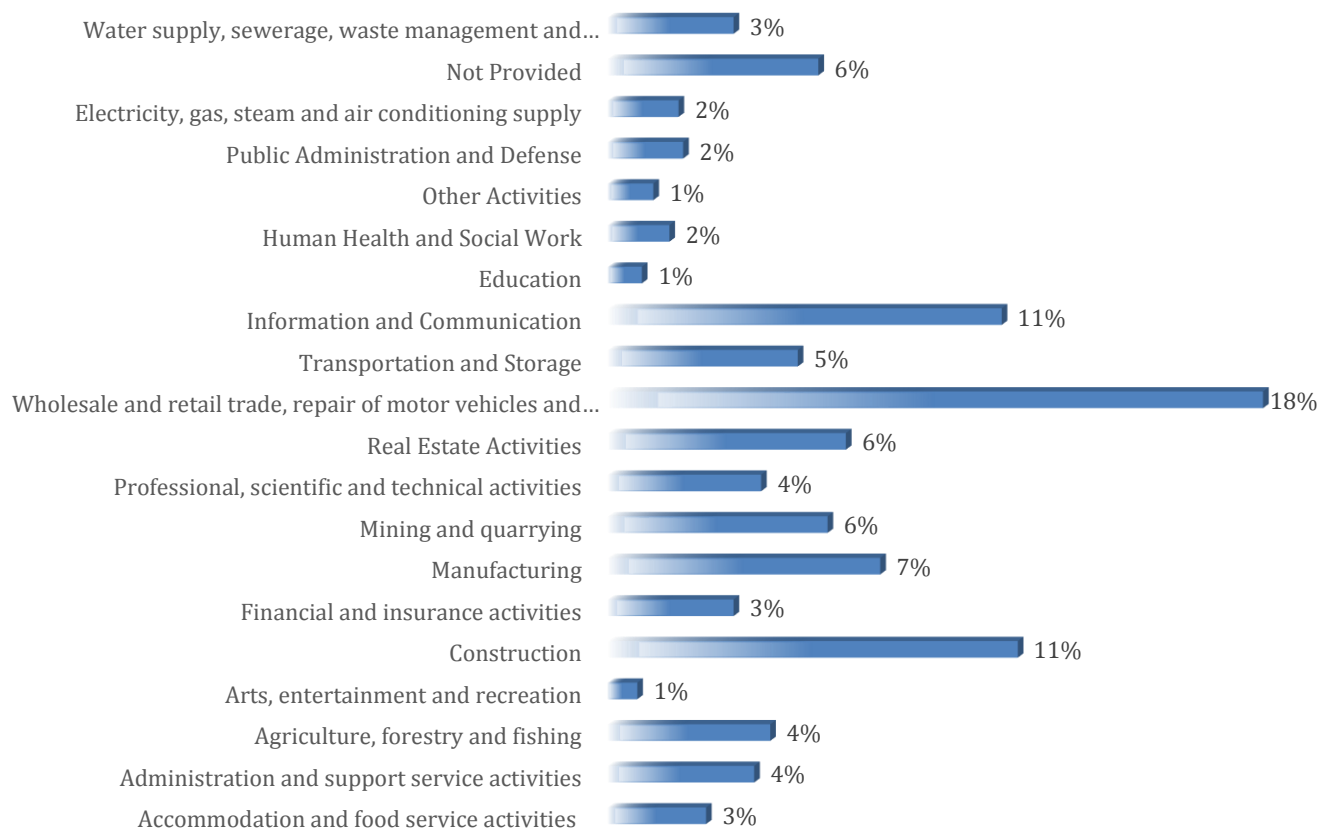
9. Business Rescue Proceedings Started Per Industry:

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

Graph 16 reflects the overall % breakdown of the industries commencing business rescue proceedings and indication for which industries business rescue proceedings increased or decreased. A red downward pointing arrow indicates that there was a decrease compared with the previous year while a green upward pointing arrow indicates an increase.

Industry	Total	2014-2015	2015-2016	2016-2017	2016-2017 %	2017-2018	2017-2018 %	% Change 2017-2018 compared with 2016-2017
Accommodation and food service activities	11	3	1	17	↓ 4%	22	↑ 6%	1%
Administration and support service activities	54	19	26	13	↑ 3%	6	↓ 2%	6%
Agriculture, forestry and fishing	46	6	24	25	↑ 7%	16	↓ 4%	5%
Arts, entertainment and recreation	9	2	4	4	↑ 1%	3	↓ 1%	1%
Construction	110	34	64	39	↓ 10%	42	↑ 12%	12%
Financial and insurance activities	34	2	20	16	↓ 4%	17	↑ 5%	4%
Manufacturing	60	0	43	35	↓ 9%	41	↑ 11%	7%
Mining and quarrying	40	24	25	11	↓ 3%	36	↑ 10%	4%
Professional, scientific and technical activities	29	0	26	18	↓ 5%	23	↑ 6%	3%
Real Estate Activities	57	0	33	35	↓ 9%	36	↑ 10%	6%
Wholesale and retail trade, repair of motor vehicles and motorcycle	168	28	114	84	↑ 22%	60	↓ 17%	18%
Transportation and Storage	62	26	25	18	↑ 5%	14	↓ 4%	7%
Information and Communication	35	146	13	8	↑ 2%	5	↓ 1%	4%
Education	12	7	2	5	↑ 1%	1	↓ 0%	1%
Human Health and Social Work	16	13	3	2	↓ 1%	9	↑ 2%	2%
Other Activities	15	0	7	11	↑ 3%	2	↓ 1%	2%
Public Administration and Defense	31	26	5	1	↓ 0%	1	↑ 0%	3%
Electricity, gas, steam and air conditioning supply	28	21	6	2	↓ 1%	2	↑ 1%	3%
Not Provided	44	0	36	33	↑ 9%	23	↓ 6%	5%
Water supply, sewerage, waste management and remediation activities	49	45	4	2	↓ 1%	4	↑ 1%	5%
Total	910	402	481	379	100%	363	100%	100%

Graph 17 indicates the percentage contribution of business rescue proceedings for each industry for 2017-2018 financial year.



***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.

10. Total Recorded Proceedings:

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

Month	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017 - 2018
April	N/A	30	39	24	42	25	16
May	5	45	50	39	33	40	27
June	28	26	37	34	21	36	43
July	25	23	47	43	67	40	23
August	38	59	49	66	56	45	33
September	81	55	26	42	34	29	41
October	27	47	45	44	57	34	33
November	42	56	28	34	55	32	47
December	59	18	14	25	21	22	18
January	67	14	35	31	22	23	25
February	43	44	31	24	47	28	32
March	28	50	32	49	38	31	30
Total for year	443	467	433	455	493	385	368

Graph 18 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 the previous two reporting periods.

