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# REPORTABLE IRREGULARITIES REPORT 2022/2023



A vertical strip on the left side of the page shows a close-up of a leaf with numerous water droplets. The leaf's surface is a mix of green and yellow, and the droplets are clear and glistening. The background is a soft, out-of-focus green.

# About the IRBA

Mandated by the Auditing Profession Act 26 of 2005, as amended, the objective of the Independent Regulatory Board for Auditors (IRBA) is to endeavour to protect the financial interests of the investing public through the effective and appropriate regulation of auditors, in accordance with internationally recognised standards, codes and applicable legislation.

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# CEO'S Foreword

“ The Reportable Irregularities process, as outlined in the Auditing Profession Act, is designed to empower registered auditors to challenge management and boards on irregularities uncovered in the course of an independent audit and ensure effective board governance. ”

**It is with considerable excitement that I present the Independent Regulatory Board for Auditors' (IRBA) inaugural report on the Reportable Irregularities (RI) process. This publication underscores our commitment to transparency and regulatory collaboration, shedding light on some of the areas that are critical for continuous improvement within South Africa's corporate landscape.**

The RI process is a crucial tool in identifying and mitigating corporate failures. Through this report, we aim to provide stakeholders with comprehensive feedback on the nature of RIs reported over a specific period and the measures taken to address them, thereby fulfilling the objectives of Section 45 of the Auditing Profession Act 26 of 2005, as amended (APA). Our primary goal is to enhance transparency and support coordinated regulatory efforts to effectively tackle identified irregularities. Therefore, auditors, audit committees, boards, investors and the public will find valuable insights into risk areas that necessitate increased scrutiny.

Significantly, this report covers a five-year overview of RIs, with a detailed analysis that is focused on the 2022/2023 fiscal year. Worth noting is that ongoing contraventions of the Companies Act 71 of 2008 and the Income Tax Act 58 of 1963 have consistently formed a substantial portion of all RIs. Specifically, continuing breaches of the Income Tax Act increased by 103% as a percentage of all reported contraventions in the past five years. In addition, irregularities related to the Unemployment Insurance Act 63 of 2001 and the Value-Added Tax (VAT) Act 89 of 1991 have been prominent, reflecting



systemic issues that require ongoing attention. The report also highlights irregularities in the basic education sector, underscoring the challenges that school governing bodies face in addressing issues within that space.

Encouragingly, 33% of the RIs were resolved within the initial 30-day reporting period, displaying the effectiveness of the process in the prompt rectification of issues. This success emphasises the crucial role of Section 45 of the APA in bolstering investor confidence in the South African economy.

It is important to recognise that while this report does not delve into the specifics of subsequent investigations, feedback from some regulators has enriched the RI reporting process. The irregularities reported provide a snapshot of areas where regulatory oversight must be intensified, even though they do not represent an exhaustive study of compliance across corporate South Africa.

Among the notable irregularities are those reported in relation to high-profile entities such as Eskom Holdings SOC Limited and the Spar Group Limited. These cases, which attracted significant media attention, are currently under investigation by the relevant regulators.

While the reportable irregularity process serves as a vital whistleblowing mechanism for auditors, it is essential to remember that the responsibility for ensuring sound financial reporting extends to all professional accountants. In fact, proposed revisions to the International Standard on Auditing (ISA) 240 aim to enhance communication about

auditors' responses to fraud, further supporting the objectives of Section 45.

Building respect for the value of audit and the profession is also central to our mandate of protecting the financial interests of the public. Through rigorous oversight and a commitment to increasing regulatory transparency, we aim to elevate the stature of the auditing profession, highlighting its critical role in safeguarding the integrity of financial reporting and corporate governance.

The auditor's role in maintaining trust within the financial ecosystem is indispensable. Auditors serve as the guardians of financial integrity, ensuring that financial statements are accurate and reliable. This trust is fundamental to the functioning of our economy, as it underpins investor confidence and fosters a stable business environment.

Furthermore, financial preparers, accountants and internal auditors play a crucial role as the first line of defence in ensuring the accuracy of financial statements. Despite their significant responsibilities, this segment of the financial ecosystem remains self-regulated, even though the World Bank recommended regulatory measures in its Report on the Observance of Standards and Codes in 2013. This gap highlights the need for a more comprehensive regulatory framework to enhance the overall integrity of financial reporting.

Boards of directors also play a pivotal role under the Companies Act, as they bear fiduciary duties to act in the best interest of their companies and stakeholders. Their oversight and governance responsibilities are essential in ensuring that financial reports are accurate. Therefore, management and boards are encouraged to respond proactively to RI processes and effect the necessary remedies to ensure that RIs are resolved promptly.

The RI process, as outlined in the APA, is designed to empower registered auditors (RAs) to challenge management and boards on irregularities uncovered in the course of an independent audit and ensure effective board governance.

As the regulator, we are committed to developing resources that support auditors in the identification and reporting of RIs. Also, we are keen to maintain robust internal processes and the necessary relationships with regulators for the resolution of reported irregularities, thus ensuring that our collective efforts continue to protect and enhance the integrity of the financial system.

**Imre Nagy**  
Chief Executive Officer



# DEFINITIONS

The following terms that are used in this report will, unless otherwise stated or clearly inconsistent with

the context in which they appear, bear the meanings indicated below.

| Term   | Definition  |
|--|---|
| <b>Appropriate Regulator</b>                 | Any national government department, registrar, regulator, agency, authority, centre, board or similar institution established, appointed, required or tasked in terms of any law to regulate, oversee or ensure compliance with any legislation, regulation, licence, rule, directive, notice or similar instrument issued in terms of or in compliance with any legislation or regulation, as appears to the Regulatory Board to be an appropriate regulator in relation to the entity being audited and/or the irregularity identified during an audit. |
| <b>Audit Firm</b>                            | An audit firm registered as an auditor with the IRBA.   |
| <b>Auditor</b>                               | An individual registered as an auditor with the IRBA.   |
| <b>Board</b>                                 | The IRBA Board that is constituted by non-executive members who are appointed by the Minister of Finance in terms of Section 11 of the APA.   |
| <b>First Reportable Irregularity Report</b>  | A report sent to the IRBA by an auditor, as contemplated in Section 45(1)(1) of the APA.  |
| <b>Reporting Period</b>                      | 1 April 2022 to 31 March 2023.  |
| <b>Reportable Irregularity</b>               | Any unlawful act or omission committed by any person responsible for the management of an entity as contemplated in Section 1 of the APA, read together with Section 45.  |
| <b>Second Reportable Irregularity Report</b> | A report sent to the IRBA by a registered auditor, in terms of Section 45(3) (c) of the APA.  |

# LEGISLATIVE and Governance Framework

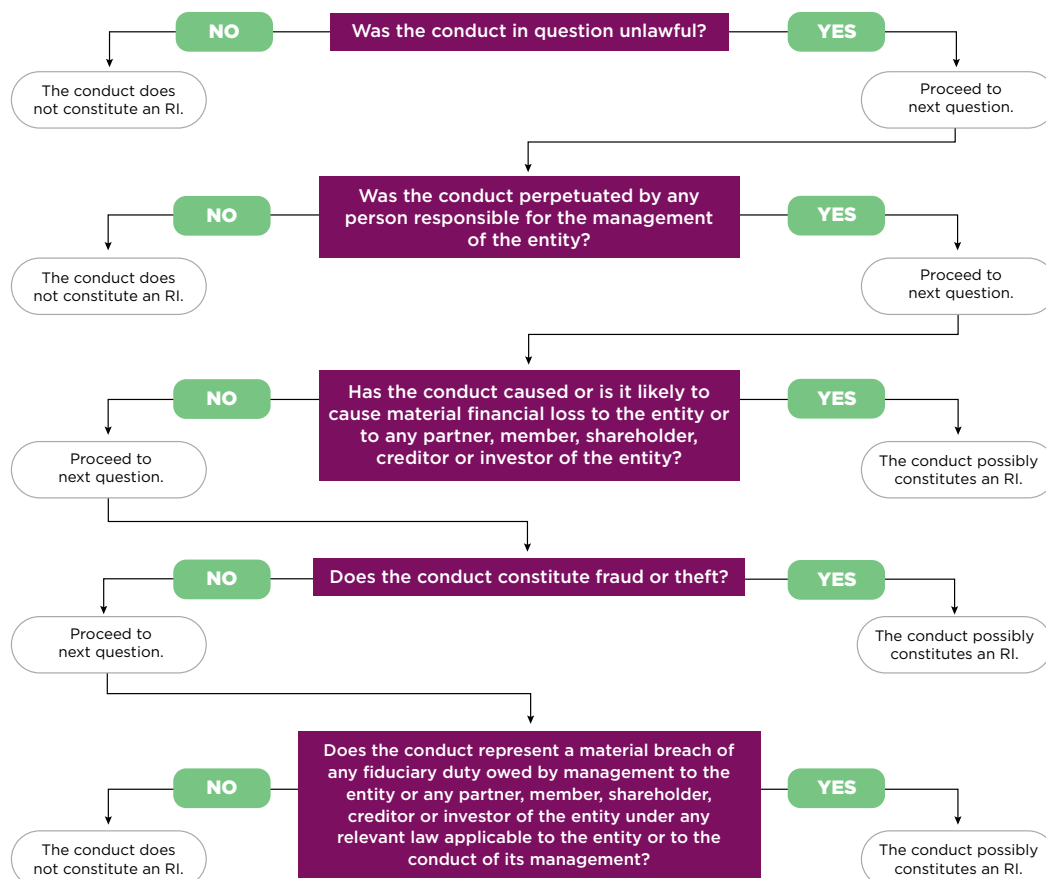
A reportable irregularity, in terms of Section 1 of the APA, is any unlawful conduct<sup>1</sup> committed by any person responsible for the management of an entity, which:

- a) Has caused or is likely to cause material financial loss<sup>2</sup> to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his or her dealings with that entity; or
- b) Is fraudulent<sup>3</sup>, amounts to theft<sup>4</sup>; or
- c) Represents a material breach of any fiduciary duty<sup>5</sup> owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof.

Section 45 of the APA, with Section 45(1) specifically mandating an auditor to send a written report to the IRBA when they suspect or have reason to believe that an RI has occurred. Section 45(3)(c) requires an auditor to send a follow-up report to the IRBA, after consulting with management of the relevant entity and/or conducting any relevant investigation into the RI, no later than 30 days from when the first RI report was sent. The follow-up report must advise the IRBA whether the RI took place but is no longer continuing or is continuing, or did not in fact take place.

**The graphic below outlines the process followed by an auditor in determining whether the conduct may constitute an irregularity which must be reported.**

The reporting of irregularities by auditors of entities that are undergoing statutory audits is governed by



The amendment of the APA in 2021, which led to the insertion of subsections (7) and (8) to Section 45, enhanced the auditor's RI reporting obligations. These amendments preclude the removal of an auditor who has reported an irregularity to the IRBA, prior to the completion of the reporting process, i.e. the submission of the second report. If the auditor resigns from the firm after submitting the first report, but prior to submitting the second one, they are then obliged to do the necessary handover to the incoming auditor, regardless of when the resignation took effect. Subsections (7) and (8) are aimed at ensuring the credibility and effectiveness of RI processes, while protecting the process from interference by client management.

In view of the subjectivity of the RI assessment process arising from the need for auditors to exercise professional judgement during the assessment of an RI, the IRBA Guide for Registered Auditors on Reportable Irregularities provides guidance on various aspects of RI reporting. This includes guidance on, what constitutes "reasonable measures" when an auditor attempts to discuss the RI reports with members of the management board, access to information pertaining to an RI and recurring RIs in subsequent years.

Recognising that the IRBA does not have jurisdiction to take appropriate action against the management responsible for the reported irregularities, the APA rather mandates it to notify the appropriate regulator upon receipt of a follow-up report indicating that an

RI is continuing. Appropriate regulators are expected to consider the reports submitted by the auditors through the IRBA and, in line with their regulatory processes and powers, investigate and/or ensure that action is taken against those responsible for the reported irregularities.

The RI process must be distinguished from the consideration of non-compliance with laws and regulations (NOCLAR), in accordance with the International Ethics Standards Board for Accountants' international ethics standard for auditors and other professional accountants. The NOCLAR sets out a framework to provide guidance on what actions professional accountants should take if they become aware of potential illegal acts committed by a client or employer. While an RI imposes a reporting obligation to the IRBA, a NOCLAR is a compliance response framework that includes a discussion with management and a consideration to disclose the matter to an appropriate authority.

The importance of the Section 45 RI reporting mechanism is further emphasised by the fact that failure to report an RI may expose an auditor to personal liability towards any partner, member, shareholder, creditor or investor of an entity; and/or result in the auditor being found guilty of a criminal offence and liable to a fine or imprisonment for a term not exceeding 10 years.

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- <sup>1</sup> Ordinarily, unlawful conduct denotes what contradicts legal obligations, either as prescribed in legislation or found in common law.
  - <sup>2</sup> When determining whether there has been a material loss or breach, the auditor must consider all the relevant circumstances and factors.
  - <sup>3</sup> Fraudulent conduct refers to wrongful or criminal deception intended to result in financial or personal gain.
  - <sup>4</sup> Theft refers to the act of stealing, which is the wrongful taking and carrying away of the assets of another without consent.
  - <sup>5</sup> A fiduciary duty is management's legal duty to act in good faith in promoting and protecting the interests of a company and to avoid a conflict of interest between its members and the company. The directors' fundamental fiduciary duties include preventing a conflict of interest, not exceeding the limitations of their powers, maintaining an unfettered discretion, exercising their powers for the purpose for which they were conferred and not making a secret profit.
  - <sup>6</sup> The number of days is determined with reference to the Interpretation Act 33 of 1957, as amended, which stipulates that when any number of days is prescribed by another Act, then the first day is excluded while the last is included. This is unless the last day falls on a Sunday or a public holiday. If so, then the last day will be the first day thereafter, unless that day happens to also be a Sunday or a public holiday, and so forth.



# PURPOSE and Limitations of the Report

The IRBA appreciates that the RI process is an important tool in providing significant insights into the prevention and/or mitigation of corporate failures and the consequences thereof. So, this report is aimed at providing broader stakeholder feedback on the nature of irregularities reported and how such reports are dealt with, in an effort to give effect to the intended purpose of Section 45 of the APA.

Primarily, it seeks to enhance transparency and support coordinated regulatory efforts to tackle identified irregularities effectively. The report is also intended to furnish auditors, audit committees, boards, investors and the public with valuable insights into risk areas that warrant heightened scrutiny within South Africa's corporate landscape. Despite the above, the report does not explore the particulars of any subsequent investigations conducted by the relevant regulatory bodies.

This is because there is no legal obligation for regulators to provide feedback to the IRBA on their investigative processes and outcomes. Nonetheless, some regulators voluntarily share feedback, which enriches the RI reporting process.

While the report presents a five-year overview of reportable irregularities, the analytical focus is primarily on irregularities reported during the 2022/2023 financial year that ended on 31 March 2023.

The main reason the report analysis focused on the 2022/2023 financial year was to ensure proper engagements with and feedback from relevant regulators, which could only be possible if the regulators had been given adequate time to initiate and/or finalise their own processes in respect of RIs referred to them.

# OVERVIEW of the Reportable Irregularity Process

Auditors send the first RI report to the IRBA immediately upon identifying an RI during an audit. The report ordinarily sets out the particulars of the RI that the auditor believes has taken place or is taking place within the entity being audited. The accompanying diagram provides a summary of the process.

Once the IRBA receives the first report, it meticulously assesses it for accuracy and completeness. If deemed satisfactory, the report undergoes processing and the IRBA promptly acknowledges receipt to the auditor.

Reports that are incomplete or have errors – including missing dates, signatures, incomplete client/auditor details, inconsistencies or lack of supporting documentation – are usually not accepted. Also, second reports that have discrepancies regarding the auditor’s conclusions from the first report are typically not accepted. In such instances, auditors are asked to rectify and resubmit the reports.

An RI report can have serious consequences for the entity. Therefore, after submitting the first report to the IRBA, the auditor is required to inform the entity’s management board within three days of the submission, to then discuss the contents of the report with it and provide an opportunity for input. If necessary, the auditor should carry out additional investigations into the identified irregularities. Thereafter, but no later than 30 days from the date of the first report, the auditor must submit a corresponding second report to the IRBA. This second report should include the auditor’s conclusions regarding the matters or irregularities set out in the first report, confirmation of the occurrence or existence of the irregularities and their status, i.e. whether they are ongoing or not.

If no corresponding second report is received from the auditor within 21 days, a reminder is sent, emphasising the need to submit the second report by day 30 from the first report’s date.



Subsequently, another reminder is issued on the second report’s due date, if it remains outstanding.

Similarly, upon receiving the corresponding second report, the IRBA conducts a thorough review, acknowledges receipt and, if necessary, transmits both reports to the relevant regulator(s). This transmission occurs when the second report confirms the persistence of the RI, prompting further investigation by the appropriate regulatory body.

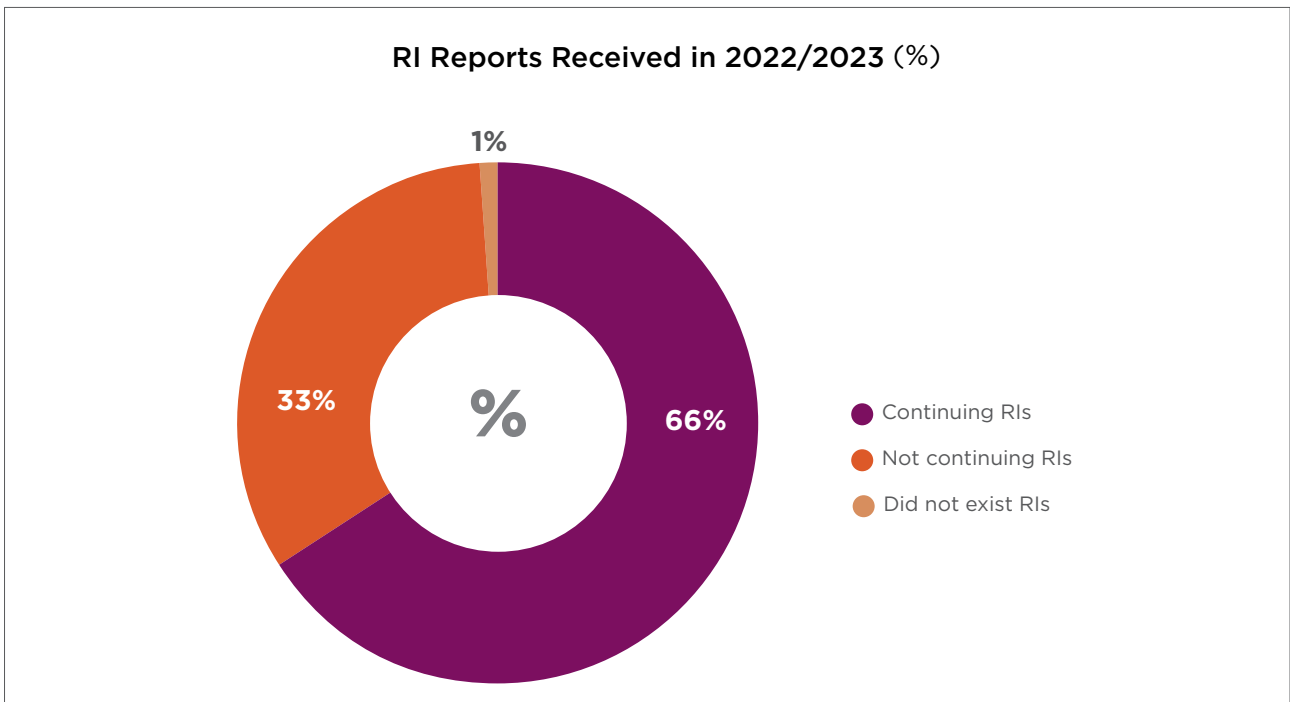
The auditor’s failure, without reasonable cause, to report an RI or submit a second report, where the first one was submitted, constitutes improper conduct that will be liable for investigation and appropriate action by the IRBA.

# ANALYSIS of the Reportable Irregularity Reports Received

## AN OVERVIEW OF THE SUBMITTED REPORTS

The IRBA received a total of 622 first RI reports from auditors during the 2022/2023 reporting period. Second reports were subsequently submitted, with 411 indicating irregularities of a continuing nature, 202 showing irregularities that were not continuing and nine noting that irregularities that were initially reported did not occur.

The representation of these categories of second RI reports, as categorised by the nature of outcomes reported therein, is reflected in the chart below.



## Reporting Auditors

The RI reports the IRBA received during the reporting period were from 213 auditors. Of the 1 244 first and second RI reports received, 502 were sent by five auditors. These RI reports represent 40,4% of the total number of RI reports received

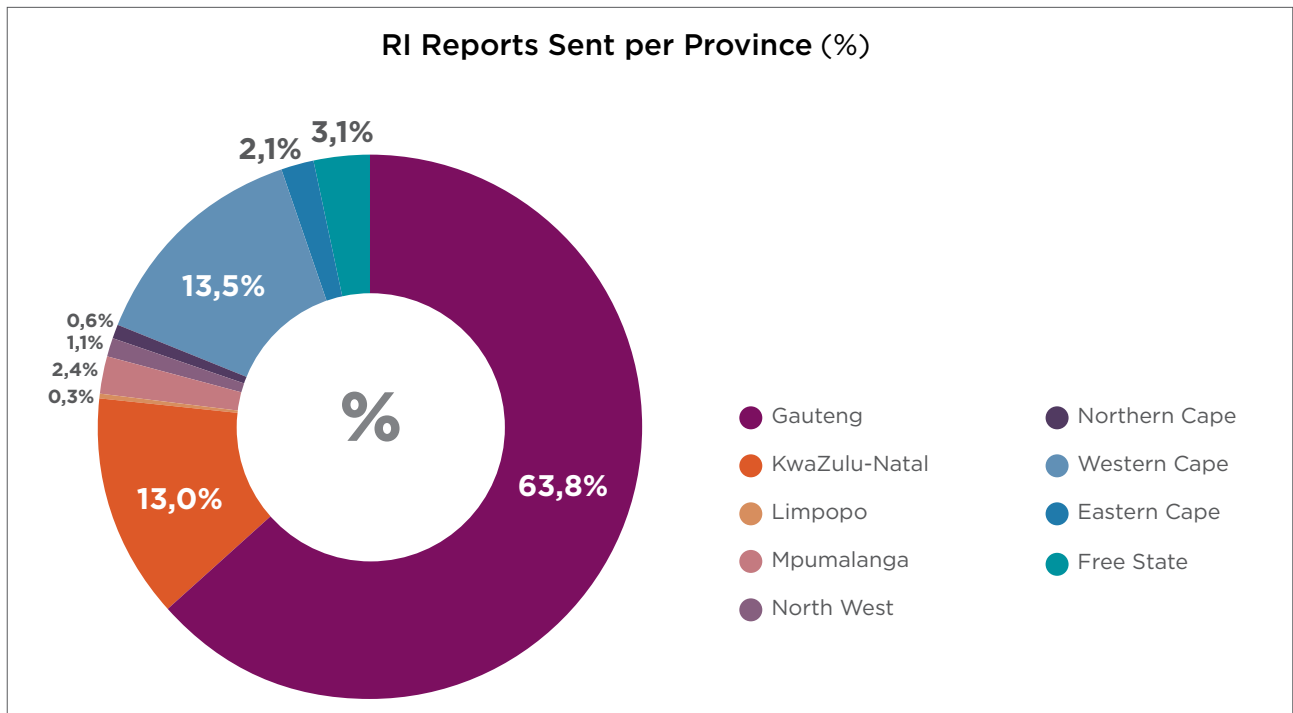
from all auditors during the period under review. The remaining 59,6% (i.e. 742) of the total RI reports were from the other 208 contributing auditors.

### Reportable Irregularities by Province

The 1 244 RI reports the IRBA received were from auditors practising in all nine of South Africa's provinces. An analysis thereof shows that more than 90% of all RI reports received were sent by auditors practising in Gauteng, KwaZulu-Natal and the Western Cape, with those from Gauteng constituting almost 64%. This is no surprise, considering the magnitude of the economic activities in these provinces.

The least number of RI reports were from auditors practising in Limpopo, and these accounted for four RI reports.

Below is a detailed breakdown of the percentage of the 1 244 RI reports per province.

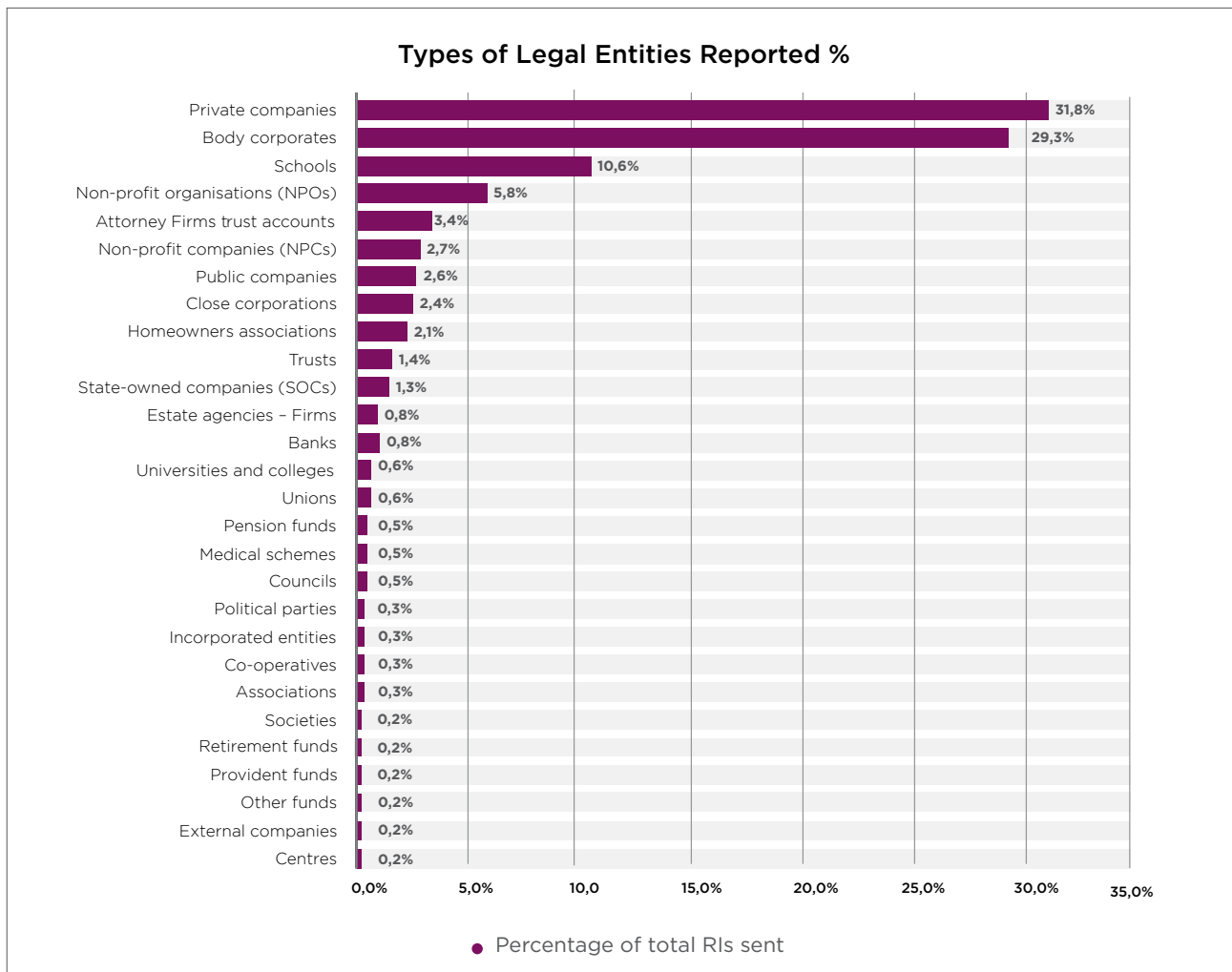


## Reportable Irregularities by Entity

Irregularities were reported in relation to audits performed by auditors on various types of legal entities. It should be noted that whether or not an entity requires a statutory audit is subject to different pieces of legislation. For example, the decision to audit the financial statements of a company depends on the provisions contained in Regulation 28 of the Companies Act, which provides the framework to determine when it is in the public interest for a company's financial statements to be audited. A company may then also include an

explicit audit requirement in its memorandum of incorporation, despite it not necessarily requiring a statutory audit.

An analysis of the types of audited entities in respect of which the 1 244 RI reports received related to is reflected below. This is expressed as a percentage of RIs received per entity type in comparison to the total number of RI reports received during the period under review.



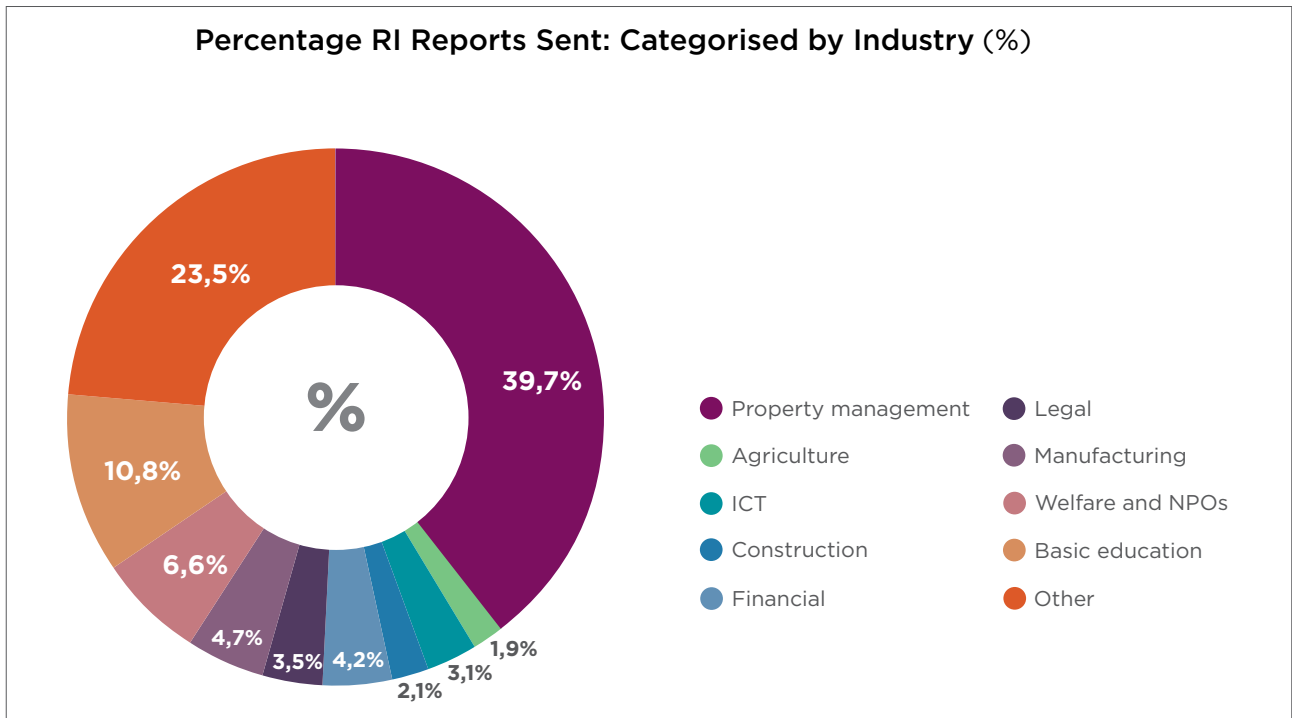
**Note:** Homeowners associations (HOAs) registered as NPCs have been included under "Homeowners associations".

As illustrated above, the top five types of entities in respect of which RIs were reported included private companies, body corporates, schools, non-profit organisations and attorney firms in relation to their

trust accounts. Collectively, the top five entity types accounted for over 80% of all RI reports received, with other types of entities reported on representing the remaining 20%.

**Reportable Irregularities by Industry**

When categorising the total number of RI reports sent across the industries audited, the results are summarised in the accompanying graph.



**Note:** The RI reports sent on entities in the financial sector comprise banks, financial advisors as well as accounting and audit firms.

As reflected in the above chart, most of the RI reports received (39,7%) related to the property management industry, i.e. body corporates, homeowners associations and estate agency firms. This was followed by entities operating in the basic education sector (10,8%), social welfare entities (6,6%) and those in the manufacturing industry (4,7%).

The 23,5% of the RI reports relating to other industries is constituted by, among others, entities

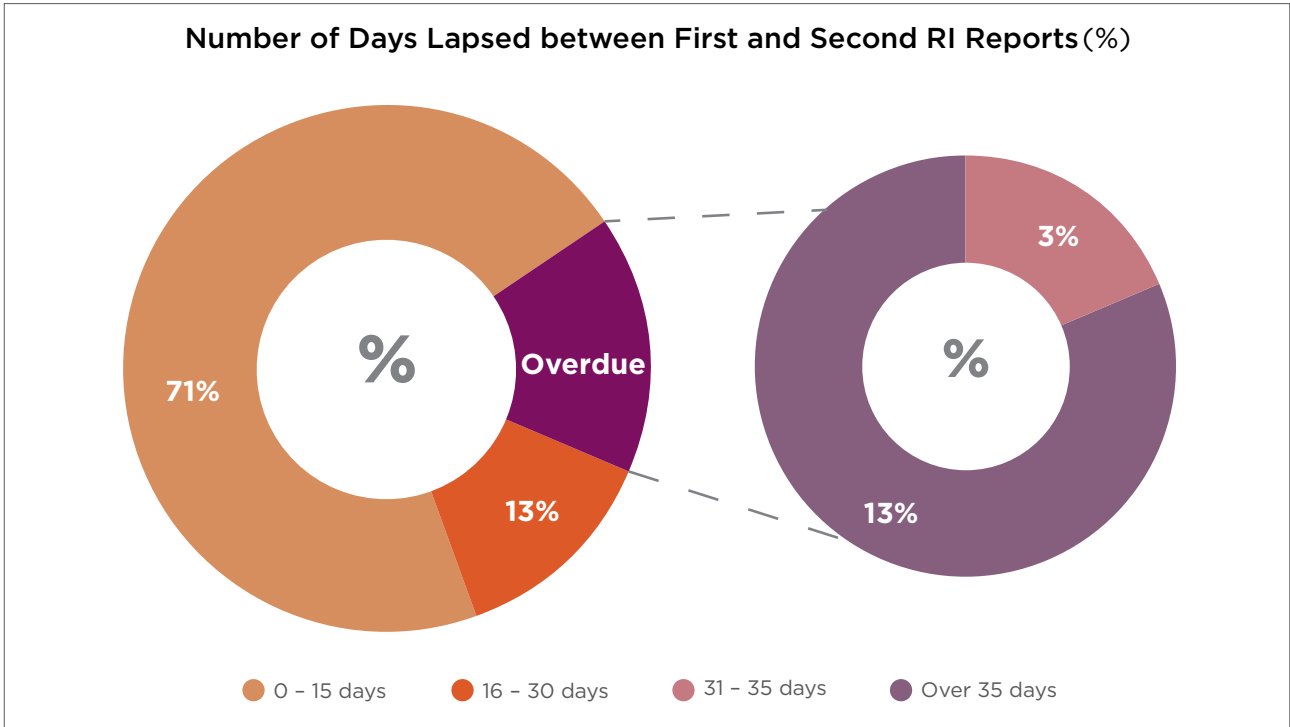
that operate within the public or government sector as well as those in the mining and quarrying, healthcare, retail, transport, political, petrochemical and entertainment industries. Each of these sectors individually accounted for less than 2% of the total reported irregularities sent to the IRBA.

**ANALYSIS OF SECOND RI REPORTS RECEIVED**

As highlighted above, auditors must send their corresponding second report to the IRBA within 30 days from the date on which the first RI report was submitted.

All 622 first RI reports submitted to the IRBA were in fact followed by the submission of the

corresponding second reports (hence, the total of 1 244 reports discussed above). On average, as reflected in the graphic analysis, auditors filed their second reports with the IRBA 26 days after having filed their corresponding first reports.



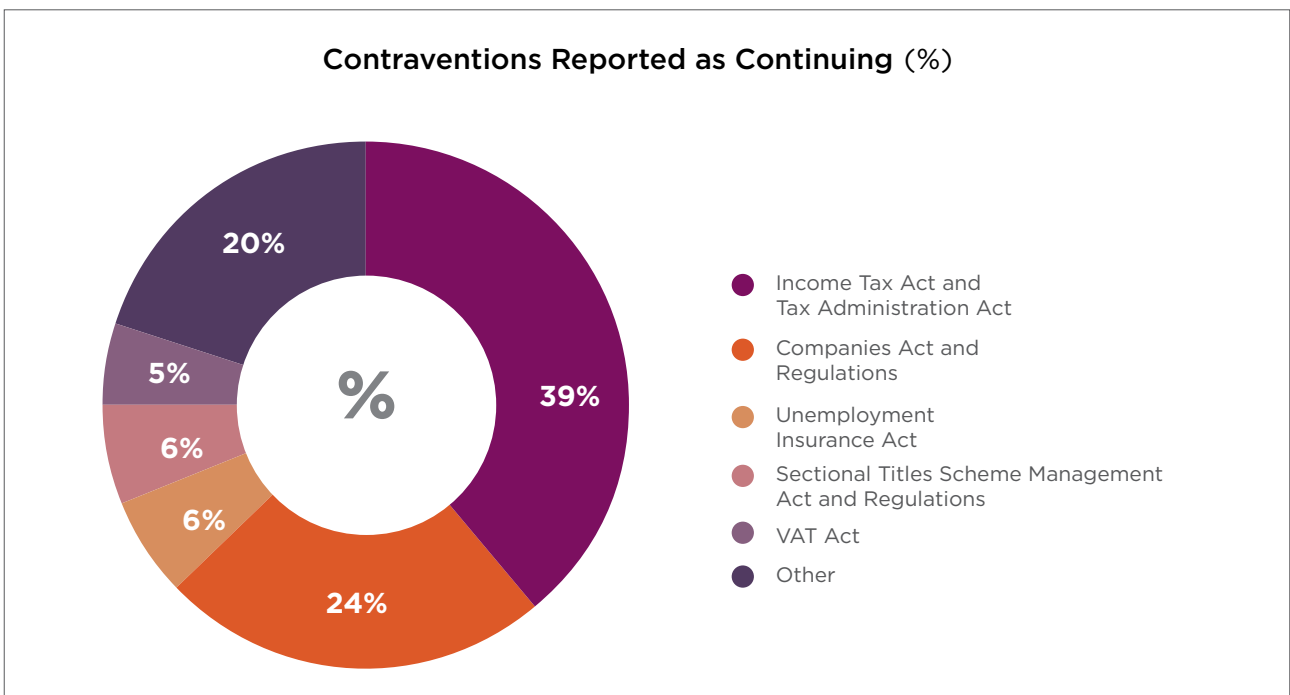
As illustrated above, 84% of all the second RI reports were received within the prescribed 30 days from the date on which the corresponding first reports were submitted, with 16% of all second reports having been sent outside that period. Delayed submissions

of corresponding second reports constitute non-compliance with the APA and render the auditor liable for investigation, in terms of Section 48 of the Act.

#### Irregularities Reported as Continuing

Of the total 622 second RI reports the IRBA received, 411 irregularities were reported as continuing to occur within the relevant entities. The accompanying chart

provides an indication of the nature of contraventions (irregularities) that were reported as continuing.



As reflected on the previous page, the top five types of irregularities that were reported as continuing represent 80% of all continuing RIs. These related to the contravention of the Tax Administration Act 28 of 2011, the Income Tax Act, the Companies Act

and Regulations, the Unemployment Insurance Act, the Sectional Titles Schemes Management Act and Regulations as well as the VAT Act. Contraventions relating to these top five types of irregularities are as summarised below.

#### *Income Tax Act and Tax Administration Act Contraventions*

| Area of Contravention   | Percentage  |
|---|-------------|
| Payroll-related tax returns not submitted and taxes due not paid.   | 38%         |
| Income tax returns not submitted and taxes due not paid.  | 37%         |
| Entities not registered for income tax purposes.  | 8%          |
| Entities operating as tax exempt without approval from the South African Revenue Service (SARS), the late submission of income tax returns and taxpayers not registered as employers. | 5%          |
| Dividend taxes not withheld, personal expenditure claimed for tax deductions and fringe benefit taxes not declared to SARS.   | 12%         |
| <b>Total</b>  | <b>100%</b> |

#### *Companies Act Contraventions*

| Area of Contravention   | Percentage  |
|---|-------------|
| <i>Sections 28, 29 and 30:</i> Failure to maintain accounting records and timeously prepare the annual financial statements.  | 42%         |
| <i>Sections 4 and 45:</i> Failure to perform the required solvency and liquidity tests when providing financial assistance to directors, related companies, etc.  | 21%         |
| <i>Sections 22 and 129:</i> Companies trading recklessly under insolvent circumstances and a failure to initiate business rescue proceedings.   | 9%          |
| <i>Sections 76 and 77:</i> Directors having breached their fiduciary duties by failing to act in the best interest of the relevant companies.   | 4%          |
| <i>Section 72:</i> Failure to establish a social and ethics committee, where required.  | 3%          |
| Other Companies Act contraventions: Failure to maintain securities registers, to file annual returns with the Companies and Intellectual Property Commission (CIPC) and failure by the board to appoint an audit committee. | 21%         |
| <b>Total</b>  | <b>100%</b> |

#### *Unemployment Insurance Act Contraventions*

| Area of Contravention   | Percentage  |
|---|-------------|
| Failure to register with the Unemployment Insurance Fund.                                   | 91%         |
| Relevant returns not submitted to the Unemployment Insurance Fund and amounts due not paid. | 9%          |
| <b>Total</b>  | <b>100%</b> |



## Sectional Titles Schemes Management Act and Regulations Contraventions

| Area of Contravention   | Percentage  |
|---|-------------|
| Failure to establish and maintain an administrative and reserve fund, and to maintain separate books of accounts and bank accounts for these funds. | 36%         |
| Failure to prepare annual financial statements and maintain adequate accounting records.  | 21%         |
| Failure to hold an annual general meeting.  | 12%         |
| Failure to insure common property.  | 10%         |
| Other, i.e. levies unlawfully refunded to members, levies incorrectly calculated and schemes operating without trustees.                            | 21%         |
| <b>Total</b>  | <b>100%</b> |

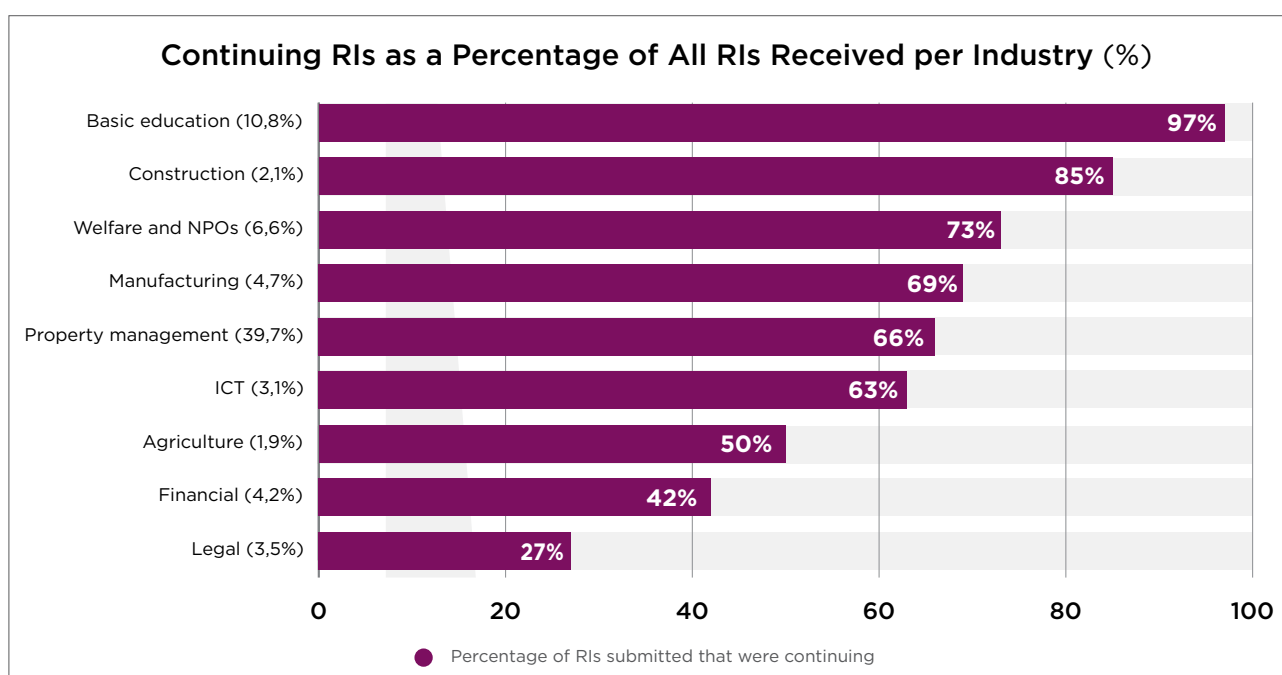
The other 20% continuing irregularities related to, among others, contraventions of the Basic Conditions of Employment Act 75 of 1997, the Financial

Intelligence Centre Act 38 of 2001, the Long-Term Insurance Act 52 of 1998 and the Trust Property Control Act 57 of 1988.

### Industries in which Irregularities were Reported as Continuing

The graphic below is an illustration of the top nine industries that collectively represent more than 76% of all the continuing RI reports sent to the IRBA during the reporting period. For each of the

industries reflected, the number of continuing RIs sent by auditors is further expressed as a percentage of the total number of second RI reports that the IRBA received per industry.



**Note:** The number of RI reports received per industry as a percentage of the total number of RI reports received during the reporting period is shown in brackets for each of the industries concerned.

The industries in respect of which the majority of RIs were reported as continuing to occur are basic education (97%), construction (85%), social welfare and NPOs (73%), manufacturing (69%), property management (66%) and the information and communication technology (ICT) sector (63%). On

the other hand, the basic education and property management sectors collectively represented 50.5% of all reportable irregularities reported across industries. Overleaf is a closer look at the trends within these two industries.

**Basic Education**

As illustrated in the previous graph, 97% of the irregularities identified in RI reports relating to the basic education sector, representing more than 10% of all RI reports received, were reported to be of a continuing nature. This indicates that in the opinions of the reporting auditors, only 3% of the governing bodies of schools reported on had addressed the irregularities identified within the 30-day timeframe prior to the submission of the corresponding second RI reports.

What is more telling is that an analysis of all continuing second RI reports in relation to basic education revealed that over 95% of the relevant schools' governing bodies had failed to engage with their auditors on the irregularities identified in the first RI reports communicated to them, in accordance with Section 45(2)(a) of the APA.

**Property Management**

RI reports sent by auditors in respect of entities within the property management sector represented more than 39% of the reported RIs, with 33% specifically relating to body corporates and homeowners associations. Of the irregularities linked to entities within the property management sector, 66% were reported as continuing. However, only in less than 5% of the cases did management fail to engage with their auditors on the irregularities identified. This is in contrast to the basic education sector that accounted for the highest percentage of continuing RIs, indicating management's lack of interest in the rectification thereof.

**Other Industries**

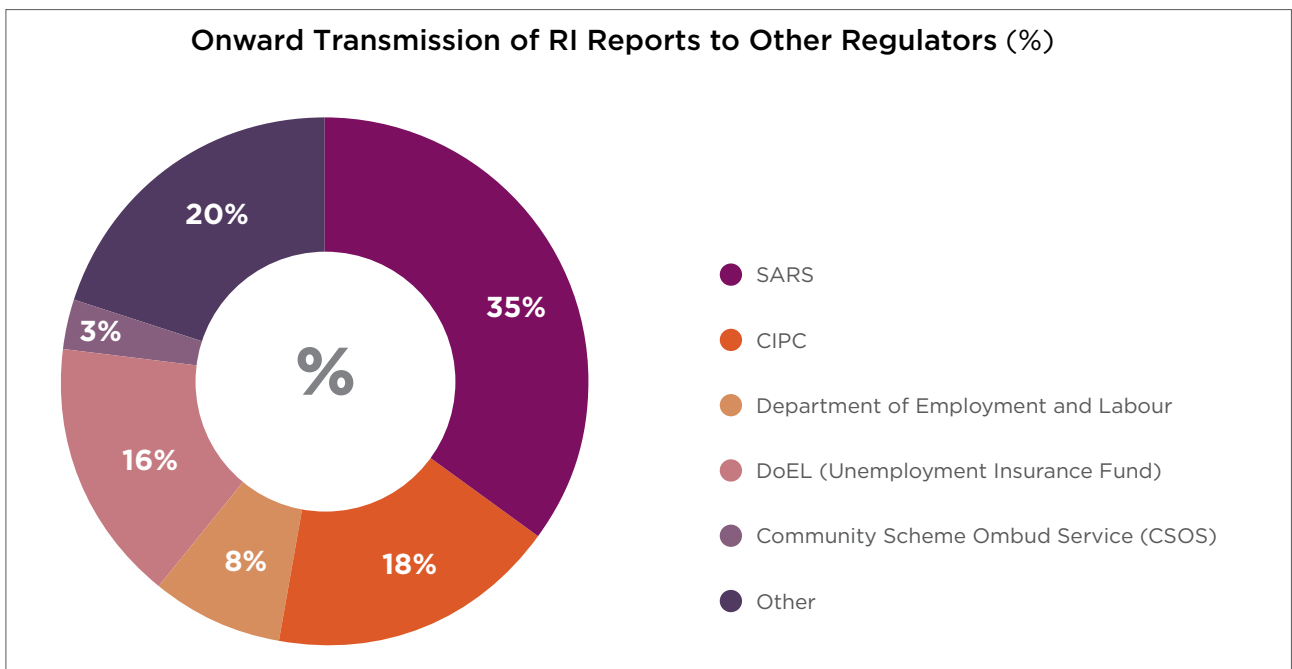
The construction industry, despite having accounted for only 2% of the total RIs reported, recorded the second highest percentage of continuing irregularities, representing 85% of the initial irregularities reported.

Despite contributing only 7% to the overall total irregularities reported, the number of continuing RIs reported on entities operating within the social and welfare industry accounted for the third highest percentage (73%) of continuing irregularities reported. As per the graphic on the previous page, the industries with the lowest percentages of continuing irregularities reported in second RI reports were legal (27%) and financial (42%).

The lower percentages of continuing RIs somehow demonstrate the willingness of the management boards of entities operating within these industries to act more quickly and decisively in rectifying the irregularities identified. That then allows them to better mitigate the risks associated with failing to address the irregularities reported by their auditors.

**Onward Regulatory Reporting of Continuing Irregularities**

As per the requirements of Section 45(4) of the APA, all but one of the 411 continuing second reports the IRBA received were onward transmitted to the appropriate regulators for further consideration and/or investigation. Consistent with the top five continuing contraventions reported, the regulators noted in the accompanying graph were the main ones to whom most of the reported continuing irregularities were sent for appropriate action.



The one reported continuing irregularity that was not forwarded to an appropriate regulator related to a church whose archdeacons had failed to provide the church's auditors with evidence that all bank transactions had been accounted for. The IRBA was unable to identify an appropriate regulatory body mandated to consider such contraventions.

The regulators reported under the other 20% are those that individually received less than 3% of all continuing second RI reports, as reflected below.

| Regulator   | Percentage of Continuing RIs |
|---|------------------------------|
| Financial Intelligence Centre (FIC)                 | 2,5%                         |
| Directorate for Priority Crime Investigation (DPCI) | 2,0%                         |
| Property Practitioners Regulatory Authority (PPRA)  | 2,0%                         |
| Compensation Fund                                   | 1,9%                         |
| Financial Sector Conduct Authority (FSCA)           | 1,7%                         |
| Department of Basic Education*                      | 1,7%                         |
| Auditor-General South Africa (AGSA)                 | 1,5%                         |
| Johannesburg Stock Exchange (JSE)**                 | 1,3%                         |
| Department of Public Enterprises                    | 1,0%                         |
| Other***  | 4,4%                         |
| <b>Total</b>  | <b>20,0%</b>                 |

\* While RI reports sent on schools represent 11% of all RI reports from auditors, most of the contraventions identified related to the Income Tax Act and were sent to SARS.

\*\* Referrals to the JSE are for entities that have a primary listing thereon, and this excludes secondary listings that are audited by a foreign auditor. The IRBA has jurisdiction only over those auditors that are on its register.

\*\*\* Other regulators include the Master of the High Court, the Social Housing Regulatory Authority, the Council for Medical Schemes and various provincial offices of the Legal Practice Council.

On average, the IRBA onward transmitted reported continuing RIs to the appropriate regulators within

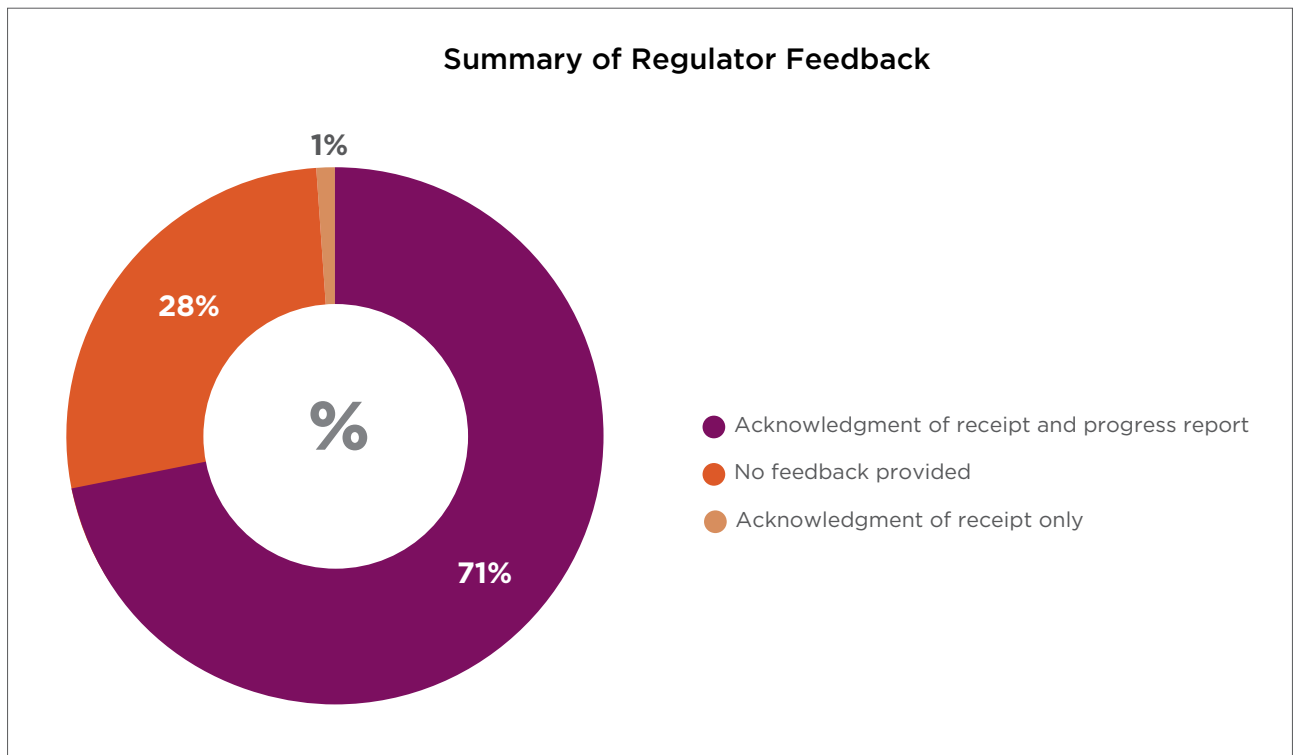
seven working days of receipt from the reporting auditors.

**Outcomes of Reported Irregularities Onward Transmitted to Appropriate Regulators**

To ensure the effectiveness of the RI reporting process, the IRBA actively solicits feedback from appropriate regulators on continuing RI reports that have been transmitted to them for investigation. This process, however, excludes regulators to whom RI reports are transmitted for information purposes only. An example would be the RI reports onward transmitted to the AGSA under circumstances where it has opted not to audit the public entity concerned

and that entity then appoints an RA to perform its statutory audit. The AGSA would be notified of all RIs that such an auditor reports to the IRBA.

For all continuing RI reports that were onward transmitted to appropriate regulators during the reporting period, a summary of the feedback received is illustrated in the accompanying chart.



**Note:** A status of “Acknowledgment of receipt and progress report” was allocated to cases where regulators were able to confirm that the matters in question had been referred to their respective internal investigation units for processing.

Overall, feedback was received from 71% of the regulators, with 1% of them only having provided the IRBA with an acknowledgment of receipt and 28% having not responded at all. The FIC advised that it was unable to provide feedback on irregularities

referred to it, due to legislative restrictions in Section 40 of the Financial Intelligence Centre Act. Therefore, RI reports transmitted to the FIC have been excluded from the analysis of feedback received from regulators.

Below is a detailed breakdown of all regulators (excluding the FIC) to whom reports were transmitted for investigation and action, as well as the nature of the feedback received in respect of all RI reports that were onward transmitted.

| Regulator   | Number of RI reports transmitted | Number of reports in respect of which the regulator provided feedback on the status of the RIs transmitted |
|---|----------------------------------|--|
| CIPC  | 109                              | 109  |
| City of Tshwane                                       | 1                                | 1  |
| Compensation Fund                                     | 11                               | 0  |
| Council for Medical Schemes                           | 1                                | 1  |
| CSOS  | 18                               | 18   |
| Department of Basic Education                         | 10                               | 10   |
| Department of Forestry, Fisheries and the Environment | 1                                | 1  |
| Department of Higher Education and Training           | 2                                | 0  |
| Department of Public Enterprises                      | 6                                | 6  |
| Department of Social Development                      | 1                                | 1  |
| Department of Transport                               | 1                                | 0  |
| DoEL  | 95                               | 0  |
| DoEL (UIF)  | 45                               | 0  |
| DPCI  | 12                               | 12   |
| FSCA  | 10                               | 10   |
| JSE   | 8                                | 8  |
| Legal Practice Council Provincial Offices             | 5                                | 5  |
| Master of the High Court                              | 3                                | 0  |
| PPRA  | 12                               | 5  |
| SARS  | 206                              | 206  |
| Social Housing Regulatory Authority                   | 1                                | 1  |
| South African Reserve Bank                            | 2                                | 2  |
|   | <b>403</b>                       | <b>396</b>   |

**Note:** While the PPRA only provided feedback on five (42%) of the twelve cases referred to them, they did acknowledge receipt of all 12 cases referred, though without detailed progress reports on the other seven (58%) cases.

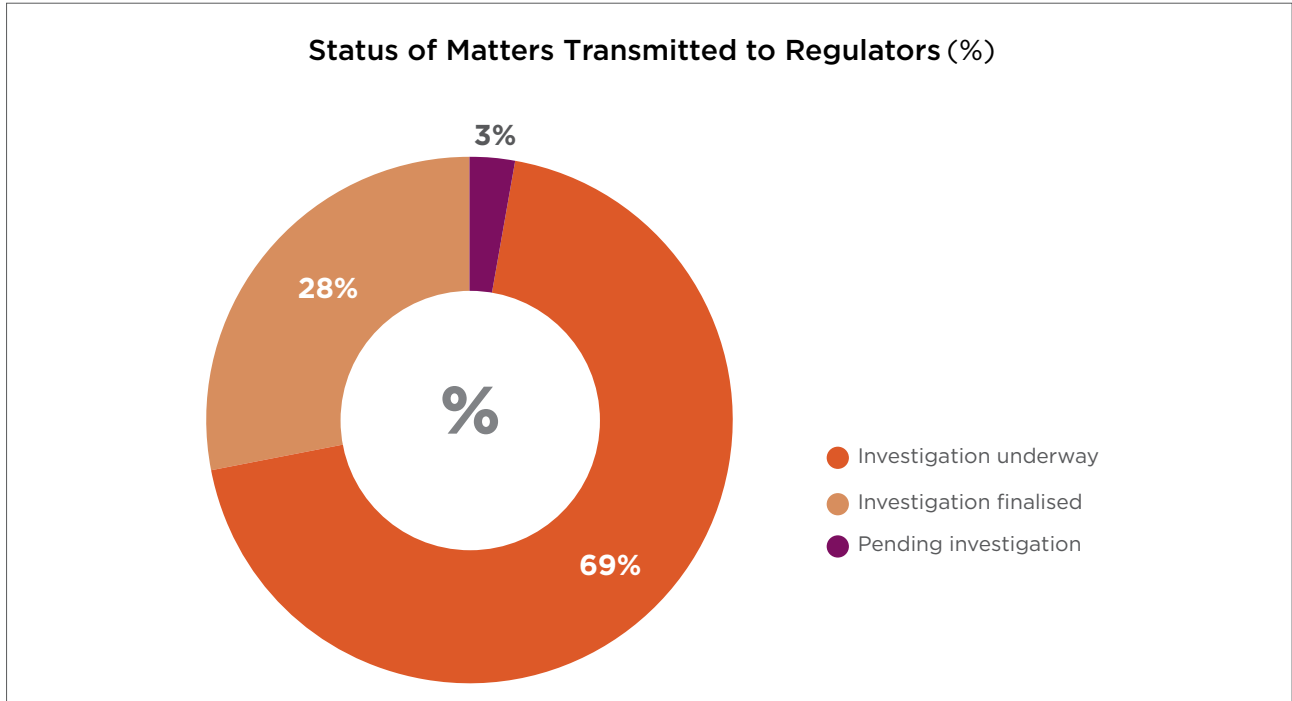
There was no feedback or acknowledgement of receipt from the DoEL and its related entities, i.e. the UIF and the Compensation Fund. There was also no feedback received from the Master of the High Court; the Department of Higher Education and Training; and the Department of Transport.

On the other hand, feedback on all transmitted cases was received from the CIPC, City of Tshwane, CSOS, Department of Basic Education, Department of Forestry, Fisheries and the Environment, Department of Public Enterprises, Department of Social Development, DPCI, FSCA, JSE, SARS, Social Housing Regulatory Authority and South African Reserve Bank.

### Status of Cases Transmitted to Regulators

A summary of the status update feedback received from regulators (the 71% that provided such detailed feedback) in relation to their respective

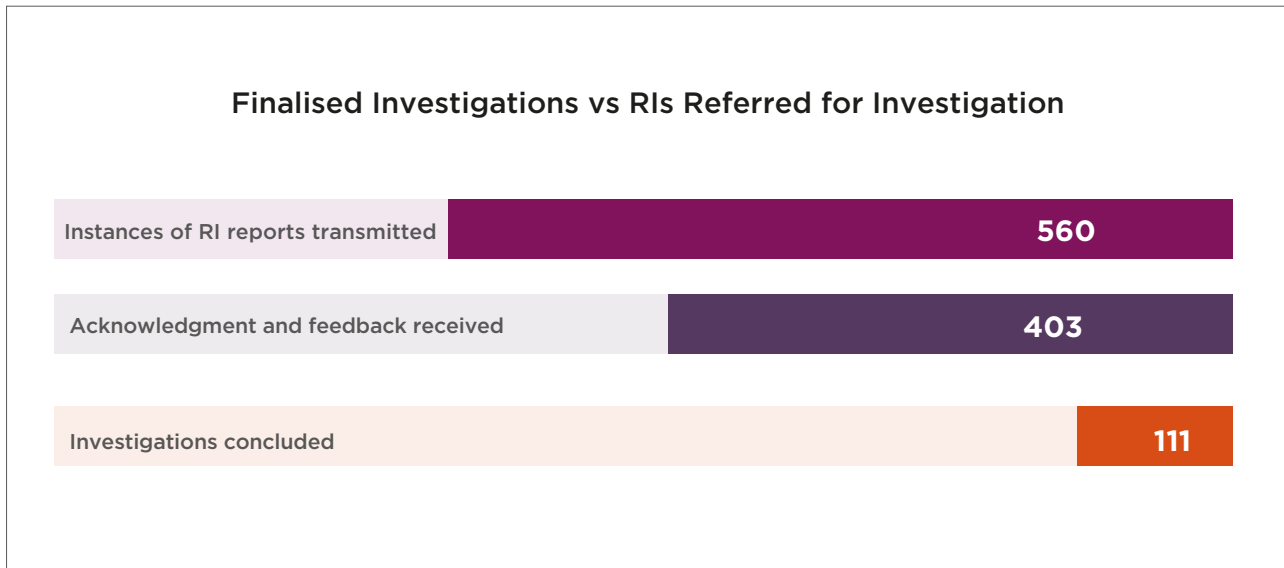
investigations into the irregularities referred to them is illustrated overleaf.



**Note:** Most of the irregularities referred to the regulators are still under investigation (69%), with just over a quarter of such matters finalised and only 3% pending investigation.

The total number of continuing RI reports where regulators confirmed that they had finalised their investigations represents 19,82% of all reports that

were sent to regulators during the reporting period. This success rate in relation to cases successfully investigated and resolved is illustrated below.



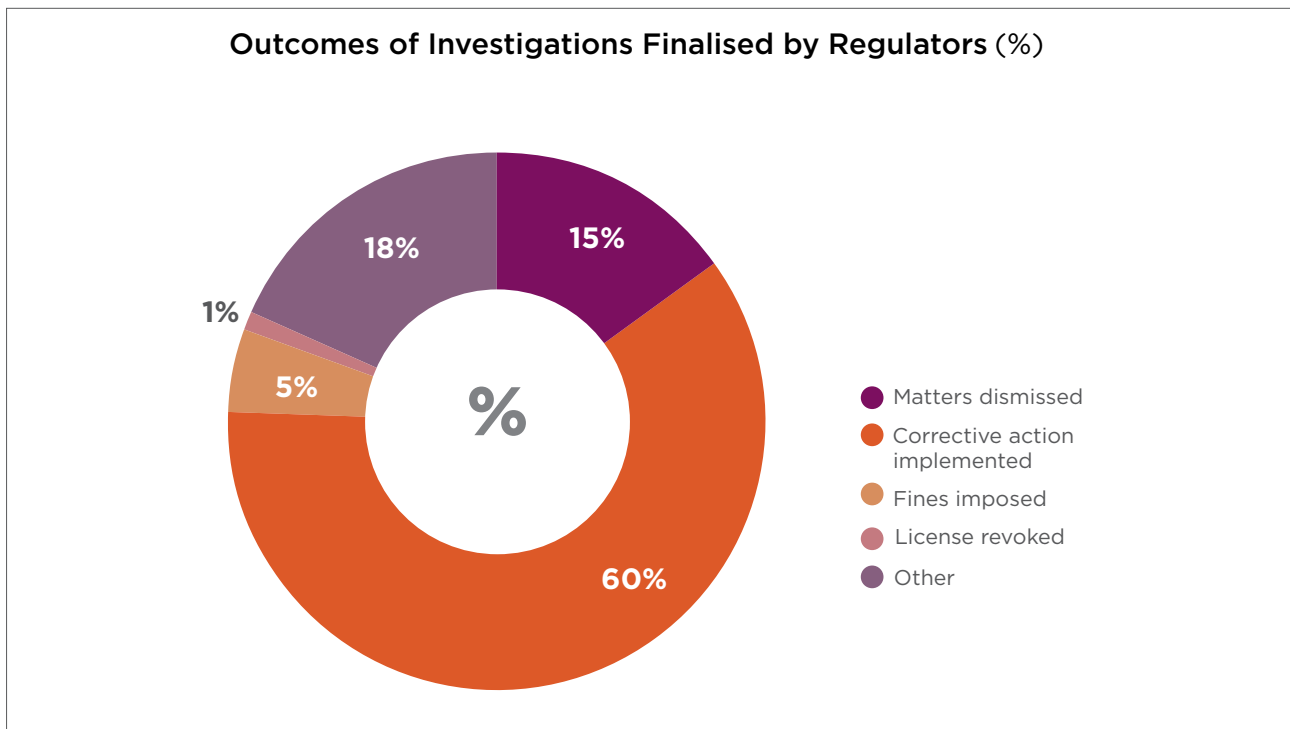
### Outcomes of Finalised Investigations

An illustration of the various outcomes of the 111 investigations finalised by regulators can be seen in the graphic below. Of the total number of investigations finalised by the relevant regulators, in 60% of the cases the regulated entities had effectively implemented corrective actions to address the irregularities identified by the reporting RAs. Examples include instances where entities reported on for not timeously preparing their annual financial statements subsequently did so after the 30-day deadline for the second RI report submission had passed and the appropriate regulatory authorities had been informed of the transgressions.

At least 15% of the finalised cases were dismissed by the regulators. This was primarily because according

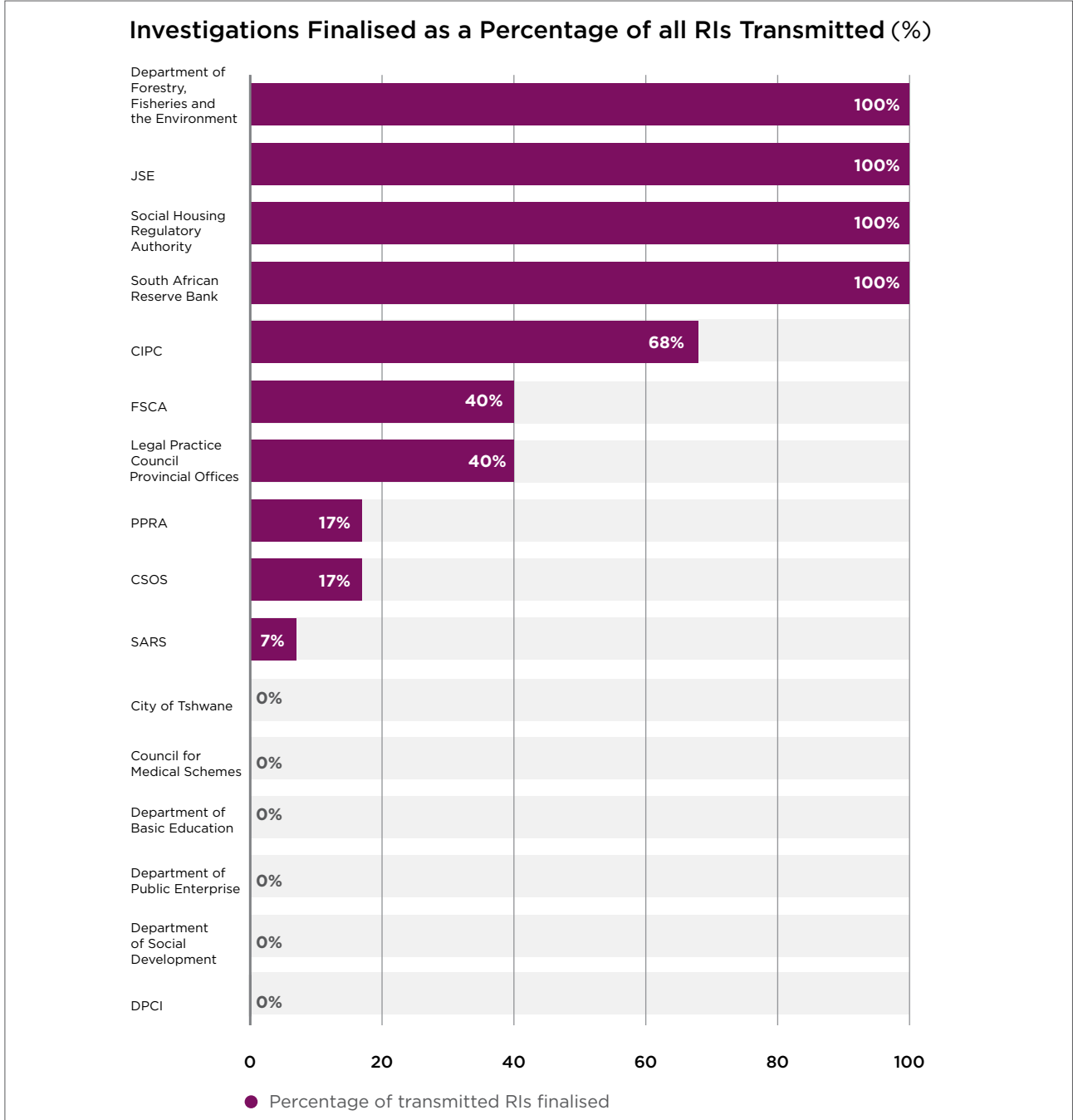
to their investigations there was no sufficient evidence to support the suspicions of wrongdoing, as reflected in the RI reports.

On the other hand, fines were imposed in 5% of the finalised cases, wherein the regulators confirmed the irregularities reported through their investigations, with practising licences being revoked in 1% of such cases. The cases reflected under the other 18% relate to investigations concluded on the basis of the subsequent liquidation of the reported entities and/or matters where regulators did not provide the IRBA with specific details of the outcomes of the finalised investigations.



Overall, the feedback from regulators indicates that in 85% of the cases where they had concluded their investigations, the issues reflected in the RI reports were confirmed. The number of the investigations

they finalised, as a percentage of all the RI reports onward transmitted to each of the regulators concerned during the reporting period, is reflected below.



**Note:** The information reflected above excludes those regulators that had not responded to the IRBA’s request for feedback on progress made regarding their investigations into the irregularities sent to them for action.

Only 25% of the regulators that provided feedback had finalised their processes in relation to all cases referred to them, while 38% had not finalised any of

the cases reported to them. Of the remaining 37% of regulators, 6% had finalised more than 50% of the referred cases, with 31% finalising less than 50%.

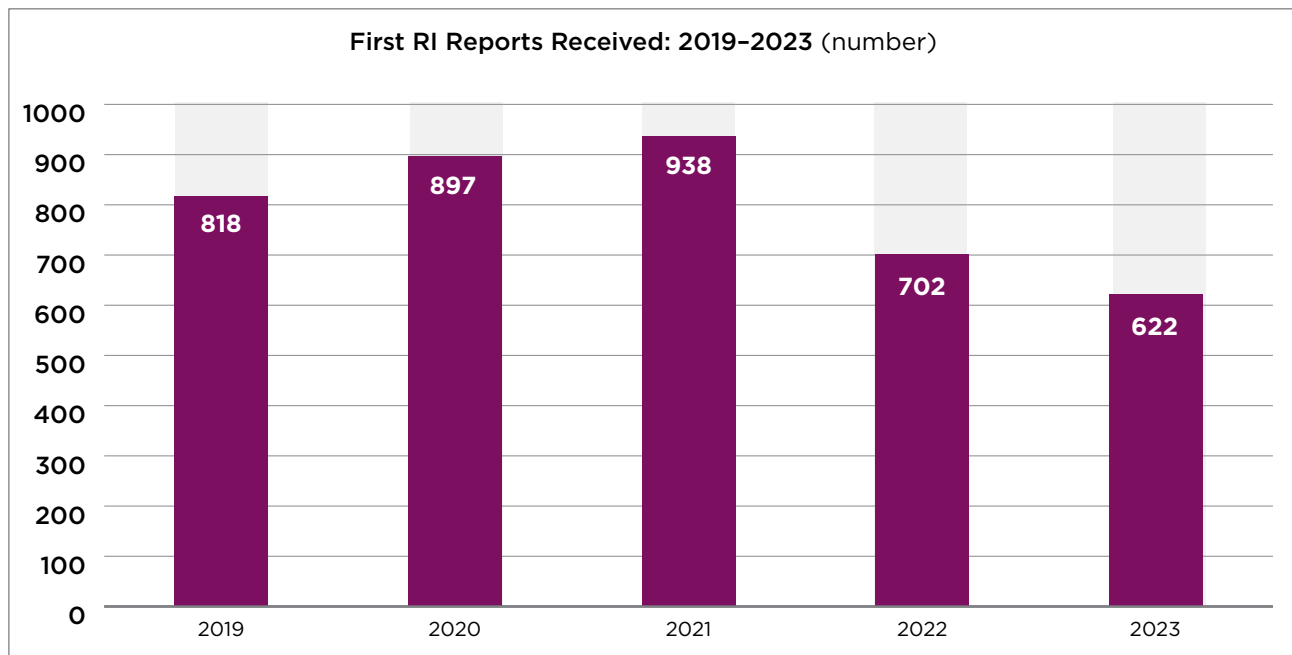


# TRENDS Identified in Reportable Irregularity Reporting Over the Past Five Financial Years

## FIRST RI REPORTS RECEIVED

As illustrated below, an analysis of the number of first RI reports received during the past five years indicates an overall increase of 15% from 2019 to

2021. This covers the period during which the first case of COVID-19 was reported in South Africa up until the pandemic reached its peak locally.



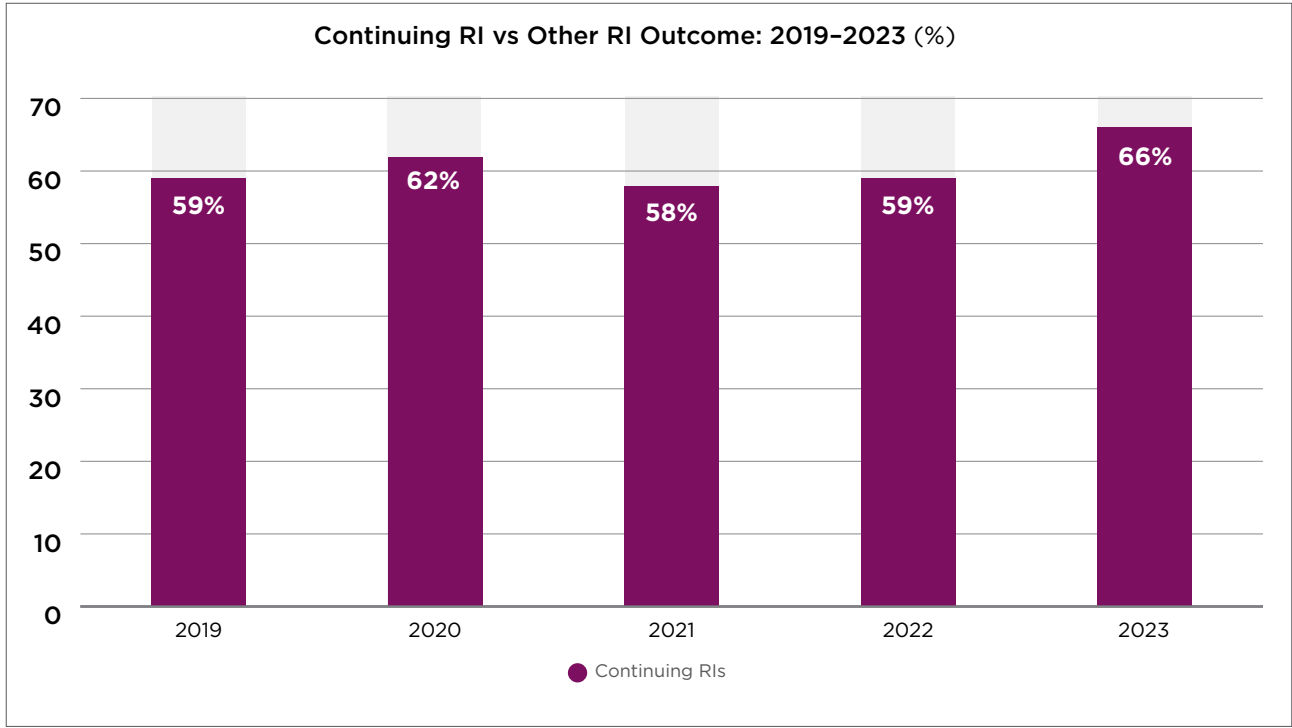
The number of RI reports received after COVID-19 decreased by just over 34% from 2021 to the end of the reporting period, with the total number of

first reports in 2023 representing only 76% of those received in 2019. This was an overall decrease of 24% in respect of RIs reported over the five-year period.

### CONTINUING RIs AS A PERCENTAGE OF FIRST RI REPORTS RECEIVED

An analysis of the percentage of RIs reported as continuing in the second RI reports against those

reported as either no longer continuing or as having never existed is illustrated below.



From 2019 to 2023, the split between the RIs reported as continuing and those reported as not continuing or non-existent consistently remained in favour of continuing RIs. Of these, 66% in 2023 was the height of all RIs reported to the IRBA classified as continuing, with the remaining 34% reported as either not continuing or not having occurred.

second RI report indicating that the RI had not occurred, remained consistently low in terms of their representation as a percentage of all RI reports sent. The relevant analysis provided herein below indicates an overall annual percentage of three or less.

The number of RIs reported annually over the past five years, with the conclusion in the corresponding

| Reporting Period | Number of RIs Not Occurring | Percentage of RI Reports Sent |
|------------------|-----------------------------|-------------------------------|
| 2023             | 9                           | 1%                            |
| 2022             | 16                          | 2%                            |
| 2021             | 27                          | 3%                            |
| 2020             | 29                          | 3%                            |
| 2019             | 13                          | 2%                            |

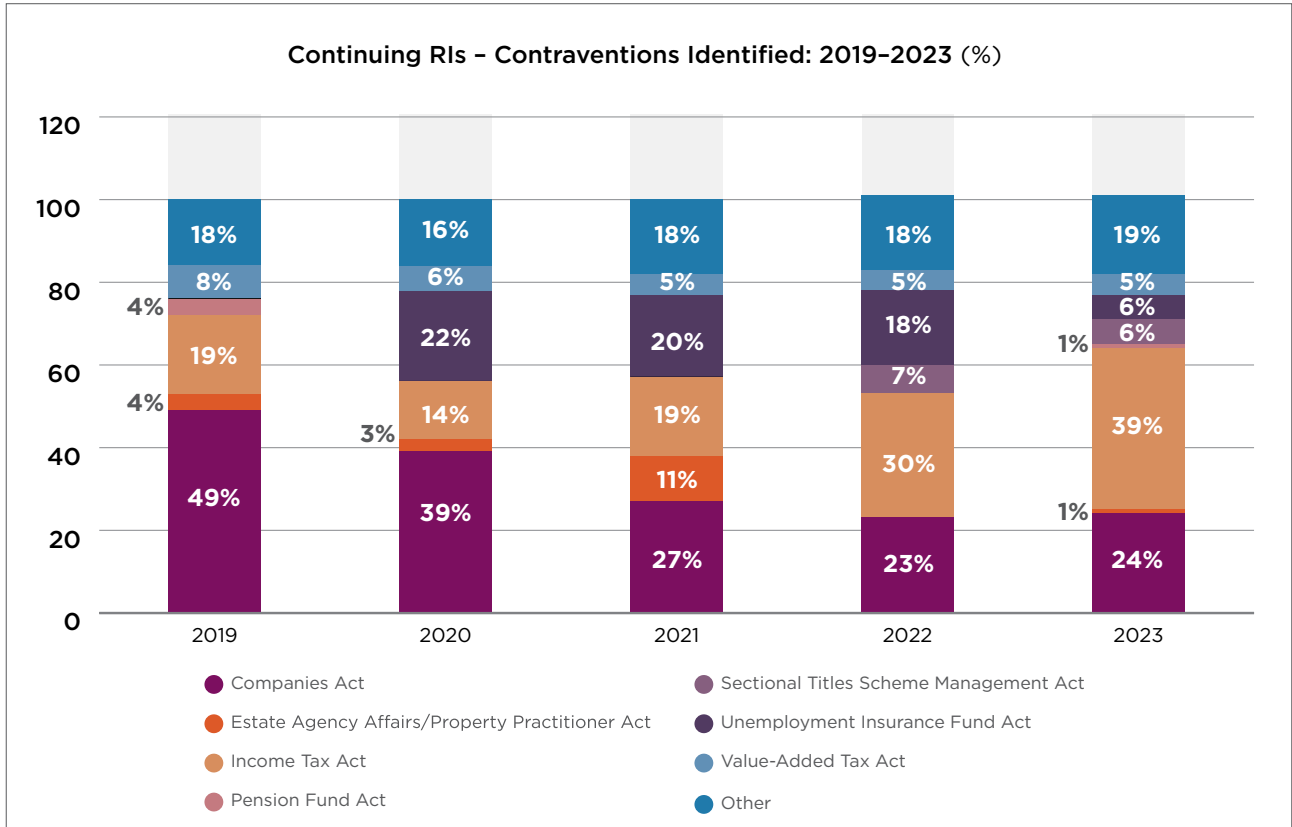
Instances where auditors had concluded in the corresponding second report that the irregularities reported in the first report had not actually occurred were mostly as a result of the subsequent submission of evidence or information contradicting the initial conclusions. There were also a few occasions where proposed legislative amendments announced sub-

sequent to the first RI report cast doubt on the initially reported irregularities.

In terms of Section 45(4) of the APA, the IRBA is not required to notify any appropriate regulator of a report sent by an auditor indicating that no RI has taken or is taking place.

### Continuing RIs - Nature of Contraventions Identified

An analysis of the types of contraventions reflected in continuing RI reports over the past five years is illustrated below.



As reflected above, continuing irregularities relating to the contraventions of the Companies Act and the Income Tax Act have constantly constituted a sizeable portion of all continuing irregularities reported to the IRBA in the past five years. However, continuing contraventions of the Income Tax Act, as a percentage of all continuing contraventions reported during the same period, increased by 103%.

Continuing irregularities relating to the contravention of the Unemployment Insurance Act constituted a significant percentage of all continuing contraventions reported to the IRBA in 2020, 2021 and 2022. Those relating to the contravention of the VAT Act represented an annual average of about 6% of all reported continuing irregularities in the five-year period under review.

# CONCLUDING Remarks

Undoubtedly, Section 45 of the APA is one of a number of legislation<sup>7</sup> that aim to combat fraud, corruption and corporate failures perpetuated by companies through their management, which often go undetected in companies' annual financial statements.

It is worth noting, though, that the irregularities auditors reported do not represent an exhaustive study of the degree to which corporate South Africa adheres to applicable laws and regulations and/or the risks of corporate failures. Nevertheless, they provide useful insights on developing trends and areas where increased levels of regulatory oversight might be required.

It is significant to note that the second highest number of RIs received during the reporting period, when classified across the relevant industries, related to educational institutions within the basic education sector. Equally telling is the fact that most of these irregularities were reported to be of a continuing nature. That indicates that the relevant school governing bodies were either unable or unwilling to rectify the issues identified by their auditors within the Section 45 reporting period. The challenges faced by the education sector in South Africa have been documented in the media and the statistics presented in this report reflect that scenario.

As expected, the majority of the reported irregularities were from registered auditors practising in Gauteng. That mirrors Statistics South Africa's most recent provincial gross domestic product figures, which show that in 2022 Gauteng was responsible for R33 of every R100 produced in the national economy.

The media has also closely followed and reported on the unfolding corporate scandals, both locally and internationally. Consequently, among the irregularities reported to the IRBA were those that had garnered media attention. These include irregularities reported in relation to Eskom Holdings SOC Limited (South Africa's electricity utility and producer) and the Spar Group Limited (a prominent food retailer). Reports on Eskom related to the utility's failure to take corrective measures after breaching the National Environment Management Act 107 of 1998 and to address a backlog of forensic cases<sup>8</sup>. The reports on the Spar Group focused on irregularities relating to loans it granted to independent merchants<sup>9</sup>. These reported irregularities are now with the relevant regulators for investigation and, where necessary, to redress and/or mitigate the impact thereof on the relevant entities.

“While the reportable irregularity process provides auditors with a useful whistleblowing mechanism, one should not lose sight of the fact that auditors are not the only role-players within the financial ecosystem that are tasked with ensuring a sound financial reporting process.”

The obligations under NOCLAR that are applicable to all professional accountants, whether active in business or public practice, include the need to consider whether further action is appropriate under the given circumstances. Such actions might include the possibility of the onward reporting of non-compliances identified to appropriate regulators, in the absence of a legislative obligation to do so, where the disclosure would be in the public's interest.

<sup>7</sup> Other such laws include Section 4 of the Prevention of Organised Crime Act that provides for the prohibition of money laundering and an obligation to report certain information; Section 29 of the Financial Intelligence Centre Act that imposes certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; and Section 34 of the Prevention and Combating of Corrupt Activities Act that places a duty on certain persons holding a position of authority to report certain corrupt transactions.

<sup>8</sup> See the Reuters article titled “South Africa's Eskom says auditors question its ability to survive” that was published on 23 December 2022.

<sup>9</sup> See the following articles published on 19 January 2023: Moneyweb's “Fictitious and fraudulent loans a ‘reportable irregularity’ - Spar”; News24's “Spar's auditors report dodgy loan to regulator”; and the Business Day's “Spar's fictitious loan reported to the audit regulator”.

Projects such as the International Auditing and Assurance Standards Board's proposed ongoing revisions to ISA 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements, highlight an increased need in the market for enhanced communication to be forthcoming from the auditor about their response to fraud. These proposed changes to the audit report are aimed at:

- Enhancing the description of the auditor's responsibilities related to fraud in the audit report itself; and
- Emphasising the importance of communicating key audit matters related to fraud.

These amendments will augment the auditors' reporting obligations per Section 45, increasing the coverage on fraud and non-compliance within corporate South Africa. However, this amplified emphasis on the auditor's role when responding to fraud in the audit of financial statements requires registered auditors to ensure that their internal processes for both the identification of RIs and the reporting thereof to the IRBA remain robust. They also need to ensure that proper audit documentation in relation to these processes is kept as required by ISA 230, Audit Documentation.

The minimal 1% of the irregularities reported in the auditors' initial reports, which were subsequently reported as having not existed, shows the appropriate manner in which auditors exercise their professional judgement when assessing identified irregularities. Most importantly, the fact that 33% of the irregularities reported to the IRBA were subsequently reported as not continuing at the end of the 30-day reporting period is testimony to the effectiveness of the RI reporting process. One can easily infer that without the registered auditors

having reported those irregularities to the IRBA, the majority thereof would not have been rectified in such a short period. That then strengthens the argument that Section 45 of the APA is critical in enhancing investor confidence in the South African economy.

It is important to note that the purpose of Section 45 cannot be effectively realised, unless the regulators to whom continuing RI reports are sent investigate, finalise and, where necessary, take appropriate action in respect of the reported issues. Accordingly, it is of concern that of the 560 instances where RI reports were sent to the relevant regulators during the reporting period, less than 20% were reported as finalised.

We are however hopeful that this report, as an intended consequence, will act as a catalyst to encourage the relevant regulators to be proactive in actioning matters that are referred to them and/or providing the IRBA with quality feedback in a timeous manner. That way, we will collectively ensure that the RI mechanism continues to add value to South Africa's corporate landscape by improving the overall levels of compliance with applicable laws and regulations.

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