

## Annual Returns FAQ's

### What is the purpose of filing a company or close corporation annual return?

All companies (including external companies) and close corporations are required by law to file their annual returns with the CIPC on an annual basis, within a prescribed time period. The purpose for the filing of such annual returns is to confirm whether a company or close corporation is still in business/trading, or if it will be in business in the near future.

Therefore, if annual returns are not filed within the prescribed time period, the assumption is that the company or close corporation is inactive, and as such CIPC will start the deregistration process to remove the company or close corporation from its active records. The legal effect of the deregistration process, is that the juristic personality is withdrawn and the company or close corporation ceases to exist.

### Will my personal detail as a director or member be disclosed on the annual return?

Due to security concerns relating to the disclosure of personal information CIPC has affected the following changes relating to annual returns:

- Only the first 6 digits of a director's or member's identity number will be displayed; and
- The annual return filing certificate will not display the identity number, addresses, or contact details of a director or member.

### Will I be able to update any details of the company or close corporation on the annual return?

Only the following fields of the entity are updateable:

- email address;
- telephone number;
- cell phone number;
- website address;
- business description; and
- principal place of business.

### What is meant by business description?

It is the industry that the company or close corporation mainly operated in for the annual return period, for example construction, catering, cleaning services, import/export, transport, financial sector, investment, mining, agriculture, marketing. The indicated examples are not an inclusive list of all industries.

### What is meant by principal place of business?

It is the primary address from which the company or close corporation conduct its business. It may not necessarily be the same as the registered office.

### How do I file my annual returns?

Annual returns can only be filed electronically via the provided application on the CIPC website.

Step 1: Register as a customer on the CIPC website. Go to [www.cipc.co.za/ Register as a Customer](http://www.cipc.co.za/ Register_as_a_Customer).

Step 2: Calculate the annual return fee.

Step 3: Deposit the relevant filing fee. The fees can be deposit at any ABSA bank or via EFT.

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### CIPC Banking Details

|                   |  |
|-------------------|--|
| Bank              | ABSA   |
| Account Type      | Transmission Account   |
| Account Name      | CIPC   |
| Account Number    | 4055 68 1017   |
| Branch Name       | Van der Walt Street  |
| Payment Reference | CUSTOMER CODE DATE (DDMMYYYY)AND 01 (If the Reference Number is less than six characters long then use trailing zeros. (CUSTOMER CODE00DATE(DDMMCCYY01)<br>e.g. MAKG001204201101 |

The reference number on the deposit slip will assist CIPC to allocate the deposit accurately and on time to your virtual account. If not allocated within three days, fax proof of payment to +27 86 673 8313. Mark for attention - Revenue Department and remember to include your customer code as a reference.

For finance related enquiries only, send an email to [revenue@cipc.co.za](mailto:revenue@cipc.co.za).

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Step 4: File annual returns via the CIPC website.

Step 5: File the appropriate amendment forms e.g. CK2/CK2A/CoR39/CoR21.1.

### What will happen if the company or close corporation does not comply with annual returns?

The CIPC will assume that the company or close corporation is inactive, and as such CIPC will start the deregistration process to remove the company or close corporation from its active records. The legal effect of the deregistration process, is that the juristic personality is withdrawn and the company or close corporation ceases to exist.

### **Who may file an annual return on behalf of a company or close corporation?**

The Companies Act, 2008 and the Close Corporations Act, 1984 require the company or close corporation itself, (it also include its authorised representative) to file the annual return.

### **When must a company or close corporation file its annual returns?**

Companies and close corporations are required to file annual returns once a year within a given time period. Companies must file within 30 business days after the anniversary date of its incorporation while close corporations must file within the anniversary month of its incorporation up until the month thereafter.

### **If a company or close corporation has filed its tax returns with SARS, is it still required to file annual returns with CIPC?**

A clear distinction must be made between an annual return and a tax return. An annual return is a sort of “renewal” and has the purpose to confirm whether CIPC is in possession of the most up to date information of a company or close corporation and that the company or close corporation is still conducting business. A tax return focuses on taxable income of a company or close corporation in order to determine the tax liability of the company or close corporation to the State and is filed with SARS.

Compliance with the one does not mean that there is automatic compliance with the other. It is two different processes administered in terms of different legislation by two different government departments. Therefore, even if the tax return has been filed with SARS, the annual return must still be filed with CIPC.

### **Will the annual return replace the filing of other prescribed or statutory forms?**

No. An annual return is not an amendment form and therefore, the annual return must be followed by the appropriate statutory form to update the CIPC registers after filing if CIPC is not in possession of the most up to date information. An example of this is if the company address changes, a form CoR21.1 must still be completed and submitted to CIPC.

### **Should all annual returns be up to date before a close corporation converts to a company?**

If a close corporation converts to a company and the conversion application on Form CoR18.1 is received on or before the last day before the start of the anniversary month of the close corporation, then the annual return for such year does not need to be filed. The reason for this

is that no obligation has yet arisen for the filing of the annual return for the current year. All other outstanding years must be brought up to date.

For future filing of annual returns, the anniversary month will then be the month within which the close corporation was converted.

Should the close corporation file its application for conversion within the month of the anniversary of its incorporation or the month thereafter then all annual returns must be brought up to date including the annual return for the current year.

### **Should all annual returns be up to date if the company converts from one category of company to the other?**

No. The company does not have to be up to date with annual returns before converting but it should not be in “deregistration process” or “final deregistered”. If in “deregistration process” the company must first object to deregistration in writing (if not due to annual return non compliance) or file all outstanding annual returns (if due to annual return non compliance) before applying to convert.

If the company is final deregistered it must first be re-instated. Kindly refer to the Re-instatement section of the FAQ’s for the requirements to apply for re-instatement.

### **How must the annual return be filed?**

Annual return filings are only accepted electronically via the CIPC website by logging in as a customer, and clicking on Annual returns/submit and pay annual returns. A step-by-step guide on how to file annual returns can be viewed on the CIPC website ([www.cipc.co.za](http://www.cipc.co.za)) by clicking on I Want to.../Step by step online guide – Lodge annual returns.

### **What sections of the legislation governs annual returns?**

#### **Companies:**

Filing Requirement:

- Section 33 of Companies Act
- Regulation 30 of Companies Regulations

Deregistration Requirement:

- Section 82(3) of Companies Act
- Regulation 40 of the Companies Regulations

Re-instatement Requirement:

- Section 82(4) of Companies Act
- Regulation 40 of the Companies Regulations

Filing of Financial Information:

- Section 30 of Companies Act

- Regulation 40 (2) – (4) of Companies Regulation
- Regulations 28 and 29 of Companies Regulations

### Close Corporations

#### Filing Requirement:

- Section 15A of Close Corporations Act
- Regulation 16 of the Close Corporations Administrative Regulations

#### Deregistration Requirement:

- Section 82(3) of Companies Act
- Regulation 40 of the Companies Regulations

#### Re-instatement Requirement:

- Section 82(4) of Companies Act
- Regulation 40 of the Companies Regulations

#### Filing of Financial Information:

- Section 30 of Companies Act
- Item 5 of Schedule 5 of Companies Act (relating to the amendments of section 58 of Close Corporations Act)
- Regulation 40 (2) – (4) of Companies Regulation
- Regulations 28 and 29 of Companies Regulations

### What fee should be paid when filing annual returns?

In determining the appropriate fee for the filing of an annual return, a distinction must be made between a company and close corporation filing, and the date on which the annual return became due, since different fee structures are used for companies and close corporations. Further, in order to determine the year from which the company or close corporation became liable to file annual returns, the roll out date for the specific category of entity must be used together with its registration date.

- Public and external companies – rolled out August 2003
- Private and incorporated companies – rolled out May 2005
- Close corporations – rolled out September 2008
- Non profit companies – rolled out May 2011

| Examples (Companies)   | Examples (Close Corporations)   |
|--|---|
| The company was registered on 26 June 1995. If it is a <b>public or external company</b> , its first annual return became due in <b>June 2003</b> . Therefore, annual returns should have been filed on an annual basis as from June 2004 until June 2011, and should then continue to be filed annually every | If the <b>close corporation</b> was registered on 26 June 1995, its first annual return became due in <b>June 2009</b> . Therefore, annual returns should have been filed on an annual basis for June 2009 to June 2011, and every year thereafter. |

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| <p>year thereafter.</p> <p>If the company is a <b>private company</b>, its first annual return became due <b>June 2005</b>. Therefore, annual returns should have been filed on an annual basis as for June 2005 to June 2011, and every year thereafter.</p> <p>If the company was registered 26 June 2009 and it is any other type of company, the first annual return became due in June 2010. Therefore, annual returns should have been filed on an annual basis for June 2010 and June 2011, and every year thereafter.</p> | <p>If the close corporation was registered on 26 June 2009, its first annual return became due in June 2010. Therefore, annual returns should have been filed on an annual basis for June 2010 and June 2011, and every year thereafter.</p> |
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If the annual return became due 1 May 2011 or thereafter, the fee structure under the Companies Act, 2008 must be used. If it became due before 1 May 2011 the Companies Act, 1973 fee structure must be used.

**Companies Act, 1973 fee table:**

| Annual Turnover                                 | Private and Incorporated Companies | Public Companies | External Companies |
|---|------------------------------------|------------------|--------------------|
| Less than R10 million                           | R450                               | R4000            | R4000              |
| More than R10 million but less than R50 million | R2500                              | R4000            | R4000              |
| R50 million or more                             | R4000                              | R4000            | R4000              |
| Penalty fee for each late lodgment              | R150                               | R150             | R150               |
| Re-instatement Application (Form CoR40.5)       | R200                               |                  |                    |

**Companies Act, 2008 fee table:**

| Annual Turnover                           | Filing within 30 business days after anniversary date | Filing more than 30 business days after anniversary date |
|---|---|--|
| Less than R1 million                      | R100  | R150   |
| R1 million but less than R10 million      | R450  | R600   |
| R10 million but less than R25 million     | R2000   | R2500  |
| R25 million or more                       | R3000   | R4000  |
| Re-instatement Application (Form CoR40.5) | R200  |  |

**Close Corporations Act, 1984 fee table:**

| Annual Turnover            | Filing within 2 months from beginning of anniversary month | Penalty for each late lodgment |
|----------------------------|--|--------------------------------|
| Between 0 to R50 million   | R100   | R150                           |
| R50 million and above      | R4000  | R150                           |
| Re-instatement Application | R200   |                                |

**Can a company or close corporation request exemption for the filing and payment of annual returns?**

A company or close corporation is mandated by law to file annual returns annually and therefore, CIPC cannot exempt companies and close corporations from filing/complying with such requirement.

The prescribed filing fees for annual returns are legislated, and therefore such cannot be waived by the CIPC. The CIPC also cannot make arrangements for payment of annual returns in “installments” since the prescribed fee must accompany the filing. If the prescribed fee does not accompany the filing, the filing is invalidated and must be refiled.

**If the company or close corporation was dormant/inactive for an annual return period, should it still file and pay annual returns?**

Yes. The Close Companies Act, 2008 (and its predecessor Companies Act, 1973) and Corporations Act, 1984 does not make a distinction between an active and inactive company or close corporation. Therefore, even if the company or close corporation was inactive, it is still legally required to file and pay annual returns.

**How can a company or close corporation confirm which annual returns are outstanding?**

The outstanding years as well as the fees payable may be confirmed on the CIPC website on the annual return filing application itself by clicking on the AR Fee Calculator

**The incorrect turnover was provided when the annual return was filed, how can that be corrected?**

Once an annual return is filed, none of the information provided can be updated. In cases where the incorrect turnover has been provided the customer code used for the original filing may be issued with either a credit note (indicated turnover larger than the actual turnover) or a debit note (indicated turnover less than the actual turnover).

In order for CIPC to credit/debit the customer code the following documents are required:-

- (1) the financial statements for the annual return year in question,

- (2) the entity name, registration number and the annual return year in question,
- (3) indication of the reason for the incorrect turnover being provided,
- (4) certified ID copy of the owner of the customer code used to file the annual return, and
- (5) a letter providing permission to the CIPC to credit/debit the difference.

This information must be e-mailed to any of the following e-mail addresses [CKlokow@cipc.co.za](mailto:CKlokow@cipc.co.za), [HDelport@cipc.co.za](mailto:HDelport@cipc.co.za) or [annualreturns@cipc.co.za](mailto:annualreturns@cipc.co.za).

### How can the reason for deregistration of my company or close corporation be determined?

A request for the reason for deregistration may be e-mailed to [annualreturns@cipc.co.za](mailto:annualreturns@cipc.co.za). The CIPC call centre may also be contacted on 086 100 2472.

### Must the financial statements be filed with the annual returns?

Companies and close corporations by law are required to either file its audited financials, reviewed financials or financial supplement with its annual returns. Due to current system limitations, only audited financial statements must be filed.

All companies and close corporations, if it is required to prepare audited financial statements in terms of Companies Regulation 28 read with Companies Regulation 26, , must file such with CIPC at the same time of filing is annual returns by emailing the financial statements to [financialstatements@cipc.co.za](mailto:financialstatements@cipc.co.za).

It should be noted that only the audited financial statements must currently be filed with the CIPC. A company or close corporation, that is not required to file its audited financial statements, may still file such or its reviewed financial statements via [financialstatements@cipc.co.za](mailto:financialstatements@cipc.co.za).

Companies and close corporations that is neither required to file its audited financial statements, nor voluntarily filed its audited financial statements or reviewed financial statements, must file a financial accountability supplement (CoR30.2) with its annual returns. Currently, the financial accountability supplement has not yet been incorporated into the annual return filing application, and therefore such is currently waived.

### Which set of financial statements should be used to determine the turnover of the company or close corporation for purposes of filing annual returns?

A company or close corporation must use its **latest approved financial statements** for purposes of determining the turnover for purposes of filing annual returns.

### How do I determine the entity's turnover?

Turnover of an entity is the amount of money taken by a company or close corporation during its financial year. Roughly stated, the turnover of the company or close corporation is its revenue or income for the financial year.

### When must a company file audited financial statements, reviewed financial statements or a financial supplement with its annual returns?

All companies must prepare annual financial statements (“AFS”). Public and State Owned companies (SOC) must have audited AFS while a Private, Personal liability and Non-Profit company is not required to have its AFS **audited** unless –

- in the ordinary course of its business, it holds assets in a fiduciary capacity for persons who are not related to the company, in excess of R5 million in value at any time during the year;
- it is a non-profit company and was directly or indirectly incorporated by the state, a state owned company or foreign entity;
- it is a non-profit company and was incorporated primarily to perform a statutory or regulatory function in terms of any legislation or to carry out a public function; or
- its public interest score in that financial year, as calculated in accordance with Regulation 26 (2), is 350 or more or is at least 100 if its AFS have been internally compiled.

Any other company must have its AFS **independently reviewed** in accordance with ISRE 2400 unless –

- it is exempt, in terms of section 30 (2A) to have its AFS audited for that year or reviewed (every person who is a holder or has a beneficial interest in any securities issued is also a director of the company);
- it is required by its own Memorandum of Incorporation (“Mol”) to have its AFS audited; or
- it has voluntarily had its AFS audited for that year.

A company that is required to have its AFS audited, as indicated above, must file a copy of its latest approved audited AFS with its annual return while a company that is not required to have its AFS audited as indicated above, may file a copy of its audited or reviewed AFS with its annual return.

A company that is not required to file AFS with its annual return or that does not elect to file its audited or reviewed AFS as indicated above, must file a financial accountability supplement (CoR 30.2) with its annual return. The current version of the annual return filing application does not make provision for the filing of a financial accountability supplement. CIPC currently requires only the filing of audited financial statements by emailing the financial statements to [financialstatements@cipc.co.za](mailto:financialstatements@cipc.co.za).

### Will CIPC provide notification of the pending deregistration?

Yes. During the deregistration process notifications are mailed to the company or close corporation's registered postal address **as per CIPC records**, informing it of the intended deregistration and a request to either provide confirmation that it is still active or to file outstanding annual returns. At the time of notification, the company or close corporation's legal persona is not yet removed. The notification only serves to inform the company or close corporation of the intention to deregister it, if no objection or filing of annual returns occurs.

**Can deregistration be cancelled if the company or close corporation has been placed in deregistration due to annual return non compliance?**

Yes. If deregistration is due to annual return non compliance, deregistration process will be cancelled if all outstanding annual returns are filed while it is still in such status. If the cause for deregistration is any other reason, a written objection to deregistration must be filed by posting or hand delivering the objection to CIPC. This objection must be addressed to the Deregistration Unit of CIPC.

Once a company or close corporation is "final deregistered" no annual return or objection can be processed.

It is advised that the objection be posted by registered mail to CIPC in order to act as proof that the objection was received by CIPC and should have been processed.

**If the company or close corporation was deregistered for non compliance with annual returns, can the company or close corporation still be re-instated (restored)?**

Yes. Once a company or close corporation has been finally deregistered, the company or close corporation or any third person may apply for re-instatement upon filing of a Form CoR40.5 and if required, supporting documents. Upon the processing of the re-instatement application, the status will be changed to "in re-instatement process".