

## Annual Returns FAQ's

### What are Annual Returns?

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. **CIPC will remind companies and close corporations annually to file their Annual Returns provided that CIPC has the correct electronic contact information of directors and members.**

An Annual Returns is a statutory form in terms of the Companies and Close Corporations Acts. Failure to file an Annual Return will result in the CIPC assuming that the company and/or close corporation is not doing business or is not intending to do business in the near future. Non-compliance will lead to deregistration, which has the effect that the juristic personality is withdrawn, and the company and close corporation cease to exist. Active directors of companies and active members of close corporations may still be held liable for actions taken during their tenure and while the company or close corporation was in business.

When filing the Annual Returns, the company or close corporation **MUST** also file its latest Beneficial Ownership Declaration as well as its Audited Financial Statements (AFS) or Financial Accountability Supplement (FAS).

- Companies have 30 business days from the date when Annual Returns become due to file Annual Returns before they are considered non-compliant with the Companies Act. Late filing will result in penalties being incurred.
- Close corporations have, from the first day of their anniversary month up until the month thereafter, to file Annual Returns before they are considered non-compliant with the Close Corporations Act. Late filing will result in penalties being incurred.
- Annual Returns can only be filed electronically.

### What must I file with my Annual Returns?

When filing an Annual Return, you will be required to submit the below applications as well:-

- Beneficial Ownership Declaration
- AFS / FAS
- Compliance Checklist

## Will my personal details as a director or member be disclosed in the Annual Returns?

Due to POPIA (Protection of Personal Information Act) the disclosure of personal information e.g., identity numbers have been masked.

- 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, personal address, or contact details of a director or member.

## Can Annual Returns be filed manually?

No. Annual Returns can only be filed electronically via any of the CIPC electronic platforms:-

- BizPortal – [www.bizportal.gov.za](http://www.bizportal.gov.za)
- e-Services – [www.eservices.co.za](http://www.eservices.co.za)
- Self Service Centre

## How do I file Annual Returns?

No. Annual Returns can only be filed electronically via any of the CIPC electronic platforms:-

- BizPortal – [www.bizportal.gov.za](http://www.bizportal.gov.za)
- e-Services – [www.eservices.co.za](http://www.eservices.co.za)
- Self Service Centre

Step by step guide for e-Services is available on the Annual Returns service.

## 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.

Other organizations e.g., banks, Central Supplier Database, service providers may refuse service since the company or close corporation no longer exists. Directors and members active at the time of deregistration may be held liable for all debts.

## Must Beneficial Ownership Declaration be filed with the Annual Returns?

Yes. Before being able to file the Annual Returns, the company or close corporation must first ensure that CIPC has its latest Beneficial Ownership Declaration. If not, click on the “next” hyperlink on the Annual

Returns service to be redirected to the Beneficial Ownership Declaration service. Once filed, you need to proceed with the Annual Return filing process.

### **Who may file an Annual Returns on behalf of a company or close corporation?**

Due to the nature and the content required on an Annual Return, such must be filed by the company or close corporation or its duly authorized representative that is in a position to provide the required information.

When an Annual Return is filed, the company or close corporation will also be required to submit the latest Beneficial Ownership Declaration and AFS/FAS. For more information on Beneficial Ownership Declaration and AFS/FAS refer to the relevant FAQs for such services.

### **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 summary of the most relevant information regarding the company or close corporation and is filed with CIPC while a tax return focuses on taxable income of a company or close corporation in order to determine its tax liability to the State and is filed with SARS.

Compliance with the one does not mean that there is compliance with the other. It is two different processes, administered in terms of different legislation by two different government departments.

### **Will the Annual Returns replace the filing of other prescribed or statutory forms?**

No. An Annual Returns is not an amendment form and therefore, such changes or amendments must still be filed. Such changes can either be filed before or after the Annual Returns is submitted.

### **What are the Annual Returns used for?**

Annual Returns are used to determine whether the business is still doing business or will be doing business in the future and to ensure that CIPC has the latest information relating to the company or close corporation. If Annual Returns are not filed, CIPC assumes that the business is dormant and starts the process to remove the business from the register of active businesses. Also, Annual Return may be used to gauge the level of compliance with the Companies Act, especially financial reporting.

### **How will I know when to file?**

CIPC does provide e-mail / SMS reminders to directors (for companies) and members (for close corporations) PROVIDED that correct contact details have been provided to the CIPC when registering the business or updating its detail. If CIPC does not have the correct information, reminders cannot be issued. In such an instance the relevant director or membership change must be affected.

**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)
<p>The company was registered on 26 June 1995. If it is a <b>public or external company</b>, its first Annual Returns became due in <b>June 2003</b>. Therefore, Annual Returns should have been filed on an annual basis from June 2004 until June 2011 and should then continue to be filed annually every year thereafter.</p> <p>If the company is a <b>private company</b>, its first Annual Returns 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 Returns became due in June 2010. Therefore, Annual Returns should have been filed on an annual basis for June 2010 and June 2011, and</p>	<p>If the <b>close corporation</b> was registered on 26 June 1995, its first Annual Returns would be 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.</p> <p>If the close corporation was registered on 26 June 2009, its first Annual Returns 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
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The system will automatically calculate the Annual Return fee at the end of submitting the information.

### **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 an Annual Return 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 cannot be waived by the CIPC. The CIPC also cannot make payment arrangements for 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 re-filed.

### **If the company or close corporation was dormant/inactive for an Annual Returns period, should it still file and pay Annual Returns?**

Yes. The Companies Act, 2008 (and its predecessor Companies Act, 1973) and Close Corporations Act, 1984 do 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.

### **What will happen if the company or close corporation do not file Annual Returns?**

As indicated above, there are cost implications for late filings. Continuous non-filing will result in the company or close corporation being placed into deregistration and eventually being finally deregistered. During the deregistration process or final deregistration, government departments, SARS, banks and other organizations or the service providers of the company or close corporation may refuse to do business with the company or close corporation until such time that outstanding Annual Returns have been submitted.

Deregistration will be automatically triggered by the CIPC when two or more successive Annual Returns are outstanding. During deregistration companies and close corporations will be notified only by e-mail of the pending deregistration. The contact details as per the CIPC records will be used to dispatch the notification. If your contact details are outdated or incorrect, you will not receive such notification.

If finally deregistered, the business will have to be re-instated first before it can continue doing business.

## **The incorrect turnover was provided when the Annual Returns was filed, how can that be corrected?**

Once an Annual Returns 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 Returns year in question,
- (2) the entity name, registration number and the Annual Returns 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 Returns, and
- (5) a letter providing permission to the CIPC to credit/debit the difference.

This request and information must be logged via the CIPC online enquiry system [www.cipc.co.za](http://www.cipc.co.za) / enquiries.

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

The reason for deregistration is definable from the status assigned to your company or close corporation.

- Deregistration – voluntary deregistration due to voluntary deregistration application from company or close corporation itself.
- Final Deregistered – finally deregistered due to voluntary deregistration application from company or close corporation itself.
- AR Deregistration – CIPC placed the company or close corporation into deregistration due to non-compliance with Annual Returns.
- AR Final Deregistered – CIPC finally deregistered the company or close corporation due to its continued failure to comply with Annual Returns.

On BizProfile ([www.bizprofile.gov.za](http://www.bizprofile.gov.za) / login / BizProfile), under the History tab all applications received and processed relating to the company or close corporation is available.

## **Must financial statements be filed with the Annual Returns?**

Companies are required to either file their audited financials, reviewed financials or financial supplement with their Annual Returns.

All companies and close corporations, if it is required in terms of Companies Regulation 28 read with Companies Regulation 26 to prepare audited financial statements, must file such with CIPC at the same time of filing is Annual Returns via iXBRL by click on AFS or file such via the stand-alone service on e-Services.

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 when filing its Annual Return (FAS button) or file such via the stand-alone service on e-Services.

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

A company or close corporation must use its **latest approved financial statements** for the purpose of determining the turnover for the purpose of filing Annual Returns.

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

Annual Turnover is referred to in table CR 2B – Commission Fee Schedule of the Companies Regulation 2011 and Schedule 1: Fees of the Close Corporation Administrative Regulations.

Section 223, read with Regulation 164 of the Companies Act, clearly sets out what constitutes turnover, and the method required to calculate turnover for the purpose of determining the correct Annual Returns fee to be paid to the CIPC.

### **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 and close corporation 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 conduct 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 has 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.

### 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 Returns non-compliance?

Yes. If deregistration is due to Annual Returns non-compliance, deregistration process will be cancelled if all outstanding Annual Returns are filed while it is still in such status.

**WARNING:** The outstanding Annual Returns must be filed before the date the company or close corporation is finally deregistered.

If a voluntary deregistration, an objection letter must be e-mailed to [deregistrations@cipc.co.za](mailto:deregistrations@cipc.co.za). The objection letter must clearly state the reason for objecting to the deregistration and must be signed by the person who is objecting to the deregistration. Once signed, it must be scanned in either PDF or TIFF and e-mailed as a single e-mail with all attachments in PDF or TIFF to [deregistrations@cipc.co.za](mailto:deregistrations@cipc.co.za).

**WARNING:** The objection letter must be submitted to the CIPC before the date the company or close corporation is finally deregistered. If the company or close corporation was finally deregistered, the company or close corporation must apply for re-instatement. No supporting documents are required to object to the deregistration.

### **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” to allow for the filing of outstanding Annual Returns, Beneficial Ownership Declaration and AFS/FAS.

### **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 Returns 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 Returns 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 Returns 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 Returns non-compliance) or file all outstanding Annual Returns (if due to Annual Returns non-compliance) before applying to convert.

If the company is finally deregistered it must first be re-instated. Kindly refer to the Re-instatement section of the FAQs for the requirements to apply for re-instatement.

### **What sections of the legislation govern 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