

CIPC Webinars

Co and CC Annual Returns, Annual Return Deregistrations, Re-instatements

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Companies and Intellectual
Property Commission

a member of **the dti** group

Mandate of the CIPC

- Section 185(2)(d)(i) of the Companies Act, 2008
 - “*The Commission must exercise the functions assigned to it in terms of the Companies Act or any other law, or by the Minister, in the most cost-efficient and effective manner*” (own underlining)
- Section 186(1)(b) of the Companies Act, 2008
 - “*The objectives of the Commission are ... maintenance of accurate, up-to-date and relevant information concerning companies, foreign companies and other juristic persons ... and the provision of that information to the public and to other organs of state*” (own underlining)
- Section 186(1)(d) of the Companies Act, 2008
 - “*...the promotion of compliance with this Act, and any other applicable legislation*”

Mandate of the CIPC (cont...)

Section 187(4) of the Companies Act, 2008

• *“The Commission must*

(a) establish and maintain in the prescribed manner and form –

(i) an companies register; and

(ii) any other register contemplated in this Act, or any other legislation that assigns a registry function to the Commission;

...

(d) Register and deregister companies, directors, business names and intellectual property rights, in accordance with relevant legislation; and

(e) perform any related functions assigned to it by legislation, or reasonably necessary to carry out its assigned registry function.”

Annual Returns – Legislative Framework

	Companies	Close Corporations
Filing Requirements	Section 33 of Companies Act Regulation 30 of Companies Regulations	Section 15A of Close Corporations Act Regulation 16 of the Close Corporations Administrative Regulations



Annual Returns – Overview

All companies (including external companies) and close corporations

- on an annual basis
- within a prescribed time period
- regardless whether it was actually conducting business or not

Due period:

- Co: 30 business days from date of registration
 - Cc: 1 day of the anniversary until month thereafter
 - Filed later than the due period, penalty is applicable for the late filing
- Value of penalty is dependent on (i) entity type (company or close corporation) and (ii) indicated turnover**



Annual Return – Roll Out Dates

- 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

Annual Return – Fee Structure (Companies)

- Two different fee structures – one for companies and one for close corporations
- Companies – if AR became due after 1 May 2011

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	

- Companies – if AR became due before 1 May 2011

Annual Turnover	Private Incorporated Companies	and 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

Annual Return – Fee Structure (Companies)

- Close Corporations – independent of 1 May 2011 date

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
Restoration Application	R200	

Annual Return – Turnover

- Use the latest approved financial statements to determine the turnover amount – if financial year end February 2015 and due period is March, use February 2014 financial year
- If first annual return filing, and financial year not yet passed, indicate turnover as R0.00
- Definition for turnover – Practice Note 1 of 2016

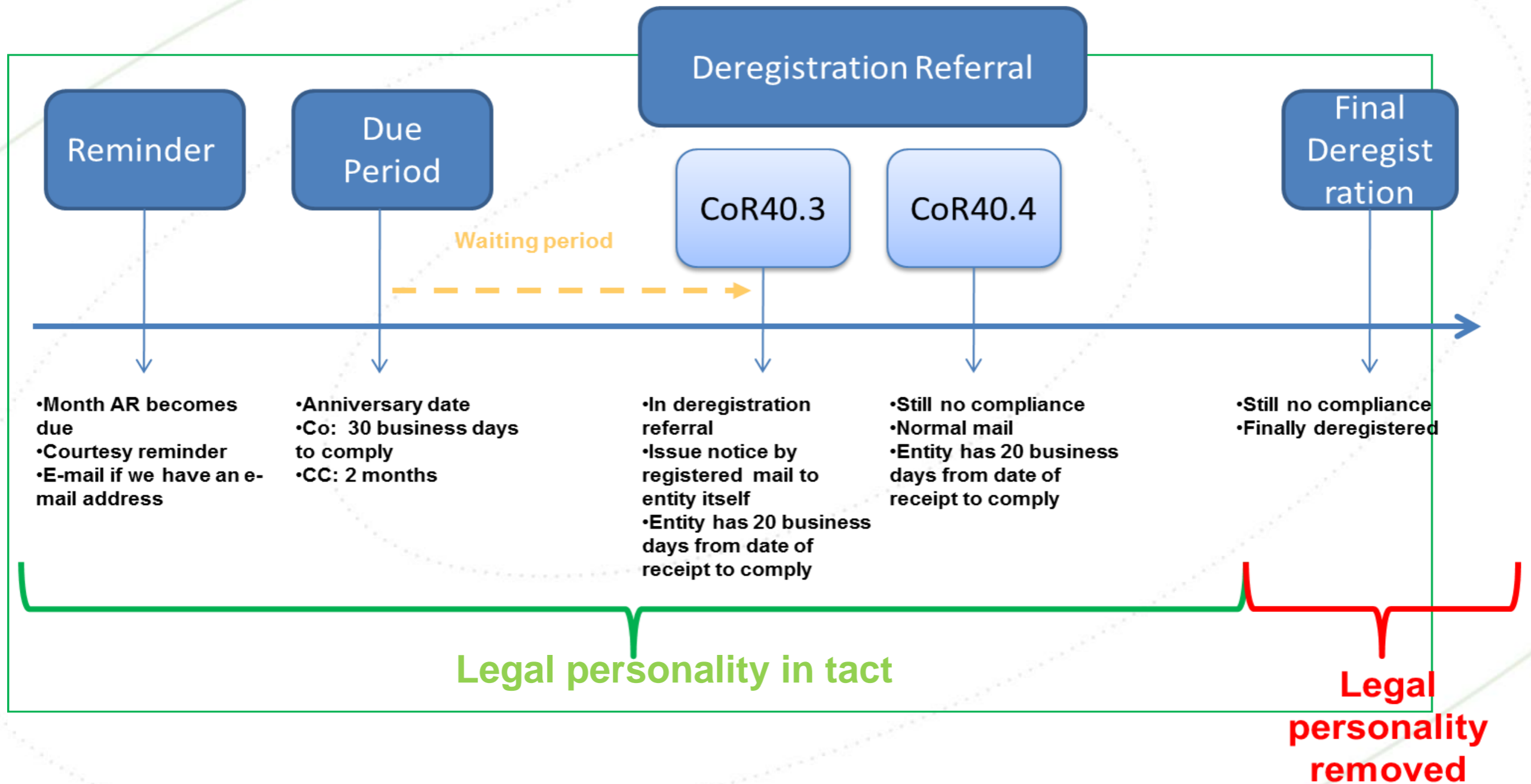


Annual Return - Purpose

- To confirm whether the co or cc is still in business/trading, or if it will be in business in the near future
- The assumption: if annual returns are not filed within the prescribed time period – co or cc is inactive and CIPC will start the deregistration process to remove co or cc from the register
- In line with CIPC mandate to keep an effective and up to date register of co and cc's
- Annual Returns is a compliance tool / mechanism
- Annual Returns is the source of regular updates
- Non-filing may have serious consequences



Annual Returns – Process



Annual Returns – Tips



- Ensure that correct reference number is provided for on deposit slip
 - **If incorrect reference was provided on deposit slip, CIPC will not credit back the penalty if not allocated in time**
- Confirm that billing occurred – if not, resubmit
 - If no billing, the transaction is invalidated and the filing will reflect as outstanding on the AR Calculator screen
 - Confirm via customer statement

Annual Returns – Tips



- Sporadic time out errors are experienced – due to high volume of web traffic to our data base and legacy systems
 - Try to file early in the mornings, late afternoons or weekends when web traffic is low
- Do not try to file or prepare to file annual returns a couple of days before penalty will incur or final deregistration
 - Resolution of enquiries takes time and they are attended to in sequence of being received

Annual Return – Challenges (CIPC Perspective)

- Lack of knowledge of requirements to legislation especially small businesses and primary property holding entities
- Assumption that another party will attend to administrative actions (e.g. bookkeeper, accountant or auditor)
- Directors / members do not want to be involved / receive these type of notifications and make their service providers (e.g. secretarial firm, bookkeeper, accountant or auditor responsible) responsible for managing their compliance
 - It is the directors / members responsibility to manage the compliance of their businesses and cannot delegate such responsibility
- Incorrect contact details (postal, e-mail and cell phone details) provided

Annual Return – Technical and Administrative support

Customer profiles:

- Blocked code; Updating of contact details;
- Invalid customer code and password; resetting password

resetpassword@cipc.co.za

Time out errors:

- File during low volume periods

early mornings, late afternoon and weekends

Blank certificate:

- Confirm that billing occurred
- If no, resubmit
- If yes, log ticket via CIPC website

www.cipc.co.za / enquiries category – company or close corporation annual return

Deposits:

- Deposit not allocated
- Transfer of funds in codes

www.cipc.co.za / enquiries category – allocation of deposit

Requests from credit and debit notes

www.cipc.co.za / enquiries category – company or close corporation annual return

Other, annualreturns@cipc.co.za

Next Final Deregistration Date

August 2016:

- Co's and CC's referred during 2013 – 2015 – 151 000
- Provided that SARS and Banks do not object
- List published on CIPC website – under Gazette's

Skipped and referrals after 1 April 2015:

- Co's and CC's referred 2013 – 2016 – 510 000

AR Deregistration – Overview

A business may be referred for deregistration:

- Upon application by any party subject to section 82(3)(b)(ii)
- If annual returns are outstanding for more than 2 successive annual return years
- If the Commission believes that the company/close corporation has been inactive for 7 years
- Before 1 May 2011, and under the 1973 Companies Act and Close Corporations Act, business would have been referred for deregistration where annual returns were outstanding for a period of six months

Deregistration – Legislative Framework

	Companies	Close Corporations
Deregistration Requirements	Section 82(3) of Companies Act Regulation 40 of the Companies Regulations	Section 82(3) of Companies Act Regulation 40 of the Companies Regulations



AR Deregistration - Notification of pending deregistration

- Mailed to the registered postal address **as reflected on the CIPC records**
- Informs co and cc's of intended deregistration, and requesting it to either provide confirmation that it is still active, or to lodge the outstanding annual returns.
- At the time of notification, the legal persona still exist



Annual Return Deregistration - Cancellation

- If deregistration due to non-compliance in respect of the lodging of annual returns: filing the outstanding annual returns while in deregistration
- If deregistration for any other reason: written objection to deregistrations@cipc.co.za
- Once a co or cc is finally deregistered, no annual return filing or objection can be processed

AR Deregistration – Issues on Notification of Pending Deregistration



- Addresses as per CIPC registers are outdated and therefore the notices does not reach its intended destination
 - Result: high volume of return mail and no notification
- Since registered mail, entities think it is AARTO fines and do not collect registered mail
- Registered addresses on CIPC registers are that of e.g auditor or accounting officer and they do not always action
- E-contact detail incorrect
- No legal duty to submit e-contact detail

Deregistration - Consequences

- The legal effect of the deregistration process: juristic personality is withdrawn and the entity ceases to exist
- Directors / members may be held personally liable for all debts / action that it incurred during such period – common law
- Immovable property becomes *bona vacantia*
- Companies:
 - Companies Act, 2008: Removal of company from the register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register. (own underlining)
 - Companies Act, 1973: The liability of every director, officer and member of the company shall continue and may be enforced as if the company had not been deregistered
 - Continue to exist as an association whose members are personally liable for its debts (companies)

Deregistration – Consequences (cont...)



- Close Corporation:

- If deregistered after 1 May 2011 the same as for companies apply
- If deregistered before 1 May 2011 repealed section 26 of the Close Corporations Act, 1984 apply
 - If close corporation was deregistered while having outstanding liabilities, the members at the time of deregistration shall be jointly and severally liable
- Possible reckless trading if directors / members allows the deregistration while knowing that there is outstanding debts

Re-instatement – Legislative Framework

	Companies	Close Corporations
Filing Requirements	Section 33 of Companies Act Regulation 30 of Companies Regulations	Section 15A of Close Corporations Act Regulation 16 of the Close Corporations Administrative Regulations
Restoration Requirements	Section 82(4) of Companies Act Regulation 40 of the Companies Regulations	Section 82(4) of Companies Act Regulation 40 of the Companies Regulations

Re-instatement – Overview

- Business may apply for re-instatement upon meeting the requirements
- Ground for re-instatement by business itself:
 - Proof that it was in business at time of being finally deregistered
 - Proof that it has immovable property
- After the re-instatement application has been filed, all outstanding annual returns must be lodged in order to change the status to “in business” and to legally re-instate the entity – position confirmed by case law



Re-instatement – Requirements

Main Forms:	CoR40.5	R200.00
Supporting Documents:	<ul style="list-style-type: none">• Certified ID copy of applicant (director/member)• Certified ID copy of the customer, filing the application• Multiple Deed Search reflecting if there is immovable property or not (compulsory)• Copy of advertisement in local newspaper giving 21 day calendar notice• Original letter from the Department of Public Works (if immovable property is involved)• (removed from requirements as from 2 March 2015) Original letter from National Treasury (if immovable property is involved)• Sufficient documentary proof, in the form of bank statements or other third party documents, confirming activity or economic value.	

Re-instatements@cipc.co.za

30 working days to process request

Re-instatement - creditors

- It is not advisable for creditors to follow administrative re-instatement process
- Any interested party may apply for re-instatement but Companies Regulation 40 states that process is only complete once outstanding annual returns have been filed
 - Only the co or cc itself has the duty to file annual returns
- Creditors are advised to approach the high court for a court order of re-instatement
 - Court order must be submitted to re-instatements@cipc.co.za for processing
 - Normal processing procedure applies for re-instatement court orders
 - **Attach customer code when submitting court order in order to receive automatic notification of processing**
 - Once court order is processed (status change to in business), the entity will be referred back into annual return deregistration within 2 – 3 week period
 - Legal personality is still in tact during the deregistration process



Re-instatement - Merger

- Deregistered - Merger – status 49
- CIPC cannot administratively re-instate if entity was merged with another – no provision in law

Section 82(4) of the Act, 2008 states that *“If the Commission deregisters a company as contemplated in subsection (3), any interested person may apply in the prescribed manner and form to the Commission, to re-instate the registration of the company.”*

Section 82(3) of the Act states the grounds for deregistration as (i) failure to file annual returns, (ii) the company has been inactive for seven years, and (iii) voluntary deregistration request since the entity ceased to carry on business.

Re-instatement – Merger_cont....

- CIPC can only administratively re-instate an entity if:-
 - (i) CIPC deregistered it because it has been inactive for seven years
 - (ii) CIPC deregistered it for annual return non-compliance; and
 - (iii) when the entity itself applied for its deregistration since it ceased carrying on business.

Re-instatement – Administrative support

- All applications must be submitted in a **single e-mail** with all attachments in PDF or TIFF to re-instatements@cipc.co.za
- If queried, the entire application with the correction must be resubmitted to re-instatements@cipc.co.za
- All enquiries must be logged via the CIPC website
 - www.cipc.co.za / enquiries
 - Category – company or close corporation re-instatement
- Re-instatement applications will only be tracked and billed PROVIDED that
 - Customer code is indicated on CoR40.5
 - R200.00 available within customer code
 - Tracking and billing usually occurs within 1 – 2 working days from date of receipt of application
- Compliance with supporting documents and completeness of application is evaluated after tracking of application
 - Processing occurs within 30 business days from date of tracking