

PRACTICE NOTE 6 OF 2009

ANNUAL RETURNS FOR COMPANIES AND CLOSE CORPORATIONS

In order to assist customers with lodgment of annual returns and the administrative processes, CIPRO provides these guidance notes which may change from time to time and all attempts will be made to communicate such timeously.

FOR EASE OF REFERENCE, "ENTITY/ENTITIES" WILL REFER ONLY TO COMPANIES AND CLOSE CORPORATIONS.

Annual returns for entities are primarily regulated by the following sections of the Companies and Close Corporations Acts:

For companies:

- Section 173 of Companies Act, 61 of 1973 (statutory duty to lodge annual returns)
- Section 73 of Companies Act, 61 of 1973 (deregistration and restoration due to non compliance with annual returns)
- Regulation 28 of the Companies Administrative Regulations (content and method of lodgement of annual returns)
- Part C of Schedule 1 of the Companies Administrative Regulations (prescribed and penalty fees)
- Part A of Schedule 1 of the Companies Administrative Regulations (prescribed fee for restoration if deregistration due to annual returns)

For close corporations:

- Section 15A of Close Corporations Act, 69 of 1984 (statutory duty to lodge annual returns)
- Section 26 of Close Corporations Act, 69 of 1984 (deregistration and restoration due to non compliance with annual returns)
- Regulation 16A of Close Corporations Administrative Regulations (content and method of lodgement of annual returns)
- Schedule 1 to the Close Corporations Administrative Regulations (prescribed penalties fees)



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NATURE OF ANNUAL RETURNS

An annual return is a statutory return in terms of the abovementioned legislation and therefore **MUST** be complied with, failure of which the Registrar assumes that the entity is not doing business or is not intending to do business within the foreseeable future. Non-compliance with the above leads to deregistration, which has the effect that the juristic personality is withdrawn and the entity ceases to exist.

PURPOSE OF ANNUAL RETURNS

An annual return contains a SUMMARY of the latest information of an entity which should be received by CIPRO at least once a year, the latest information pertaining to it. It further serves as a measure to confirm if an entity is still doing business or will be doing business within the foreseeable future.

The information provided on an annual return is important in the sense that it may be regarded as the latest information of the entity in the absence of compliance with any other statutory return(s). Therefore, if a company did not lodge a CM29/ or a CK2 to indicate a change in directorship or membership, and the annual return is the last document lodged with CIPRO that reflects the change, the annual return may be used as proof of the change. It should be noted that the lodgement of an annual return does not exempt an entity to lodge other returns like a change to directorship/membership or auditor/ accounting officer. Such must still be complied with in order to fulfill the entity's statutory obligations.

ANNUAL RETURNS VS TAX RETURNS

An annual return is a summary of the most pertinent information regarding an entity and focuses on the juristic personality thereof. A tax return focuses on taxable income of such entity in order to determine its gross turnover vs net profit for tax liability to the State. Both these statutory returns serve different purposes and follow different administrative routes. Therefore, compliance with the one does not constitute compliance with the other.

WHAT ENTITIES ARE LIABLE TO COMPLY WITH REGARDING ANNUAL RETURNS AND AS FROM WHEN

- Public and External Companies – rolled out August 2003
- Private and Incorporated Companies – rolled out May 2005
- Close Corporations – rolled out September 2008

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It is important to note that the Companies and Close Corporations Acts do not make a distinction between a dormant, active or shelf entity. Therefore, even if an entity is dormant (meaning that it has not major financial transactions for a specific period of time or is not currently doing business, but intends to do business in the foreseeable future or only has a private residential property) or a shelf entity it is still liable to comply with annual returns requirements.

WHEN ANNUAL RETURNS MUST BE LODGED:

Annual returns must be lodged within the anniversary month of an entity's incorporation up until the end of the month thereafter. A fixed penalty fee will be incurred for a period of six months after such lodgement period expires.

Example: If a company is incorporated in May 2007, the anniversary month will then be May the following year. Thus the first annual return must be lodged 1 May to 30 June 2008 and for the same period the years thereafter.

LODGEMENT OF ANNUAL RETURNS

Customers are strongly advised to lodge annual returns at the beginning of the due period (anniversary month of incorporation up until the month thereafter) and not to wait for the last week of the last month. This will limit possible inconvenience or problems that may be experienced during lodgement due to high volumes of compliance.

Further, it is not advisable to deposit monies for annual returns during the last two days of each month since interbank allocation of monies to CIPRO's bank account and to the applicable customer code which, may take up to two days provided that the correct reference number was provided on the EFT or deposit slip. Credit card and deposits made at CIPRO's premises in Pretoria is allocated immediately to customer codes. Once the monies have been allocated to the customer code, it must be followed up with the lodgement of annual returns via CIPRO's website only. Annual returns for companies and close corporations may only be lodged electronically and no manual lodgements are accepted and/or processed.

It should further be noted that annual returns are only regarded by law as being received if it has been accompanied with payment. Therefore, if an annual return reflects as incomplete it means that an annual return has been received without payment of the prescribed fee. In such instances the relevant monies must be deposited and annual

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return re-lodged.

Any annual return that notes a change to previous information lodged with CIPRO **MUST** be followed by the lodgement and registration of the appropriate statutory form by following the standard available processes for such registration. Compliance with the duty to lodge annual returns does not constitute or replace the entity's duty to comply with other statutory returns.

APPLICABLE FEE STRUCTURES FOR ANNUAL RETURNS:

	Private and Incorporated Companies	Public Companies	External Companies	Close Corporations
Turnover of less than R10 million	R450	R4000	R4000	R100
Turnover of R10 million or more but less than R50 million	R2500	R4000	R4000	R100
Turnover of R50 million or more	R4000	R4000	R4000	R4000
Penalty fee for each late lodgement	R150	R150	R150	R150
Restoration if deregistration due to annual returns	R150	R150	R150	R150

REFERENCE NUMBERS ON DEPOSIT/CREDIT CARD PAYMENTS/EFT PAYMENTS

The reference number on deposits **MUST** be constituted as follows:

(6 digits for the customer code)(Day)(Month)(Century)(Year)(2 digits for deposit number)



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ABCDEF2110200901

Or if customer code is only 5 digits long a zero must be added to the customer code to make up the required six digits.

ABCDE02110200901

If the reference number is not constituted as above, CIPRO cannot automatically allocate monies to the required customer code. If a wrong reference number was provided, CIPRO must be notified with a request to allocate the funds accompanied by proof of payment in order to manually trace the deposit. This will cause a delay in the customer being able to lodge an annual return and CIPRO cannot be held liable in such circumstances for any late lodgements.

REQUESTS FOR FINANCIAL REVERSALS

Requests for credit notes (waivers) will only be given attention by CIPRO if CIPRO contributed to the problem and sufficient proof is provided of such fact. If it is a company, an evaluation will be done if the annual return has already been lodged. Evaluations for close corporations may be evaluated upfront and if approved a tracking number will be provided to the customer to override the penalty fee upon lodgment.

The following may be considered sufficient proof but is not necessarily limited to such:

- Error or problem on website:
 - screen print out of the error/problem that indicates the nature of the error or problem with an electronic date stamp
 - saved tracking number for the annual return
 - proof of correspondence forwarded with clear indication of date on which dispatched and contact detail used
- Allocation of monies to customer code:
 - proof of payment and request for allocation of monies
- General assistance:
 - caller id for calls logged with the *DTI* contact centre
 - proof of correspondence forwarded with clear indication of date on which dispatched and contact details used
 - supporting documents to the request (if applicable)
- Requests for credit or debit due to incorrect turnovers supplied:
 - a letter from the customer who lodge the annual return explaining how error occurred and consent that the correct turnover may be confirmed with SARS on CIPRO's own discretion;

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lodged the annual return) indicating:

- capacity of representative
 - the amount of the incorrect turnover provided on the annual return
 - the true value of the turnover
- alternatively to the commissioned affidavit a copy of the approval annual financial statements

It is advised that all requests for financial reversal be forwarded to the Registrar before the end of the financial year which ends in March in order to ensure timeous processing before the closing of the financial accounts.

CONSEQUENCE OF NON COMPLIANCE WITH ANNUAL RETURNS

Failure to lodge annual returns within the specified two-month period will result in a penalty fee being levied. Further failure to pay within a further period of six months will result in deregistration of the entity. The final deregistration of an entity means the withdrawal of its status as a separate legal entity. As it no longer exists it will be unable to function or transact within the economy. Further, the directors or members of the entity may be held personally liable to creditors for all outstanding liabilities, including mortgage bonds and other debts since all legal responsibilities remain fully enforceable as though the entity has not been deregistered. Lastly, all assets are forfeited to the state in terms of the common law principle and practice of *bona vacantia*.

CORRECTION OF NON COMPLIANCE WITH ANNUAL RETURNS

If an entity has been placed in deregistration due to its failure to comply with annual returns, the entity may continue to lodge its annual returns while in deregistration (special exemption from normal practice granted) without bringing a written application or objection to the Registrar. The system will automatically take the entity out of deregistration and restore it back to active. If the entity has been placed in deregistration due to another reason a written application or objection must be made to the Registrar for cancellation.

If an entity has been finally deregistered due to failure to comply with annual returns an application may be made to the Registrar who **MAY** restore the entity. The application for the restoration of a company must be made on a letter and must indicate why annual returns were not lodged and provide reasons as to why it must be restored. The application must be accompanied by:

- letters from National Treasury and Public Works indicating that they do not object

to the restoration of the entity

- Notification of restoration application to the Registrar on a local newspaper within the area where business or property is situated
- proof of payment of the prescribed restoration fee of R150.00
- intention to lodge all outstanding annual returns and other statutory returns in order to update the information of the entity once restored
- for the restoration of a close corporation the application must be made on a CK3 accompanied by all required supporting documents

Sincerely,



p/f **Keith W Sendwe**

The CEO of CIPRO

Date: *26/11/09*