



**Companies
Registration
Office**

**An Oifig
um Chlárú
Cuideachtaí**



Filing an Annual Return in the CRO

Information Leaflet No. 23

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1. What is an annual return?

Every company, whether trading or not, is obliged to file an annual return (Form B1) with the CRO once at least in every calendar year.

The annual return is a document setting out certain prescribed information in respect of the company. It may be downloaded from the forms page at www.cro.ie.

A checklist of all documents to be attached to Form B1 when filed is contained in the form. In most cases, audited accounts¹ must be attached to the annual return. These accounts must cover a period which ends not more than nine months prior to the date to which the annual return is made up. (See 6 below as to the requirements for accounts.)

Annual returns must be completed in a legally recognised currency as at the effective date of the return (i.e. they must be completed in euro and not in Irish pounds where the return is made up to 1 January 2002 or later). Accounts for any period ending on 1 January 2002 or later are also required to be completed in euro or in another legally recognised currency as at the company's financial year-end.

2. What are a company's obligations in relation to preparation and filing of an annual return?

The annual return of a company is required to be made up in every year to a date which is not later than its **Annual Return Date** ("ARD").² (See 3 below as to the ARD.) An annual return with an effective date of 1 March 2002 or later must be delivered to the CRO **not later than 28 days after its effective date**.³ This means that if an annual return is made up to a date earlier than the company's ARD, it should be delivered to the CRO within 28 days after that earlier date.

If the 28 day filing period expires on a Saturday, Sunday or public holiday, the 28 day period is extended to the next working day.⁴

IMPORTANT NOTE

Where accounts are required to be attached to the return, the filing deadline is either the company's ARD plus 28 days or the company's financial year-end plus nine months and 28 days, whichever is the earlier.

Returns which are filed late with the CRO incur a substantial late filing penalty. (See 5 below as to the level of late filing penalty.)

If a company requires extra time to file its return, application may be made to the High Court by a company, on notice to the CRO, for an order extending the time for filing of a particular annual return.⁵ If granted, this allows the company extra time to file that return before the late filing penalty is incurred.

3. What is an Annual Return Date (ARD)?

Every company in existence on 1 March 2002 was assigned an ARD by law.⁶ New companies incorporated on or after 1 March 2002 have an ARD triggered by their date of incorporation.

A company's ARD in future years is 12 months from its previous year's ARD, unless the company altered that ARD.

¹ Accounts must be audited, unless the company is entitled to claim and does claim the audit exemption pursuant to Part III of the Companies (Amendment)(No. 2) Act 1999. For further information in this regard, see CRO Information Leaflet No. 10, The Audit Exemption.

² Section 127(1) Companies Act 1963 (inserted by section 60 Company Law Enforcement Act 2001)

³ Or 1 June 2002, whichever was the later: Section 127(2). See 9 below as to the position where a return has an effective date pre-dating 1 March 2002

⁴ Section 4(1) Companies Act 1990

⁵ Section 127(3) Companies Act 1963

⁶ Section 127(5)

During 2002, the requirement to attach accounts which predate the ARD by no more than nine months (see 6 below for the requirements for accounts) led to many companies altering their statutorily designated ARD. A company's ARD in future years is 12 months from its previous year's ARD, unless the company altered that ARD.

Alteration is effected by bringing the ARD forward to an earlier date or by extending it to a later date. (See 7 below, How does a company alter its ARD?)

4. How is the ARD determined?

A company's ARD may be checked by logging on to www.cro.ie > Online Services > Company Search Facility, and searching against the company name or number.

(a) In the case of a company incorporated before 1 March 2002, the ARD is either:

- the anniversary of the date which is six months after the date of incorporation⁷, or,
- if an annual return was filed by the company before 1 March 2002, the anniversary of the effective date of that return.⁸

If the company alters its ARD by bringing it forward to an earlier date, its ARD then becomes the anniversary of that earlier date. If the company alters its ARD by extending it to a later date, its ARD then becomes that later date.

(b) In the case of a new company incorporated on or after 1 March 2002, the first ARD is

- six months after the date of incorporation.⁹

No accounts need be attached to this first return.¹⁰

If the first ARD is extended by such company (see 7 below, How does a company alter its ARD?), this will shorten the time allowed before the company has to file a Form B1 with accounts.

Second and subsequent ARDs fall on the anniversary of the company's first ARD, unless the company elects to change its ARD.

5. What happens if an annual return is filed late?

A late filing penalty of €100 becomes due in respect of an annual return on the day after the expiry of the filing deadline i.e. 28 days after the effective date of the return, with a daily penalty amount of €3 accruing thereafter, up to a maximum penalty of €1,200 per return. This penalty is in addition to the standard filing fee of €30 per annual return. Revenue has confirmed that late filing penalties are not tax deductible.

In addition, an on-the-spot fine may be imposed by CRO where the company has a record of persistent late filing.

Auditors ought to be furnished with the books and records of the company well in advance of the annual return filing deadline if the company wishes to avoid incurring the late filing penalty.

⁷ Section 127(5)

⁸ Section 127(5). The statutorily-assigned ARD reflected the filing position as at 1 March 2002. Accordingly, an annual return filed on or after 1 March 2002, made up to a date prior to 1 March 2002, does not alter the ARD.

⁹ Section 127(6)

¹⁰ Section 127(7)

6. What are the requirements for accounts?

The accounts to be annexed to the annual return are required:

- (a) in the case of the first annual return to which accounts are required to be annexed, to cover the period since the date of incorporation;
- (b) in any other case, to cover the period since the end of the period covered in the last set of accounts which were filed with the CRO.

The accounts are further required to be made up to a date which is not earlier by more than nine months than the date to which the annual return is made up¹¹ (the "**nine month rule**").

Accordingly, if a company's ARD is more than nine months after its financial year-end, the company cannot retain that ARD and will have to either bring forward its ARD to an earlier date or extend it to a later date. If the company's ARD is less than nine months from its financial year-end, the company may wish to extend its ARD to a later date to take full advantage of the nine month rule.

Accounts must be audited unless the company is entitled to the audit exemption and claims it. See CRO Information Leaflet No. 10, The Audit Exemption (available on www.cro.ie).

7. How does a company alter its ARD?

Bringing the ARD forward to an earlier date: The ARD is set to an earlier date by filing a return made up to a date more than 14 days before the company's current ARD. The company's ARD in future years will then fall on the anniversary of the date to which the return has been made up.¹² If the annual return is made up to an earlier date, it should be delivered to the CRO not later than 28 days after the date to which it has been made up.

Extending the ARD to a later date: The ARD is set to an later date by filing Form B73, or in respect of the **first** ARD post-1 March 2002 for companies incorporated prior to that date, Form B73(a).

(a) If your company was incorporated **prior** to 1 March 2002 and wishes to extend its **first** ARD after 1 March 2002, it may do so by:

- delivering an annual return to the CRO not later than 28 days after this first ARD to which no accounts need be annexed; and
- nominating on Form B73(a), the new ARD, which date may be no later than six months after its first ARD.¹³

Note: Form B73(a) may be used only by companies which were incorporated prior to 1 March 2002 to extend the initial ARD which occurs on or after that date.

(b) If your company was incorporated **prior** to 1 March 2002 and it wishes to extend its **second or subsequent** ARD post-1 March 2002, it may do so by¹⁴:

- delivering an annual return to the CRO **not later than 28 days** after its current ARD, to which no accounts need be annexed; and
- nominating on Form B73, the new ARD, which date may be no later than six months after its existing ARD.

Form B73(a) and Form B73 may not be used back-to-back by a company; after using Form B73(a), it is necessary to deliver an annual return with accounts before again extending the ARD, using Form B73. Furthermore, Form B73 may be filed by a company no more than once in every five years.

¹¹ Section 7(1A) Companies (Amendment) Act 1986 (inserted by section 64 Company Law Enforcement Act 2001)

¹² Section 127(8)

¹³ Section 127(11). This option is limited to companies incorporated prior to 1 March 2002.

¹⁴ Section 127(9)

- (c) New companies incorporated on or after 1 March 2002 are due to file accounts with their second annual return, which is required to be made up to a date not later than 18 months post-incorporation, unless the company has altered its ARD. Such companies may only extend the ARD using the Form B73 procedure, outlined above. Form B73 ought not to be filed with such company's first annual return, as the effect of this to shorten the time allowed to the company before it has to file an annual return with its accounts.

IMPORTANT NOTE

It is a statutory requirement that Forms B73(a) and B73 be delivered to the CRO within 28 days from the company's existing ARD. As a matter of law, a Form B73(a)/B73 is ineffective and cannot be accepted by the CRO if it is filed more than 28 days after the company's existing ARD.

8. What enforcement measures may be taken by the CRO where there has been failure to file an annual return in compliance with the Companies Acts?

If a company fails to file its annual return in compliance with the Companies Acts, the company and its officers are liable to enforcement measures, including the imposition of an on-the-spot fine on the company and/or any person who is in default of delivering the return, and/or summary prosecution by the registrar of companies of the company and/or any officer in default. A fine of up to €1,904.61 can be imposed on a summary conviction for breach of the annual return filing requirements.

In addition, a company may be struck off the register and dissolved for failure to file an annual return. If a company is struck off, the assets of the company become vested in the Minister for Finance¹⁵, and if the business continues to trade, the owners will no longer enjoy the benefit of limited liability and so are personally responsible for any debts incurred so long as the company remains dissolved. Any person, who was director of a company at the date of sending to that company of a strike off notice due to the non-filing of annual return(s), may be disqualified from acting as director by the High Court, where the struck off company leaves outstanding liabilities. Such order made by made by the High Court on the application of the Director of Corporate Enforcement.

9. My company has to file an outstanding return made up to a date prior to 1 March 2002 - what should I do?

The registrar of companies may reject an annual return unless all earlier annual returns which are outstanding are also filed by the company.

An annual return which is made up to a date prior to 1 March 2002 should be completed on the current Form B1.

An annual return with an effective date prior to 1 March 2002 ought to have been delivered to the CRO within 60 days of the company's AGM for the year in question. Such return is liable to the late filing penalty from day 78 after the date to which the return has been made up (see 5 above for the late filing penalty).

For example, if a company held its AGM on 31 December 2001, its return should have an effective date of 14 January 2002, and ought to have been filed in the CRO by 1 April 2002, accompanied by a set of accounts with an accounting period ending no earlier than 14 April 2001. The late filing penalty is applied to such return with effect from 2 April 2002.

10. I have further queries about filing my company's annual return. What should I do?

The CRO recommends that you consult your professional adviser without delay, who will be best able to deal with the specifics of your company's situation and to advise you accordingly.

¹⁵ Section 28 State Property Act 1954



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