RETENTION OF RECORDS

Owing to various legislative requirements, documents must be retained for a certain number of years, depending on the legislation.

This policy refers to the legislation and identifies the timeframe in which certain documents have to be kept.

This is not an exhaustive list of documents and retention periods. Legal Department should be contacted should there be a document that is not included herein.

The policy is structured to refer to the relevant Act and then to the documents that should be kept and to the period of retention.

Multiple legislative requirements

Where different legislation refers to the retention of the same records/information, Columbus will adhere to the most **stringent of the legislative requirements.** For example the Value Added Tax Act states that invoices should be kept for five years from the submission of the return. However, the Companies would require the financial records to be kept for a minimum of seven years. Columbus' requirement is seven years retention period. Where legislation refers to different records (e.g. employment records versus accounting records), then each requirement is specific to that legislation and should be applied accordingly to the specific records.

It is important to note that the Companies Act, No 71 of 2008, has a general requirement, in respect of *any* information that a company is required to keep (whether in terms of the Companies Act or any other legislation), to retain such information for a period of at least seven years (or the longer period specified in the applicable legislation). Therefore, as a general rule, company records and information are retained for no less than seven years.

Retention of records for an "indefinite" period

In certain instances, legislation requires that records be kept for an "indefinite" period. The term "indefinite" is not defined in the legislation, but clearly requires that documents be retained for as long as the entity exists. In the case of a company, the obligation to retain documents in terms of the Companies Act, No 71 of 2008, only applies to an entity that remains registered as a company.

After an entity ceases to exist, other legislation may require records to be retained, but typically only for a period of time and no longer "indefinitely". In the case of liquidation or sequestration in terms of the Insolvency Act, No 24 of 1936, specific requirements apply to the retention of documents, discussed under Section 10 "Insolvency and Liquidation" below. As a company that has been deregistered can be re-registered, or litigation may follow in respect of the deregistered company, we propose that the records of a deregistered company be retained for a reasonable period after deregistration (we propose not less than three years).

1. COMPANIES

Companies Act, No 71 of 2008

Purpose: To consolidate and amend the law that relates to companies.

Retention form: Records must be kept in written form, or other form or manner that allows that information to be converted into written form within reasonable time.

	Document	**Retention period**
	Reference: Section 24	
1.1	General rule for company records: Any documents, accounts, books, writing, records or other information that a company is required to keep in terms of the Act and other public regulation	7 years or longer (as specified in other public regulation)
1.2	Notice of Incorporation (Registration certificate)	Indefinite
1.3	Memorandum of Incorporation and alterations or amendments	Indefinite
1.4	Register of company secretary and auditors	Indefinite
1.5	Notice and minutes of all shareholders meeting including: - Resolutions adopted - Document made available to holders of securities	7 years
1.6	Copies of reports presented at the annual general meeting of the company	7 years
1.7	Copies of annual financial statements required by the Act	7 years
1.8	Copies of accounting records as required by the Act	7 years
1.9	Record of directors and past directors, after the director has retired from the company	7 years
1.10	Written communication to holders of securities	7 years
1.11	Minutes and resolutions of directors' meetings, audit committee and directors' committees	7 years
	Reference: Section 50	
1.12	Securities register and uncertificated securities register	Indefinite

2. TAX

The Income Tax Act, No 58 of 1962, is the Act that governs all the laws relating to income taxes and donations and the Value Added Tax Act, No 89 of 1991, provides for the taxation of the supply of goods and services as well as the importation of goods. The Tax Administration Act, No 28 of 2011, has been effective from 1 October 2012. This Act has not removed the retention of documentation requirements from the Income Tax Act and the Value Added Tax Act and has included the requirements for document keeping in the Act.

Tax Administration Act, No 28 of 2011

Purpose: Section 29 of the Tax Administration Act (TAA), No 28 of 2011, contains the general record retention requirements for all Acts administered by the Commissioner (Schedule 1 of the South African Revenue Service Act, 1997) and states that a person must keep the records, books of account or documents that:

15. enable the person to observe the requirements of a tax Act;
16. are specifically required under a Tax Act or by the Commissioner by public notice; and
17. will enable the South African Revenue Service (SARS) to be satisfied that the person has observed these requirements.

Form of Retention: According to section 30 of the TAA, records can be kept:

a) in their original form in an orderly fashion at a safe place,
b) in any other form (including electronic) as may be prescribed by the SARS Commissioner in a public notice, or
c) in a form specifically authorised by a senior SARS official.

The SARS Commissioner published notice 787 to provide taxpayers with more detailed guidance regarding the retention of documents in electronic form. As a general matter, electronic records must be kept at a place physically located in South Africa. However, a senior SARS official may authorise for electronic records to be kept at a place physically located outside of South Africa if certain requirements are met. Additionally, records retained in an electronic format or computer software commonly recognised in South Africa are subject to less stringent requirements, for the purposes of the public notice.

	Document	**Retention period**
	Reference: Section 29(3)(a)	
2.1	Taxpayers that have submitted a return	5 years from date of submission
	Reference: Section 29(3)(b)	
2.2	Taxpayers who were meant to submit a return, but haven't for that period	Indefinite, until the return is submitted – then the 5-year rule applies
	Reference: Section 29(3)(c)	
2.3	Taxpayers who were not required to submit a return, but received income, had capital gains/losses or engaged in any other activity that is subject to tax or would be subject to tax but for the application of a threshold or exemption	5 years from the end of the relevant tax period
	Reference: Section 32(a)	
2.4	A person who has been notified or is aware that the records are subject to an audit or investigation	In addition to the 5- year rule, records must be retained until the audit is concluded or the assessment or decision becomes final. In this regard the extended retention period will apply irrespective of whether the assessments have prescribed in terms of section 99.
	Reference: Section 32(b)	
2.5	A person who has lodged an objection or appeal against an assessment or decision under the TAA	In addition to the 5- year rule, records must be retained until the audit is concluded or the assessment or decision becomes final
	Reference: Section 102	

2.6	While this is not a specific requirement in terms of the TAA that records must be retained for longer, on the basis that a taxpayer bears the onus of proving a valuation, an exemption and a deduction, where any of these items form part of a calculation for purposes of calculating the base cost for capital gains tax purposes, it is recommended that a taxpayer retain records for such longer period as will enable the taxpayer to discharge this onus	In addition to the 5-year rule, records must therefore be retained until the base cost calculation must be proved to SARS in the event of a capital gain or capital loss

Income Tax Act, No 58 of 1962

	Document	**Retention period**
	In addition to the records required in Chapter 4, part A of the Tax Administration Act, every employer must keep the records as indicated below	
	Reference: 4th Schedule, para 14(1)	
2.7	In addition to the records required in section 29 TAA, in respect of each employee the employer shall keep a record showing (para 14(1)(a)(-(d)): 18. amount of remuneration paid or due by him to the employee; 19. the amount of employees' tax deducted or withheld from the remuneration paid or due; 20. the income tax reference number of that employee; 21. any further prescribed information	5 years from the date of submission of the return evidencing payment (i.e. EMP201)
	Reference: 4th Schedule, para 14(3)	
2.8	In addition to the records required in section 29 Tax Administration Act, in respect of each employee the employer shall keep a record showing (para 14(1)(a)(-(d)): 22. amount of remuneration paid or due by him to the employee; 23. the amount of employees' tax deducted or withheld from the remuneration paid or due; 24. the income tax reference number of that employee; 25. any further prescribed information;	5 years from the date of submission of the return required by gazette (i.e. EMP501)
	Reference: 6th Schedule, para 14(a) – (d)	
2.9	Notwithstanding the provisions of Part A of Chapter 4 of the Tax Administration Act, a registered micro business must only retain a record of: (a) amounts received by that registered micro business during a year of assessment; (b) dividends declared by that registered micro business during a year of assessment; (c) each asset of that registered micro business as at the end of a year of assessment with a cost price of more than R10 000; and (d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000.	5 years from date of submission or 5 years from end of the relevant tax year depending on type of transaction

Value Added Tax Act, No 89 of 1991

	Document	Retention period
	In addition to the records required in Chapter 4, part A of the Tax Administration Act, every vendor must keep the records as indicated below.	
	Reference: Section 11(3)	
2.10	Where the zero rate is applied by any vendor documentary proof must be obtained and retained to substantiate the entitlement to the zero rate	5 years from the date of submission of the return
	Reference: Section 15(9)	
2.11	Where a vendor's basis of accounting is changed, the vendor shall prepare lists of debtors and creditors showing the amounts owing by the debtors and owing to the creditors at the end of the tax period immediately preceding the changeover period.	5 years from date of submission of the return
	Reference: Section 16(2)	
2.12	Records of importation of goods and documents - bill of entry, or - other documents prescribed by the Custom and Excise Act; - proof, by virtue of retention of the receipt of payment, that the VAT charge has been paid to SARS - Records must be maintained as referred to in section 20(8) where the supply is a supply of second hand goods or a supply contemplated in section 8(10) - statements as contemplated in section 54 (2A and 54(3)(a) of the Customs & Excise Act must be retained A ruling (requested no later than two months before expiry of the five year period and such documents to which the ruling relates Section 16 refers to Section 55 of the VAT Act and Part A of Chapter 4 of the TAA insofar that even if provided to SARS, the Commissioner may disallow a deduction for input tax unless the bill of entry or document concerned is retained by the taxpayer in accordance with these provisions.	5 years from date of submission of the return

	Reference: Section 55(1)(a)	

2.13	Vendors are obliged to keep the following records in addition to those required under Part A of Chapter 4 of the TAA: - record of all goods and services supplied by and to the vendor showing the goods and services, the rate of tax applicable to the supply and the suppliers or their agents, in sufficient detail to enable the goods and services, the rate of tax, the suppliers or the agents to be readily identified by the Commissioner and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques - a record of all importation of goods required to be obtained relating thereto in terms of section 16(2)(d) - documentary proof required to be obtained and retained in terms of section 16(2)(f) and (g) - the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describes the accounting system used for each tax period in the supply of goods and services; - any list required to be prepared in accordance with section 15(9) - any documentary proof required to be obtained and retained in accordance with section 11(3)	5 years from date of submission of the return
	Reference: Interpretation Note 31 – 30 March 2013	
2.14	Documentary proof substantiating the zero rating of supplies	5 years from date of submission of the return
2.15	Where a tax invoice or credit or debit note has been issued in relation to a supply by an agent or to an agent or a bill of entry as described in the Customs and Excise Act, the agent shall maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained.	5 years from date of submission of the return

Transfer Duty Act, No. 40 of 1949

	Document	**Retention period**
2.16	In addition to the records required to be kept by Chapter 4, part A of the Tax Administration Act, every auctioneer or person who has effected a sale (or other type of transfer) of property on behalf of some other person shall keep:	
	Reference: Section 15(1)	
2.17	A record of the sale, including - a description of the property sold - the person by whom the property has been sold - the person to whom the property has been sold; and - the price paid for the property	5 years from date on which the sale was effected
	Reference: SARS Transfer Duty Guide	

2.18	Other records to be kept by the abovementioned persons include: - signed transfer duty returns submitted to SARS - manual and/or eFiling receipts received from SARS regarding payment of the duty - exemption certificates (if applicable)	5 years from date on which these records were submitted to, or received from SARS

Securities Transfer Tax Administration Act, No. 26 of 2007

	Document	Retention period
	In addition to the records required to be kept under section 29 of the Tax Administration Act, the below-mentioned persons must retain sufficient record of a security transfer in order to enable that person to observe the requirements of this Act and satisfy the Commissioner that the requirements of this Act have been met.	
	Reference: Section 13(1)	
2.19	Any member, participant or person to whom a listed security is transferred must keep, for a period of five years, such record of every transfer which has been effected by the member, participant or person to whom the security has been transferred as may be required to enable the member, participant or person to whom the security has been transferred, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed	5 years from date of transfer of the security
	Reference: Section 13(2)	
2.20	A company or close corporation that issued an unlisted security must keep records of every transfer of an unlisted security issued by it as may be required to enable the company to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed. These records must be obtained from a person to whom an unlisted security is transferred, who is required to inform the aforementioned company of the transfer.	5 years from date of transfer of the security

3. CONSUMER PROTECTION

Consumer Protection Act, No 68 of 2008

Purpose: to promote a fair, accessible and sustainable marketplace, to provide for improved standards of consumer information and to prohibit certain unfair marketing and business practices.

Retention Form: Not specified

	Document	Retention period
	Reference: Section 27(3)(b) and Regulation 10 **Disclosure by intermediary**	

3.1	Information provided to a consumer by an intermediary - - Full names, physical address, postal address and contact details; - Id number and registration number; - Contact details of public officer in case of a juristic person; - Service rendered; - Intermediary fee; - Cost to be recovered from the consumer; - Frequency of accounting to the consumer; - Amounts, sums, values, charges, fees or remuneration specified in monetary terms	3 years
3.2	Disclosure in writing of a conflict of interest by the intermediary in relevance to goods or service to be provided	3 years
3.3	Record of advice furnished to the consumer reflecting the basis on which the advice was given	3 years
3.4	Written instruction sent by intermediary to the consumer	3 years
	Reference: Section 36(11)(b) and Regulation 11(6) **Promotional competitions**	

3.5	A person who conducts a promotional competition must retain: - full details, including identity or registration numbers, addresses and contact numbers of the promoter; - rules of promotional competition; - copy of offer to participate in promotional competition; - names and identity numbers of persons responsible for conducting the promotional competition; - full list of prizes offered in promotional competition; - a representative selection of materials marketing the promotional competition; - list of all instances when the promotional competition was marketed, including dates, medium used and places where marketing took place; - names and identity numbers of persons responsible for conducting the selection of prize winners in the promotional competition; - acknowledgement of receipt, identity number and the date of receipt of the prize by the prize winner; - declarations or affirmation that prize winners are not employees, directors, agents, or consultants who directly or indirectly controls or is controlled by the promoter or marketing service provider in respect of the promotional competition, or	3 years

4. PROTECTION OF PERSONAL INFORMATION ACT, 4 of 2013

The Protection of Personal Information Act, No 4 of 2013, aims to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations.

Section 14 of the Protection of Personal Information Act states that personal information must not be retained for any longer than is necessary to achieve the purpose for its collection. If there is no legal requirement to keep the information, it should be deleted. The Act therefore places an obligation on the person collecting the data to delete or remove it at a certain time.

Records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless:

(a) retention of the record is required or authorised by law;

(b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

(c) retention of the record is required by a contract between the parties thereto; or

(d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

5. ELECTRONIC COMMUNICATION

Electronic Communication and Transaction Act, No 25 of 2002 The **Electronic Communication and Transaction Act, No 25 of 2002,** regulates electronic communication and prohibits the abuse of information. Certain principles are stated for the electronic collection of personal information and also the timeframe in which this information must be kept.

	Document	**Retention period**
	Reference: Section 51(5), (7) and (8)	
5.1	Personal information and the purpose for which the data was collected must be kept by the person who electronically requests, collects, collates, processes or stores the information	As long as information is used, and at least 1 year thereafter
5.2	A record of any third party to whom the information was disclosed must be kept for as long as the information is used	As long as information is used and at least 1 year thereafter
5.3	All personal data which has become obsolete	Destroy

6. FINANCIAL INTELLIGENCE

Financial Intelligence Centre Act, No 38 of 2001

Purpose: Established a **Financial Intelligence Centre** and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities. The Act imposes certain duties on institutions and people who might be used for money laundering purposes and the financing of terrorist and related activities.

Retention Form: Not specified

	Document	**Retention period**
	Reference: Section 22 and 23	
6.1	Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, the accountable institution must keep record of: - the identity of the client; - if the client is acting on behalf of another person, • the identity of the person on whose behalf the client is acting; and • the client's authority to act on behalf of that other person; - if another person is acting on behalf of the client— • the identity of that other person; and • that other person's authority to act on behalf of the client; - the manner in which the identity of the persons referred to above was established. - the nature of that business relationship or transaction; - in the case of a transaction— • the amount involved; and • the parties to that transaction; - all accounts that are involved in— • transactions concluded by that accountable institution in the course of that business relationship; and • that single transaction; - the name of the person who obtained the identity of the person transacting on behalf of the accountable institution; and - any document or copy of a document obtained by the accountable institution The records may be kept in electronic format.	5 years 5 years

7. HEALTH AND SAFETY

Compensation for Occupational Injuries and Diseases Act, No 130 of 1993

Purpose: Provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment or for death by these injuries at their place of work. The Act states that certain records that relate to the earnings should be retained.

Form of Retention: Not specified

	Document	Retention period
	Reference: Section 81(1) and (2)	
7.1	A register or other record of the earnings and other prescribed particulars of all the employees	4 years after the date of the last entry in that register or record

Occupational Health and Safety Act, No 85 of 1993

Purpose: The **Occupational Health and Safety Act, No 85 of 1993,** was enacted to provide for the health and safety of employees at work and for people using plant and machinery and working in other hazardous employment conditions. Certain documents have to be kept based on the Administrative Regulations.

Form of Retention: Not specified

	Document	Retention period
	Reference: General Administration Regulations 2003, 9(1) and 5(1)	
7.2	An employer or user shall keep at a workplace or section of a workplace, as the case may be, a record for a period of at least three years, which record shall be open for inspection by an inspector, of all incidents which he or she is required to report in terms of section 24 of the Act and also of any other incident which resulted in the person concerned having had to receive medical treatment other than first aid.	3 years
7.3	A health and safety committee shall keep record of each recommendation made to an employer in terms of issues affecting the health of employees and of any report made to an inspector as contemplated in section 20(2) of the Act	3 years
	Reference: Asbestos Regulations, 2001, Regulation 16(e) and (f)	
7.4	Records of assessments and air monitoring, and the asbestos inventory	Min of 40 years
7.5	Medical surveillance records	Min of 40 years
	Reference: Hazardous Biological Agents Regulations, 2001, Regulation 9(1) and (2)	
7.6	Records of risk assessments and air monitoring results	40 years
7.7	Medical surveillance records	40 years
	Reference: Hazardous Chemical Substance Regulations,	

8. LABOUR RELATIONS

Employee relations are governed by a variety of legislation, including the Basic Conditions of Employment Act and the Labour Relations Act.

Basic Conditions of Employment Act, No 75 of 1997

Purpose: The **Basic Conditions of Employment Act, No 75 of 1997,** states that various documents relating to employees should be kept for future reference.

Form of Retention: Not specified

	Document	**Retention period**
	Reference: Section 29(4)	
8.1	Written particulars of employee must be kept after termination of employment	3 years after the termination of employment.
	Reference: Section 31	
8.2	Employee's name and occupation	3 years from the date of the last entry in the record.
8.3	Time worked by each employee	
8.4	Remuneration paid to each employee	
8.5	Date of birth of any employee under 18 years of age	
8.6	Any other prescribed information	

A reference exists that an employer who keeps records in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

Employment Equity Act, No 55 of 1998

Purpose: Provides for employment equity and applies to employers and employees.

Form of retention: Not specified

	Document	**Retention period**
	Reference: Section 26	
8.7	An employer must establish and maintain records in respect of its workforce, its employment equity plan and other records relevant to its compliance with this Act.	5 years after expiry of the plan
	Employment Equity Regulations, 2014 **Reference: Regulation 9(3)**	
8.8	A designated employer must retain their Employment Equity Plan	
	Reference: Section 21 **Employment Equity Regulations, 2014** **Reference: Regulation 10(9)**	
8.9	A designated employer must submit a report to the Director General once every year. This report should be retained after submission to the Director General	5 years after it has been submitted to the Director-General.

Labour Relations Act, No 66 of 1995

Purpose:	Applies to employees, employers, trade unions and employers' organisations and provides a framework where the parties can collectively bargain regarding remuneration, basic conditions of service and other matters of importance.
Form of retention:	Not specified

	Document	Retention period
	Reference: Section 53(4)	
8.10	Every Council must preserve the following documents in original or reproduced form: - books of account - supporting vouchers - income and expenditure statements - balance sheets - auditor's reports - minutes of its meetings (Reference: Section 54)	3 years from the end of the financial year to which they relate
	Reference: Section 98(4)	
8.11	Registered trade unions and registered employers' organisation must preserve the following documents in original or reproduced form: - books of account - supporting vouchers - records of subscriptions or levies paid by its members - income and expenditure statements - balance sheets - auditor's reports	3 years from the end of the financial year to which they relate.
	Reference: Section 99	
8.12	Registered trade unions and registered employers' organisation must keep a list of its members	Indefinite
8.13	Minutes of its meetings, in an original or reproduced form from the end of the financial year to which they relate	3 years
8.14	Registered trade unions and registered employers' organisation must keep the ballot papers for a period of three years from the date of every ballot	3 years
	Reference: Section 205(1) and (2)	
8.15	Every employer must keep the records in their original form or a reproduced form that an employer is required to keep in compliance with any applicable: - collective agreement; - arbitration award; - determination made in terms of the Wage Act	3 years from the date of the event or end of the period to which they relate
	Reference: Section 205(3)	
8.16	Employer must keep prescribed details of any strike, lock-out or protest action involving its employees	Indefinite
	Schedule 8, Section 5	
8.17	Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions	Indefinite
	Schedule 3, Section 8(a)	
8.18	The Commission must keep the following records: Books of accounts Records of income, expenditure, assets and liabilities	Indefinite

Unemployment Insurance Act, No 63 of 2002

Purpose:

applies to all employers and workers, but not to –

- Workers working less than 24 hours a month for an employer;
- Learners;
- Public servants;
- Foreigners working on contract;
- Workers who get a monthly State (old age) pension; or
- Workers who only earn commission.

	Document	**Retention period**
	Reference: Section 56(2) (c)	
8.19	Employers must maintain personal records of each of their current employees in terms of - names; - identification numbers; - monthly remuneration; and - address where the employee is employed	Refer to 13.6 under Income Tax Act

9. INSOLVENCY AND LIQUIDATION

Insolvency Act, No 24 of 1936

The **Insolvency Act, No 24 of 1936,** states that various documents relating to insolvent estates can only be destroyed after a certain period; care should therefore be taken that the documents are kept until this period has passed.

	Document	**Retention period**
	Reference: Section 155	
9.1	In respect of all insolvent estates which have been finally liquidated or in course of liquidation at the commencement of this Act, and only with the permission of the Master, the trustee may destroy all books and records in his possession relating to the estate	6 months from the confirmation by the Master of the final trustees' account
9.2	In respect of all insolvent estates which have been finally liquidated, all records in his office relating to the estate of that insolvent	After 5 years have lapsed from the rehabilitation of an insolvent

10. Revision History

Revision	Nature of change
0	New document
1	Changed the details of the CEO and updated the template

11. Document Approval

	Job Title	Co. No.
Prepared by	Secretary: Legal	9189
Approved by	Chief Executive Officer	5252