

Information for companies that failed to re-register

Section 408 of the new *Companies Act 2017* sets out the rules for a company that fails to re-register. It reads:

408 Failure to apply for re-registration

- (1) An existing company that has not applied for re-registration in accordance with section 407 is a nullity.
- (2) For the purposes of subsection (1), subparts 3 and 4 (but not subpart 5) of Part 16 apply as if the former company were a company that had been removed from the Cook Islands register under subpart 2 of Part 16.
- (3) On the application of a director, shareholder, or creditor of an existing company, the Court may—
 - (a) direct the Registrar to make an application for re-registration on behalf of the company; and
 - (b) make any other orders necessary to effect the re-registration of the company.

There are three main parts to section 408.

First, under the directive contained in Subsection (1), all companies that failed to re-register have been struck off from the active register.

Second, under Subsection (2), Subparts 3 and 4 of Part 16 (Sections 344-349) of the *Companies Act* apply to a company that failed to re-registered. These Subparts say that any property of the struck-off company vests in the Crown. The Act then provides guidance to Government on how to deal with that property. In practical terms for the struck-off company, this may make it difficult to undertake any transactions involving property. In order to deal with the property, the company must either be restored to the register. Further, any person with a claim to the property may seek a court order to allow the company to deal directly with the property under Section 345(1).

Third, Subsection (3) indicates how a company that has failed to re-register can come back into good standing. There are two main points in this subsection (3):

- First, it lists who is eligible to seek re-registration: a director, shareholder, or creditor; and
- Second, this person must obtain a court order directing the Registrar to re-register the company.

The online registry will accept a filing called a “Court Order for Re-registration.” If you are preparing to undertake this process, we suggest that you contact MOJ for further discussions.

Note that this process only applies to local companies as overseas companies that have failed to re-register must start over: they have to file an application for registration.