



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

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# Compliance Agenda — January 2020

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We are delighted to publish the latest edition of our newsletter, Compliance Agenda. It contains a round-up of all the latest legal updates of interest to Company Secretaries, Company Directors and Compliance Officers.

## Contents

1. [Involuntarily struck off, can I bring my company back to life?](#)
2. [Is your Company Secretarial Function fit for the future?](#)
3. [New Partnership Regulations, does your partnership need to take action?](#)
4. [Ultimate Beneficial Ownerships — What is 'Control via other means'?](#)

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## Involuntarily struck off, can I bring my company back to life?

Every year a significant number of companies are struck off the register of companies. Whilst some of these are done by voluntary means, others are struck off involuntarily by reason of their failure to make statutory filings as required under company law. These statutory filings are normally the annual return and associated financial statements.

It is of the utmost importance for companies to adhere to their statutory requirements, as failure to do so can leave directors exposed to a variety of undesirable repercussions. If the intention is to “get rid” of a company, there are a number of options available including voluntary strike off and members’ voluntary liquidation, intentional failure to keep the company’s filings up to date should not be considered as an option.

### What happens if a company is involuntarily struck off?

- The company’s assets become vested in the state;
- The protection of limited liability is lost;
- The directors become personally liable for any debts, including bank loans or financing;
- The director of corporate enforcement will be notified and is entitled to bring action against the directors including the imposition of a disqualification order.

If your company has been involuntarily struck off, restoration is possible, however the method will depend on the period of time that has passed since the company was struck off. If less than 1 year has passed since its striking off, the company can undergo an administrative restoration which will require the company bringing all of its statutory filings up to date and making an application for restoration to the Registrar of Companies. If more than 1 year has passed, restoration will only be possible by way of application to the high court.

If your company has been struck off the register, our highly experienced company secretarial team can advise on the means of having it restored to good standing in the most expeditious manner. We can also

advise on the various ways you can wind down and dissolve your company as well as assisting you in discharging your statutory obligations. For assistance with these, or any company secretarial matter, please [contact a member of our team](#).

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## Is your Company Secretarial Function fit for the future?

With the start of the new corporate year, now is the time to consider a review of your existing governance, statutory and regulatory compliance activities to ensure your organisation has the most efficient operating model.

Considerations such as the following are triggers for organisations to ensure their operating model is efficient in terms of live business needs, role responsibilities and resource requirements.:

- the increased demands being placed on the secretarial function, due to increased regulations and the expectations of your Board;
- the possible need to revive and realign the secretarial function, and expressing the importance of this to the organisation; and
- the desire to keep up with the pace of growth and change within the organisation.

In light of this, as part of our **Independent Company Secretarial Function Effectiveness review**, we consider these key triggers in conjunction with;

- **People:** correct organisational design in terms of areas of responsibility, resource requirements and value.
- **Procedures:** opportunities to enhance operating efficiencies and governance procedures.
- **Technology:** use of technology; for example, to manage the Board processes and automate your compliance requirements.

Working with the current Company Secretary and engaging with the relevant stakeholders, we will assess the various activities and tasks required of the team throughout the corporate year. This includes benchmarking the support that your Board and any Committees receive and how compliance with statutory and regulatory requirements are managed and controlled.

Please do not hesitate to contact [Elaine Hughes](#), our Head of Company Secretarial if you would like to discuss any aspect of our **Independent Company Secretarial Function Effectiveness review** and how this can benefit your organisation.

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## New Partnership Regulations, does your partnership need to take action?

The European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 (the “**2019 Regulations**”) were recently enacted, the purpose of which is to bring the statutory obligations of certain “qualifying” partnerships more in line with the Companies Act 2014 (the “**2014 Act**”). The 2019 Regulations replace the European Communities (Accounts) Regulations 1993.

### What is a qualifying partnership?

For the purposes of the 2019 Regulations, a qualifying partnership is a partnership, all of the members of which enjoy the protection of limited liability;

Or

a limited partnership, all of the general partners of which enjoy the protection of limited liability. This will include general partners which are limited companies, designated ULCs or partnerships, the beneficial owners of which have limited liability.

Pursuant to the 2019 Regulations, qualifying partnerships, will now apply Part 6 of the 2014 Act which pertains to the annual return and ancillary documentation, including financial statements, required to be

annexed to the annual return.

### **What will I need to do?**

Partnerships which fall into the above criteria will be required to file an annual return (form P1) accompanied by financial statements which include a balance sheet, profit and loss account, partners' report and auditor's report within 6 months of the partnership's financial year end. Failure to make these filings could result in the limited partner losing its limited liability protection and being liable for the debts of the partnership.

If you are unsure of your partnership's obligations in light of these new Regulations, our highly experienced [company secretarial team](#) is on hand to provide advice and assistance.

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## **Ultimate Beneficial Ownership – What is 'Control via other means'?**

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the "2019 Regulations") came into effect in 2019 and introduced the Central Register of Beneficial Ownership ("RBO") in Ireland.

Under the 2019 Regulations, a beneficial owner is defined as "any natural person(s) who ultimately owns or controls a legal entity, either through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the entity, including through bearer shareholdings, or through control via other means".

### **What is 'Control via other means'?**

Control via other means occurs when an individual, who does not hold directly or indirectly an ownership interest of more than 25% in an entity, still exercises significant control or influence over the entity in question. Listed below are some common examples of control via other means:

- Control through a shareholders' agreement;
- Control through the exercise of dominant influence; and
- Control via the power to appoint senior management within the Company.

The above listed examples do not necessarily give the individual in question a specific shareholding from which they can be considered a beneficial owner, but they do give the individual a controlling interest which can influence the Company's decision making.

### **What does this mean for you?**

It is important to consider the powers conferred both implicitly and explicitly to individuals within an entity prior to making your beneficial ownership disclosures with the RBO.

Aside from natural person(s) with an ownership interest, directly or indirectly, of more than 25% an entity, Company's should also consider whether there is any natural person(s) who may control the entity by other means, aside from an explicit ownership of shares.

It is possible that a situation may arise whereby there are several beneficial owners of a company, some of whom are beneficial owners through their indirect or direct shareholding, others through their control interest.

Should a Company ascertain that any individual(s) exercise control via other means, they will be listed as the beneficial owner of the Company for the purposes of the 2019 regulations.

If you do have any questions in respect to how these regulations affect you or your company, please do not hesitate to [contact a member of our company secretarial team](#).

# About the Author