

Chandrawat
& Partners

NOMINEE DIRECTOR

A short guide on nominee director services.

Table of Contents

<u>Content</u>	<u>Page no.</u>
Overview	2
Why is a nominee director required?	3
Legal duties	4
Risks associated	5
Benefits of having a nominee director	6
Roles and responsibilities	7
How we can help?	9

OVERVIEW



The name "nominee" is used to indicate that the director role is strictly a non-executive role in companies. A nominee director is a director in a company who has been appointed by financial institutions, banks, or investors to form part of the board of directors. They are a non-executive director appointed to protect the identity of the actual director. Nominees are used also to provide a local director for non-resident business owners although have the least involvement in running the company.

A nominee director is nominated to ensure that the interests of the institution/individual in question are adequately safeguarded. Also, the nominee director is appointed to perform duties towards the borrower company and its stakeholders. The nominee director will be liable for the institution or investor and also monitor the activities of the borrower company or investee. Even if it is a non-executive role, a nominee director must still abide by their general duties to ensure that the companies comply with the legal statutes.



WHY IS A NOMINEE DIRECTOR REQUIRED?

There are several reasons why one should have a nominee director in their company including:

1. Mandatory requirements for incorporation.
2. Ensures accountability in the company.
3. Fulfill the need for a resident director.

Appointing a nominee director can help a business in achieving certain level of privacy within the company as the director's name will be kept confidential and away from public record. A nominee director is a person who in the eyes of the public is the owner and director of a company. However, internally there is a contract between the actual owner and the nominee director with a Power of Attorney or an agreement.

LEGAL DUTIES



Nominee director duties will depend heavily on a company's needs and available resources in the country. Some of these duties include:

- to act in the best interests of the company and good faith for the company's and its members' wellbeing.
- to avoid any conflict of interest.
- to carry out duties with skill, care, and intelligence.
- to monitor the company's activities to ensure compliance with all regulations and laws.
- to participate actively in board meetings and non-executive decisions.

RISKS ASSOCIATED



There are many risks associated with the appointment of nominee director. These risks should be considered before the appointment of a nominee director, these include:

- Executive and non-executive directors are treated equally in the eyes of the law, with the same authorities authority and duties. Usually, nominee directors will also be held liable under the law in the case where the nominee director was aware of the offense or mistake or if it occurred due to his or her negligence.
- The nominee may disclose the arrangement to others, jeopardizing shareholders' identity and liability protection.
- The nominee may violate the terms of the agreement (e.g., using company assets for personal gain or abusing the given power).
- Due to the Ineffective management and control of the nominee director, it may result in business dysfunction.
- Nominee director may sometimes face civil and criminal penalties for regulatory violations.
- The nominee may become unreachable and fails to report to the appointing shareholders.

BENEFITS OF HAVING A NOMINEE DIRECTOR



- There are numerous benefits to the appointment of a nominee director. The main advantage to a nominee is the fact that he acts as a resident director and fulfills the requirement of a local director in a company.
- Another advantage of a nominee director is that the real owner's name and details will not appear in any public records, will not be linked to any assets, and cannot be held responsible for the conduct of the company.
- In addition to this, if the real owner decides to take control of the company, that can be easily done by bringing to light the nominee appointment contract and subsequently discussing the nominee appointment.
- A nominee director can help a person in opening a business bank account, as some banks may require the nominee director's signature for account opening.
- The director may after all look at company-related work but does not own shares in or receive benefits from the company. He will get monthly/yearly remuneration for his work.

ROLES AND RESPONSIBILITIES



1. Act as a resident director: There are several nations in the world requiring a local or resident director for a corporation. The necessity for a local director, one of the nominee director's primary responsibilities, is also satisfied by the appointment of nominee directors.

2. Participation and decision-making: A nominee director is a non-executive director; however, he should be actively involved in decisions about the financial performance of the investee company, fund-raising plans, including debt-raising, investments, etc. A nominee director should make his presence felt by placing his expertise at the disposal of the board of the investee company and actively participating in such meetings, which have a bearing on the interests of the nominator. He should also not abstain from voting on resolutions considered at the meetings of the board of the investee company that involves the nominator unless they involve any personal interests of the nominee director.

3. Maintain confidentiality: A nominee director should exercise adequate care and caution while dealing with unpublished price-sensitive information, in the case of a listed entity, having come to know of the same or being in a position where he is likely to be aware of such information. The nominee director is always required to abide by the code of conduct to regulate, monitor, and report trading by insiders framed by the listed entity.

4. Facilitating Power of Attorney: A Power of Attorney ("POA") is essentially an agreement to enable the nominee director to represent or act on behalf of a company. Through the POA, the nominee director will have the power to carry out activities such as signing contracts and opening bank accounts on the real director's behalf. This ensures that the nominee director is legally bound and can carry out only the actions stipulated in the POA.

5. Act as a "watchdog": A nominee director needs to oversee the operations of the investee company, ensure policy decisions are based on sound commercial lines, rationale, and adequate safeguards, and also act as a liaison between the investee company and the nominator.

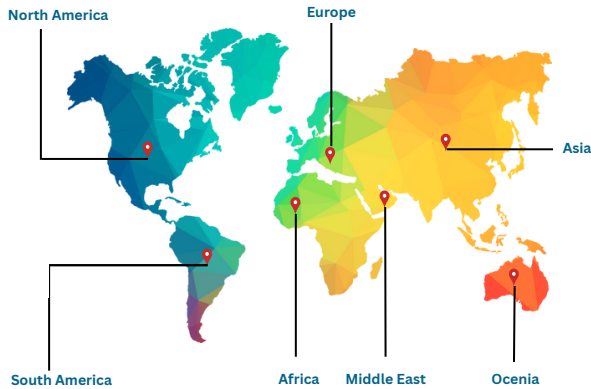


HOW WE CAN HELP?

- Our team has the capabilities and knowledge to assist clients in maintaining a good reputation while also remaining legally compliant at all times.
- With our nominee director services, the firm ensures confidentiality in the client's identity from the public records, and the client will still have full control of the company through the Power of Attorney ("POA").
- Our team can assist with drafting a nominee director agreement to be signed by all parties. The terms, conditions, and restrictions of the nominated director's appointment would be laid out in a written agreement that the client would sign.
- Our firm offers nominee director services to both private individuals and businesses while maintaining the utmost discretion and integrity.



SERVING CLIENTS WORLDWIDE



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