



Document Nominee Shareholder /Director - formal or informal

▪ Risks and Vulnerabilities of nominee shareholders and director

A nominee shareholder is the registered owner of shares held for the benefit of another person. A nominee director is a director appointed to the board of a company to represent the interests of his/her appointer on that board. In some cases, a nominee may hold the position of director or shareholder in name only on behalf of someone else. These arrangements may be controlled by a trust arrangement or civil contract between the nominee and actual director or shareholder.

The use of nominee shareholders and directors is a common phenomenon that occurs in most countries. In some countries there is also formal recognition in law of certain scenarios in which nominee arrangements are permitted. Nominees are utilised in a number of legitimate scenarios, including to shield the nominator from public disclosure requirements or to meet legal requirements of a country in which the company is incorporated (such as requirements for companies to have a director residing domestically). A range of service providers are known to offer formal nominee services, including legal and accounting professionals, Trusts and Corporate Services Providers, and professional nominees (people who rent their identification information to companies for nominee purposes only, but provide no additional services to the company).

The main use of a nominee arrangement is that the beneficial owner can keep their identity confidential and the information will not be disclosed as part of public registers. This can give a measure of privacy and confidentiality and protect one's identity. There are other methods such as setting up intermediary companies though these methods might cost more to implement than a nominee shareholder arrangement.

In some countries, members of the public can do searches of public registers for companies to identify their directors and shareholders. In the UAE, the National Economic Register currently contains basic company information including the name of a company's manager. The Beneficial Ownership and Shareholding register is currently not available to the public but is shared with the Ministry of Economy by all company registries. In this context, the use of nominees reduces the usefulness of shareholder registers filed publicly for the purpose of identifying beneficial owners and controlling persons. Likewise, the availability of corporate directors makes it more difficult for authorities to obtain information on the control of a corporate vehicle.

Notwithstanding the legitimate purposes, nominee directors and shareholders, particularly informal nominees, are a key vulnerability. While the use of nominees is lawful (or at least



not explicitly unlawful) in most jurisdictions, the role of the nominee, in many cases, is to protect or conceal the identity of the beneficial owner and controller of a company or asset. A nominee can help overcome controls on company ownership, disguise ownership and control, circumvent directorship bans imposed by courts and to evade laws designed to manage foreign business ownership and trade. These problems are greatly exacerbated when different aspects of a corporate vehicle implicate numerous countries. Criminals often create, administer, control, own, and financially operate companies in different countries, thereby preventing authorities in any one jurisdiction from obtaining all relevant information about a corporate entity.

As a result, the availability and use of formal nominee services are vulnerable to exploitation for the purposes of disguising beneficial ownership. The presence of nominee directors and shareholders in company records can also affect law enforcement investigations by delaying the identification of the beneficial owner, or by creating false links between companies that share nominees. Therefore, the ongoing merits of this practice are questionable in the context of the significant money laundering and terrorist financing vulnerabilities associated with their use.

▪ **Informal Nominee Shareholders and Directors**

Criminals often use informal nominee arrangements through which friends, family members or associates allege to be the beneficial owners of corporate entities. This can be particularly challenging given the informal and private nature of such arrangements. Discovering informal ties between the real beneficial owner and the nominee where there is no formal document, nor other proof that joins them together would require investigative practices that are beyond the reach of most company registries. This issue can be at least partially addressed by placing obligations on the nominees to disclose to the company registry the identity of the person on whose behalf they are acting and enforcing sanctions for false declarations as provided by the UAE law governing beneficial ownership.

Obscuring the relationship between the beneficial owner and an asset differs from the establishment of complex ownership and control structures in that, rather than aiming to create distance via legal complexity, it attempts to create a false or misleading picture of the true ownership and control structure. Techniques most often used to achieve this include the use of formal and informal nominees.

Informal nominee shareholders and directors perform the same function as formal nominee service providers, however their connection with the true director, shareholder, or beneficial owner is often of a personal, rather than of a professional, nature. Informal nominees commonly include spouses, children, extended family, business associates (who are being controlled by the actual owner or controller of the company), and other personal associates otherwise unrelated to the beneficial owner's business interests. The reliance on



familial nominees may stem from the ease with which the true beneficial owner can control and manage their activities.

Indeed, the relationship between an informal nominee and the actual owner or controller of a company or shares can vary significantly. Law enforcement agencies and FIUs have reported instances where foreign students and tourists have been convinced or coerced into establishing companies on behalf of third parties, sometimes in exchange for nominal payments or other personal benefits. These individuals are recorded as directors or controlling shareholders of these companies, however they are rarely involved in the operation of the company post-formation.

Unlike formal nominee arrangements, informal nominee arrangements will rarely be governed by a contractual agreement. Furthermore, while formal nominees will always seek to insulate themselves from the activities of the legal person or arrangement, informal nominees are more likely to declare to be the beneficial owner of the legal person or arrangement in an effort to maintain the fiction created by the true beneficial owner.

▪ **Transparency, disclosure and enhanced due diligence**

Given the vulnerabilities associated with the use of nominees, Registrars shall consider enhancing controls to regulate nominee arrangements with a view to promote transparency of beneficial ownership with the ultimate aim to fight corruption and money laundering activities which have been known to mask themselves behind nominees, in the UAE and elsewhere.

UAE enacted laws that require nominees to expressly identify themselves, to the entity itself and to their regulatory authority. This mandatory self-identification is meant to make the search for beneficial owners more transparent, as well as to impose penalties against nominees who fail to appropriately disclose their status.

UAE legislation empowers registrars to require a natural or legal person holding shares to disclose whether or not the person holds shares as trustee or nominee for or on behalf of another person and, if so, to disclose the name of the person and any instructions in relation to the transaction.

In addition to requiring all entities to disclose presence of nominee shareholders and directors in their structure, Registrars shall consider the following measures to limit their misuse:

- Mark all entities with nominee arrangements as high risk from compliance policy perspective



- Review the purpose of using a nominee arrangement and its nature
- Conduct Enhanced Due Diligence using a risk based approach
- Review the nominee agreement
- Ensure that all UBOs are declared and verified

Red flags that warrant EDD can include the following:

- Entity failing to disclose nominee arrangements when it is apparent that a nominee is present such as through a review of corporate documents, where the declared UBO is listed as the UBO of other licensees in the jurisdiction, and where the declared UBO is a CSP, both indicating the use of professional nominees
- Purpose of nominee arrangement is not clear
- Nominee agreement warrants suspicion
- Family or close associates acting as nominee shareholders or directors without any legitimate reason
- UBOs are PEPs, their associates or family members or individuals with adverse findings
- The client is reluctant or unable to explain their business activities and corporate history, refuses to cooperate or provide information and documents usually required for registration purposes
- Clients are setting up companies which appear strange given an individual's age (this is particularly relevant for underage or very young customers)
- Companies are registered under a name that indicates that the company performs activities or services that it does not provide

It is important that Registrars demonstrate their ability to capture and investigate all efforts to conceal true beneficial ownership, including through the use of nominees and complex corporate structures given that individuals have used and abused nominee arrangements to conceal their interest in legal entities and to obscure genuine beneficial ownership. The abovementioned controls should be adopted as soon as practical and all declared nominee arrangements should be reviewed as part of a remediation exercise.