



Is there such a person as a Nominee Director or Shareholder?

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Introduction

In the text below the concepts of nominee director and shareholder under Cyprus law are examined in turn. As a starting point it should be noted that the term 'nominee' is not legally defined in Cyprus, but it is used to denote certain types of relationships.

Nominee Director

A legal definition of The term 'nominee director' is nowhere to be found. In practice however, the term denotes a relationship whereby professionals provide, in the form of business, to clients, director services following the incorporation of a company in Cyprus. The provision of such services by professionals, falls within the ambit and is regulated by the Fiduciaries Law.

There is no distinction under Cyprus Law among the various types of directors. Whether executive or not, real or not real director, active or not, in the eyes of the law all directors of the Cyprus company have the same duties and obligations. Any breach from their part of such a duty or obligation may render them both on a civil and/or criminal level. It might be a custom for a professional or any other person who has been appointed as a director by the shareholders of the company to act based on their instructions and/or after consultation with them. This fact however, cannot be used as a defense for a breach of any of the director duties or any law. The liability towards third parties will remain with the director.

Despite the above, Cyprus Company Law foresees the possibility of certain people, not formally appointed as directors, to exercise control or materially influence the decisions of the directors. This is evident for example in s. 192 of the Companies Law. This section imposes an obligation on every company to a register of directors but it also states that, any person in accordance with whose directions or instructions, the directors of a company are accustomed to act shall be deemed to be a director and officer of the company. Furthermore, details of the name and address of such persons should be filed with the Registrar of Companies. The outcome of the above is that those persons who exercise influence over the directors of the company will also be deemed directors without however, relieving the appointed directors from their liabilities.

Nominee Shareholder

The term "nominee shareholder" is not a legal term. Rather it is used in a more general commercial context to describe the relationship between a person, who is registered as a shareholder in a company but in effect holds the shares for another person and essentially acts as an agent of that other person. This kind of relationship, as it is the case with the nominee director, is regulated by the Fiduciaries Law.

The fact that such a term is not recognized under Cyprus Company law is also evident from s. 112 whereby it is clearly mentioned that in the case of companies registered in Cyprus, no entry into the Register of Members or filing with the Registrar of any notice disclosing that a person is acting as a nominee or trustee of another person should be made.

Conclusion

In conclusion, persons and entities acting as 'nominees' should be particularly careful since they may have quite a bit more liability than what they thought when undertaking the role. This is further highlighted by the large number of legal actions being brought against nominees.



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