Confidentiality of company information: Challenges for nominee directors

Abstract

Company directors are subject to certain fiduciary duties discussed under common law and in statutory provisions. Directors’ fiduciary duties include duty to protect the confidentiality of company information. Any information that belongs to the company is to be used only by the company for the company. Such information is considered the property of the company and it must be used in the interest of the company. The objective of this paper is to discuss the duty of nominee directors concerning the confidentiality of company information. Nominee directors who actually represent their nominees on a board of directors will find their duty challenging as they might be expected by their nominees to provide them with certain information. The study is based on doctrinal and substantive analysis of selected jurisdiction as well as cases based on various jurisdictions. It is argued that nominee directors are in a vulnerable position as directors who are representing their nominees at the same time. Though it has been clearly legislated that the loyalty of a company should be to a certain extent be allowed to disclose information that would not jeopardize the company.

Author keywords

Company information, Confidentiality, Nominee director

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