

NOMINEE SHAREHOLDER IN INDIA



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OVERVIEW

Nominee shareholders in general are representatives or agents of the actual owner who continues to have control of the assets which the nominees hold on his behalf. A nominee shareholder is thus appointed by the actual shareholder in a company to represent him or her in a company. Nominee shareholders may be nominated before the formation of a company or before the title of the assets is passed to them.

The nominee shareholder will list their name and information on business filings (like articles of organization or incorporation) in place of the original shareholders name and information.

The rights and benefits of the true shareholder are also taken into consideration when appointing a nominee for the position. nominee shareholder is the official shareholder of the shares of a company and his/her name shall be registered in all public records or certificates.

The nominee shareholder shall exercise all voting rights conferred to the holder of the shares as provide by the articles of association (constitution) of the company, the services of a Nominee Shareholder are provided under specific terms and conditions contained in a nominee agreement that is signed by both the Nominee (who may also be a nominee service providing company) and the beneficial owner.



AGREEMENT FOR APPOINTMENT

An agreement for the appointment of a nominee shareholder in a company is extremely important and is one of the main prerequisites during the process of appointment. A nominee shareholder must file a statement of confidence stating that they have no rights to the assets until the founding proprietor passes away.

A custodial contract is a name given to this commitment stating that until the original shareholder is still alive, he or she has no command over the shares. The nominee holds the shares under this custodial agreement. Even a minor can be nominated for shares in a firm, and the firm's shares can be held by an individual or a business organisation.



When a share is transferred on the demise of a shareholder, nominee shareholders having all the rights of the original shareholders are appointed who are also a trustee for the legal heirs. When appointed, a nominee shareholder would appear to the world to be the owner of the shares, however the said arrangement is kept a secret. If the appointment is made in the correct manner, all of the rights and benefits in the shares are retained by the original owner, such as the right to sell the shares, receive dividends, and vote at general meetings. It is possible to appoint nominee shareholders without specifying them as the owner of shares in a will. It is merely a procedure to simplify the transmission of shares upon the demise of a shareholder. Thus all these particulars make an agreement of this nature extremely important to be produced while appointing a nominee shareholder in an organisation.





UTILITY OF AN AGREEMENT

There are various legitimate reasons for using a nominee shareholder arrangement, though the most common reasons would be to keep one's identity as the owner of a company confidential and to comply with the company requirements of the place where the company is located. This agreement, signed by both parties, should include acknowledgement that the nominee has no power over the shares and not the legal owner of the shares. All income and capital gains on the shares belong to the beneficial owner and transferring or returning of shares are executed upon the owner's instructions.



The primary reasons for forming a nominee shareholder agreement are listed below as-

PRIVACY AND CONFIDENTIALITY

The main use of this document is that the actual beneficial owner of the shares will not be seen to be on the public records as a shareholder of the relevant company. This can give a measure of privacy and confidentiality.

DECLARATION OF TRUST

A company will not record details of any trust arrangement on its share register (register of members) and so as far as the company is concerned, the person named in the company's share register is the registered shareholder. The beneficial owner of the shares will therefore often want its nominee to execute a declaration of trust in order to document the terms upon which its nominee holds the shares. A nominee can be either an individual or a body corporate.

LEGAL OWNERSHIP

Nominee shareholder agreements are legal hence if a person authorised to administer a deceased shareholder's will negligently allows someone else to take away the deceased person's shares, the nominee shareholder can take legal ownership of those shares by just signing his name under the nomination.



MAJOR RESPONSIBILITY OF A NOMINEE SHAREHOLDER AGREEMENT

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The purpose of the nominee shareholder is to uphold client secrecy by shielding the actual owner of the company from being publicly associated with the company. In a nominee shareholder situation, a confidential legal document (a declaration of trust, a deed of transfer, a nominee services agreement or another similar document) would be issued by the nominee and held by the beneficial owner. Such confidential document would evidence the actual state of affairs – namely, that the shares are only held by the nominee for and on behalf of the beneficial owner, and that only the beneficial owner has the right to dispose of those shares and is entitled to all benefits and profits deriving from those shares.

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RETURN OF SHARES

Shares must be registered in an off-balance-sheet accounts; this means that the shares cannot be used to pay off their debt obligations in the event of bankruptcy and the seizure of their property. The nominee is responsible for the return of shares to their rightful owner and the complete transfer of control upon request.



ACTING ON THE INTERESTS OF THE EMPLOYER

The nominee is responsible for acting solely in the interests of the employer. A certain range of free decision-making by the nominee shareholder is possible depending on the drawn-up agreement; however, these decisions must contain an objective and obvious benefit for the owner of the shares.

MAINTAINING CONFIDENTIALITY

The nominee is responsible for maintaining confidentiality and preventing disclosing of information about the employer, the state of their affairs, and their account.

PROVIDING INFORMATION

The nominee shareholder has the role of providing information to the owner of shares about all operations performed at his first request.

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RISKS AND VULNERABILITIES ASSOCIATED WITH THE APPOINTMENT

There are instances where nominee shareholders are appointed without any written proof of the arrangement, and the beneficial owner relies on a verbal agreement or a “gentlemen’s agreement” with the nominee. However the main risks incurred in this process are of losing the ownership of the shares, losing confidentiality, dealing with the consequences of unauthorised actions of the nominee, and of incurring significant legal costs to enforce rights.

Major risks associated with the appointment of a nominee shareholder can be stated as-

- A nominee shareholder is the enlisted proprietor of shares held to help the original beneficiary. At times, the nominee might be in a position of the main investor in name just for the benefit of another person. These arrangements might be constrained by a trust plan or common agreement between the nominee and the main investor.
- The use of nominee shareholders 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. However often nominees are utilised in a number of illegitimate scenarios, including to shield the nominator from public disclosure requirements or to meet legal requirements
- The nominee shareholder refuses to return the shares to the beneficiary. He exercises the rights or has the rights associated with those shares without the consent or knowledge of the beneficial owner. In particular, they are used as security and are sold of.



THE WAY AHEAD

Nominee shareholding is an arrangement which serves several purposes for both companies and shareholders. It is imperative for companies and shareholders who elect to make use of nominee services to comply with the provisions of the Companies Act 2013 in India, so as to benefit from the protections provided therein, and to avoid the penalties attached to the contraventions of the Companies Act 2013. Although the nominee shareholder arrangement is straightforward conceptually, it actually involves risks for the beneficiary which should be dealt with strongly failing which the beneficiary may find himself having to commence proceedings to assert his rights and ownership.

The beneficial owner must ensure that the person who has possession does not seek to enjoy rights that he is not entitled to enjoy, and that he can get the property back easily when he wants to. There are solutions which aim at eliminating the possibility of the nominee shareholder exercising rights over the shares that he is not entitled to exercise and at the very least ensure that the arrangement is in written form and can be produced as evidence. It is essential that a nominee shareholder agreement with clear and adequate provisions for the beneficiary be prepared and stamped with the relevant tax office of the country where the shares are located.



OUR NOMINEE SHAREHOLDER SERVICES

MAINTAINING CONFIDENTIALITY

Our services provide the client with confidentiality while also giving an audit trail as to the clients ownership of the shares. This can be useful when you need to prove ownership, such as to the tax authorities or other regulatory bodies.

APPROPRIATE DOCUMENTATION

On being appointed for the duties of Nominee Shareholder, we would hold the shares on trust in the form of a Nominee Shareholders agreement. Our Nominee Shareholders agreement would serve the purpose of ensuring that the identity of yours as a beneficial owner is only known to us but the nominee shareholder name is filed with the Companies Registry.

DECLARATION OF TRUST

We provide the client with a Declaration of Trust with certification by a Notary Public. Through a Declaration of Trust (DOT), an agreement between the client and the nominee shareholder, the client retains control of the shares in their company. The nominee shareholder will have voting right and power to decide in specific matters only as instructed by the beneficial owner.

MONITORING AND PROCESSING

Our nominee services include the monitoring and processing of entitlement for rights issues, bonus issues, and dividends for clients. The nominee shareholder will only transfer the shareholding upon receiving the written instructions from the beneficial owner. We can also act on our client's request to appoint a proxy for attending general meetings of the companies in which the shares are held, attending to restricted offers for sale to minority shareholders, and handling mandatory general offers on behalf of clients.

SERVING CLIENTS WORLDWIDE



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