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Governance Insights: Nominee Directors – Fiduciary Obligations and the Limits of Information Sharing

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The corporate life of a nominee director has been characterized as having the potential to be “neither happy nor long.”

In this *Governance Insights* article, we discuss the fundamental fiduciary considerations that nominee directors, nominating shareholders and companies should bear in mind when negotiating and implementing a director nominee arrangement. Our key takeaways are:

- A nominee is subject to the same fiduciary obligations as other directors.
- A nominee may share confidential information with their nominating shareholder only if the company, whether impliedly or expressly, consents; however, a nominee cannot contractually override their fiduciary obligations to act in the best interests of the corporation.
- A nominee should actively manage conflicts of interest that may arise due to their relationship with their nominating shareholder.
- Even where information sharing has been sanctioned by the board, a nominee should be mindful of securities laws that prohibit selective disclosure of material non-public information.
- A nominating shareholder who misuses information improperly shared by a nominee may be liable for breaches by the nominee.

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