Journal of Emerging Legal Studies
Vol. 1 No. 1, pp. 28-41 | October 2026
DOI: https://doi.org/10.24191/jels.v1i1.1003

Accountability of Shadow and De Facto Directors in Malaysia: A Comparative Analysis with the United Kingdom

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ARTICLE INFO

Article history:
Received : 27 August 2026
Accepted : 21 October 2026
Published : 30 October 2026

Keywords:
Shadow Director
De Facto Director
Corporate Accountability
Directors' Duties
Corporate Governance

Cite as:
Abg Abdul Malik, D. N. I., Abdullah, N. A., Madso @ Mohd Sah, I., & Zakaria, M. R. A. (2026). Accountability of shadow and de facto directors in Malaysia: A comparative analysis with the United Kingdom. *Journal of Emerging Legal Studies, 1*(1), 28–42. https://doi.org/10.24191/jels.v1i1.1003

ABSTRACT

Corporate accountability should not depend solely on formal appointment where an individual effectively exercises the powers of a director. Shadow and de facto directors present a particular challenge because they may influence or participate in corporate decision-making without formally occupying a position on the board. In Malaysia, section 2(1) of the Companies Act 2016 adopts a broad definition of "director" capable of extending responsibility beyond formally appointed directors. Nevertheless, Malaysian law does not expressly distinguish shadow directors from de facto directors, and uncertainty remains concerning their identification, the duties applicable to them, and the practical enforcement of liability. This article examines the Malaysian framework and compares it with the more developed approach adopted in the United Kingdom. Using comparative doctrinal analysis, the article evaluates statutory provisions, judicial principles and enforcement mechanisms governing informal directorship in both jurisdictions. It finds that while Malaysia already possesses a sufficient conceptual foundation based on substance over form, the United Kingdom (UK) provides greater clarity through express statutory recognition, developed judicial guidance and complementary enforcement mechanisms. The article argues that Malaysia should not replicate the UK framework wholesale. Instead, the Companies Act 2016 should expressly recognise shadow and de facto directors, provide non-exhaustive factors for their identification and clarify the application of directors' duties. Such reforms would improve legal certainty while preserving the flexibility required to address different forms of informal corporate control.

1. INTRODUCTION

Directors occupy a central position within the corporate structure. They manage the affairs of the company, participate in major decisions and exercise powers that may significantly affect shareholders, creditors and other stakeholders. Because of these powers, company law imposes various duties and responsibilities upon directors. The conventional legal framework assumes that those exercising directorial power are formally appointed to the board. In practice, however, corporate control does not always follow formal organisational structures (Whitley, 1999). A person may participate extensively

in the management of a company without having been properly appointed as a director. Similarly, an individual may remain outside the board while exercising significant influence over the directors and the decisions they make (Adams et al., 2010). This creates an important accountability problem: a person may exercise substantial corporate power while attempting to avoid the responsibilities normally attached to directorship.

Company law addresses this problem through the concepts of de facto directors and shadow directors (Moore, 2016). A de facto director generally refers to an individual who acts as a director despite lacking a valid or formal appointment. A shadow director, by contrast, ordinarily remains outside the formal board but exercises influence such that the directors are accustomed to act according to that person's directions or instructions. Although both concepts concern informal directorship, they represent different ways in which corporate power may be exercised.

Malaysia has already adopted a broad approach to directorship. Section 2(1) of the Companies Act 2016 includes a person occupying the position of director by whatever name called and also a person in accordance with whose directions or instructions the majority of directors are accustomed to act. The provision therefore enables courts to consider the substance of a person's conduct rather than merely his or her formal title. However, several uncertainties remain. The Companies Act 2016 does not expressly identify shadow and de facto directors as separate statutory categories. It also provides limited guidance on the threshold of conduct, influence or control required before a person should be treated as a director. Consequently, the identification and accountability of informal corporate controllers remain substantially dependent upon factual circumstances and judicial interpretation. The underlying study found that Malaysian law offers a strong conceptual basis but continues to face uncertainty in relation to shadow directorship and its practical enforcement. The United Kingdom (UK) provides a useful comparison. The UK company law expressly recognises shadow directors under section 251 of the Companies Act 2006, while case law has developed more detailed principles governing both shadow and de facto directors. The UK regime further connects informal directorship with directors' duties, insolvency liability and director disqualification.

Against this background, this article addresses the continuing uncertainty in Malaysian company law concerning the identification and accountability of shadow and de facto directors, particularly the absence of clear statutory distinctions and guidance on the degree of conduct, influence or control required before a person may be treated as a director. Accordingly, the article examines the accountability of shadow and de facto directors under Malaysian corporate law and evaluates whether selected aspects of the UK framework may provide useful guidance for Malaysia. It seeks to answer three questions: how Malaysian law currently identifies and regulates shadow and de facto directors; what legal and practical uncertainties arise under the existing framework; and whether selected features of the UK approach may assist in addressing those uncertainties. The article argues that the Malaysian framework does not require a complete restructuring, but that its existing substance-over-form approach should be strengthened through clearer statutory recognition, more developed judicial guidance and appropriate enforcement mechanisms.

2. LITERATURE REVIEW

Existing literature on shadow and de facto directors generally emphasises the distinction between formal appointment and actual corporate control. A de facto director is commonly described as a person who assumes and performs functions associated with directorship despite not being formally appointed. A shadow director, on the other hand, exercises indirect influence over the board, particularly where the directors are accustomed to acting according to that person's directions or instructions (Varghese, 2026).

A consistent theme in the literature is the application of the substance-over-form principle (Idensohn, 2010). Rather than asking only whether a person appears in the company's register of directors, courts and commentators increasingly consider the individual's actual participation, authority and influence within the company. This approach reflects the practical reality that corporate power may be exercised outside formal board structures (Pettigrew & McNulty, 1995). Nevertheless, the literature recognises significant difficulties in distinguishing informal directors from other corporate actors. A senior manager may exercise considerable operational authority without becoming a de facto director

(Tan, 2020). Similarly, major shareholders, financiers, creditors and professional advisers may influence corporate decisions without becoming shadow directors (Griffin, 2003). The difficulty therefore lies in determining the point at which legitimate involvement becomes the exercise of directorial power or control.

The literature further shows that identification remains highly fact-sensitive (Institute of Chartered Accountants in England and Wales, 2015). For a de facto director, relevant considerations may include participation in management, involvement in board-level decision-making and the assumption of functions normally performed by directors (Tan, 2020). For a shadow director, the focus is generally on whether there is a continuing pattern in which the board habitually follows another person's directions or instructions (Varghese, 2026). The UK dominates much of the developed legal literature in this area. Cases such as *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180, *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 (CA), *Holland v Revenue and Customs Commissioners* [2010] UKSC 51 and *Smithton Ltd v Naggar* [2014] EWCA Civ 939 have contributed significantly to the development of principles concerning informal directorship. The UK literature also examines the extension of directors' duties to shadow directors and the relationship between informal directorship, insolvency and disqualification.

By comparison, Malaysian scholarship and judicial development remain more limited. While section 2(1) of the Companies Act 2016 provides a broad statutory basis for recognising informal directorship, there is comparatively less guidance on the precise threshold for identifying shadow and de facto directors and the application of liability to them (Abdul Raof et al., 2025). Two related gaps therefore remain. First, a doctrinal and practical gap arises from the difficulty of distinguishing genuine directorial control from legitimate managerial, shareholder or professional influence. Secondly, a comparative gap remains because much of the developed jurisprudence originates from the UK, while the implications of these principles for Malaysian corporate law have received less extensive analysis.

This article addresses these gaps by evaluating whether Malaysia's current legal framework adequately translates informal corporate control into legal accountability and by considering which aspects of the UK approach may appropriately strengthen the Malaysian regime.

3. METHODOLOGY

This article employs a comparative doctrinal legal methodology (Bhat, 2020). The analysis focuses on primary legal materials, including the Companies Act 2016 in Malaysia, the Companies Act 2006 in the UK, relevant UK insolvency and disqualification legislation, and judicial decisions concerning shadow and de facto directors. Secondary materials, including academic articles, books, governance reports and professional commentary, are used to evaluate the development and application of the relevant legal principles. The UK is selected as the principal comparator because Malaysian company law developed within the common-law tradition and because the UK has developed a comparatively extensive statutory and judicial framework governing informal directorship.

4. FINDINGS AND DISCUSSION

This section begins by examining the Malaysian legal perspective on shadow and de facto directors. After establishing the Malaysian position, the article explores the corresponding legal framework in the UK. Finally, the section presents a comparative analysis of the two jurisdictions.

4.1 Accountability of Shadow and De Facto Directors in Malaysia

The Malaysian legal framework begins with section 2(1) of the Companies Act 2016. The provision adopts a broad definition of “director” and is capable of reaching individuals who exercise directorial functions without formal appointment. The phrase “occupying the position of director” provides an important statutory basis for de facto directorship. A person may therefore fall within the concept of director where his or her conduct demonstrates that directorial functions have effectively been assumed, even though formal appointment is absent or defective.

The same provision also includes persons in accordance with whose directions or instructions the majority of directors are accustomed to act. This wording incorporates the essential characteristics normally associated with shadow directorship. Malaysia therefore does not rely exclusively on formal

corporate title. Its statutory framework already recognise that legal accountability may depend on the reality of corporate control. Figure 1 below illustrates the conceptual map of the principles governing shadow and de facto directors.

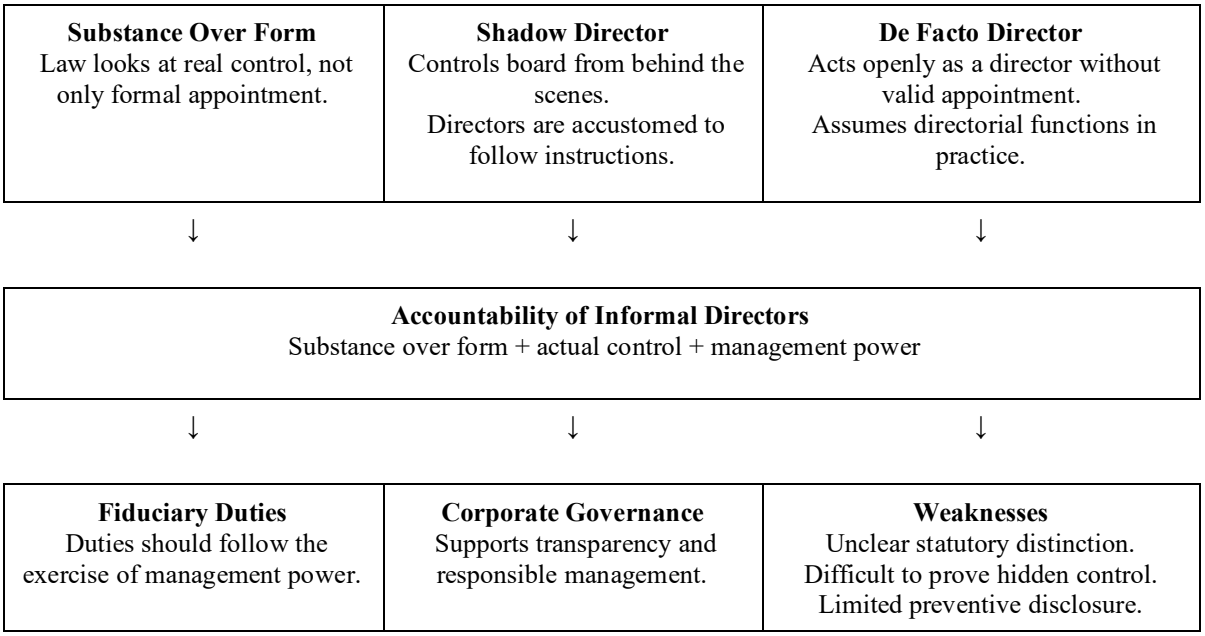


Figure 1: Conceptual Map of the Principles Governing Shadow and De Facto Directors
Source: Authors

The courts also play an important role in strengthening this principle. Since informal directorship depends heavily on facts, the court must look closely at the actual conduct of the alleged director. The court is not limited to what the company calls that person. It may consider whether he had real influence over the board, whether the directors followed his instructions, whether he participated in management, and whether he acted in a way that only a director would normally act. In *Cepatwawasan Group Bhd v. Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar* [2008] 2 MLJ 915, the court considered the need to show a pattern or custom of the directors acting according to the alleged controller's directions. This supports the idea that liability should be based on the real position of the person within the company, not merely his official title. This approach was further developed in *PP v Dato' Sri Mohd Najib Hj Abd Razak* [2020] 5 MLRH 232 (High Court) and, on appeal, in *Dato' Sri Mohd Najib Hj Abd Razak v Public Prosecutor* [2022] 1 MLRA 354, where the Court of Appeal held that shadow directorship turns on whether a person exercised significant influence over the company such that its directors acted. A higher threshold, however, was set in *Lim Seng Boon & Anor v Chew Shin Yong, Mark & Ors* [2022] MLJU 1514 whereby the court considered whether the majority of the company's directors were accustomed to acting in accordance with the alleged shadow director's directions or instructions. This decision confirms that shadow directorship requires an established pattern of influence over the board, rather than a single instance of advice or persuasion.

Read together, these cases confirm that the Malaysian judiciary applies a substance-over-form approach to shadow directorship, but tempers it with a threshold requirement: influence must have matured into a settled pattern of control before directors' duties can be imposed. This calibration reflects a deliberate policy choice to avoid burdening ordinary advisers, shareholders, or influential outsiders with directors' duties, while still capturing those who exercise real and continuing control over a company's decision-making without formal appointment. The same concern can also be seen in *Sazean Engineering & Construction Sdn Bhd v Bumi Bersatu Resources Sdn Bhd* [2019] 1 MLJ 495. The case is useful because it recognises that a person who controls the company from behind the scenes may still be treated as part of the company's directing mind, depending on the facts. This is important because

many forms of control in companies are not openly recorded. A person may not attend board meetings or sign resolutions, but he may still be the person whose instructions determine what the company does. The law would be weak if it ignored that reality.

Section 210 of the Malaysian Companies Act extends the meaning of "director" to include persons such as the chief executive officer, chief financial officer, chief operating officer, or any other person primarily responsible for the management of the company. This supports the wider principle that responsibility should attach to those who are actually involved in management, not only those who sit formally on the board. Although this provision does not remove all uncertainty concerning shadow and de facto directors, it shows that the Act recognises management power as a basis for legal responsibility.

Once a person falls within the statutory meaning of "director," the duties under the Companies Act 2016 apply regardless of whether the appointment is formal. Section 213 requires a director to exercise his or her powers for a proper purpose, in good faith and in the best interests of the company, and with reasonable care, skill and diligence, with section 213(3) rendering a contravention an offence. Sections 214 to 218 further address business judgment, reliance on information, delegation, nominee directors, and the improper use of company property, information, position, and opportunities, while sections 223 and 228 regulate certain transactions involving the company. Collectively, these provisions demonstrate that the statutory framework is capable of capturing shadow and de facto directors once their status is established, though liability under any particular provision will still depend on the specific conduct proven against them.

What the Act does not provide, however, is an express statutory distinction between shadow and de facto directors. This is a meaningful gap: the two categories reflect fundamentally different forms of informal control, yet the Act offers no factors for telling them apart, nor does it clarify whether the same legal consequences follow once either status is established. If the law does not draw a clearer line between them, the tests may overlap. For example, a dominant shareholder may strongly influence a company, but strong influence alone should not automatically make him a shadow director. In the same way, a senior manager may be heavily involved in daily operations, but that does not necessarily mean he has assumed the position of a director. The difficult question is where ordinary influence ends and directorial accountability begin, as held in the case of *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180.

The difficulties are not merely conceptual. Informal corporate control is also difficult to prove. Shadow influence may occur through private discussions, informal communications, personal relationships or undocumented instructions. As a result, regulators or litigants may need to rely on board minutes, emails, financial records, recurring patterns of compliance or nominee relationships to establish that directors were accustomed to act according to another person's instructions. The enforcement of accountability against informal directors is also possible through several existing mechanisms under Malaysian law. The Companies Act 2016 provides regulatory and court-based enforcement, while sections 198 and 199 provide for disqualification where the relevant statutory requirements are satisfied. In a winding up, sections 501 to 503 allow the Court to obtain information, require the production of documents and examine persons who may have information about the company's affairs.

The Act also provides different remedies depending on the nature of the wrong. For example, section 347 allows a qualifying complainant, with leave of the Court, to bring proceedings on behalf of the company, while section 346 provides an oppression remedy where its requirements are satisfied. Section 540 may also impose personal responsibility on a person who is knowingly involved in fraudulent trading, while section 541 allows the Court in a winding up to deal with certain cases of misfeasance or breach of duty. Therefore, the main difficulty is not that Malaysia has no enforcement mechanisms or remedies. The greater difficulty is identifying the informal controller and obtaining sufficient evidence to establish the relevant status, misconduct and legal basis for the claim.

Transparency is also an important issue. Section 57 requires a company to maintain a register containing particulars of its directors, managers and secretaries. However, this formal register does not identify every person who may exercise influence over the board without being formally appointed. The position has developed following the Companies (Amendment) Act 2024, which introduced Division 8A on beneficial ownership. Section 60A recognises beneficial ownership by reference to ultimate ownership or control, while sections 60B to 60D provide requirements relating to beneficial-

ownership information. The current Malaysian Companies Commission (SSM) framework also recognises forms of ultimate effective control that may be exercised formally or informally (Companies Commission of Malaysia, 2025). This may help to identify some informal controllers. However, beneficial ownership and shadow directorship are not the same concept. A person may exercise influence over the board without being a beneficial owner, while being a beneficial owner or exercising ultimate control does not by itself mean that the majority of directors are accustomed to act according to that person's directions or instructions. Access to beneficial-ownership information is also subject to the applicable 2025 Regulations.

The Malaysian Code on Corporate Governance promotes accountability, transparency and responsible management, especially among listed companies (Securities Commission Malaysia, 2021). However, its role is still limited. It does not operate like a statutory provision that directly imposes liability on shadow or de facto directors. This becomes a problem because informal control may also happen in private companies, where the effect of the Code is even more limited. Therefore, although the Code supports good corporate governance, it cannot replace clear statutory rules on who should be treated as a director and what duties should follow from that position.

4.2 The United Kingdom Approach

The development of UK law on shadow and de facto directors did not happen in one single step. It developed gradually because the company's control itself became more complicated. In the older view of company law, the focus was mainly on formally appointed directors. These are the persons whose names appear in the company's records and who are officially appointed to manage the company. However, in practice, corporate control does not always work that neatly. A person may control the company without being appointed. This practical reality pushed UK law to develop beyond formal titles. The UK approach, therefore, moved from a formal understanding of directorship towards a more functional one. This is where the concepts of shadow director and de facto director became important. Both concepts are used to address persons who are not ordinary de jure directors but are still close enough to the company's management to warrant legal responsibility, as laid out in *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180. Figure 2 below shows the development of the approach made by the UK, from formal control to actual control.

The development of shadow directorship in the UK is strongly connected to statute. The concept was already recognised before the Companies Act 2006, including under the Companies Act 1985 and insolvency legislation. The idea behind it was simple: a person should not be able to control the board from outside and then deny responsibility by saying that he was never formally appointed. This approach was later carried into Section 251 of the Companies Act 2006, which defines a shadow director as a person in accordance with whose directions or instructions the directors of the company are accustomed to act. This wording shows that UK law is concerned with a pattern of control. It is not enough that the board follows advice once. What matters is whether the directors have become accustomed to acting according to that person's directions or instructions.

At the same time, the law also recognises that not every person who gives advice should be treated as a shadow director. This is important because companies often rely on lawyers, accountants, consultants, bankers and other professional advisers. If every advice-giver could be treated as a shadow director, it would be unfair and commercially impractical. For that reason, Section 251 (2) of the UK Companies Act 2006 excludes a person who gives advice in a professional capacity. This shows that the development of UK law tries to strike a balance. It wants to catch hidden controllers, but it does not want to punish ordinary professional advice.

The development of de facto directorship is slightly different because it is mainly developed through case law rather than through a clear statutory definition [*Holland v Revenue and Customs Commissioners* [2010] UKSC 51, *Smithton Ltd v Naggar* [2014] EWCA Civ 939]. A de facto director is generally understood as someone who acts as a director, although he was not validly appointed. The issue is not hidden control from behind the board, but whether the person has stepped into the role of a director in practice. This may happen where a person takes part in management decisions, represents himself as having directorial authority, gives instructions within the company, or acts in a way that only a director would normally act.

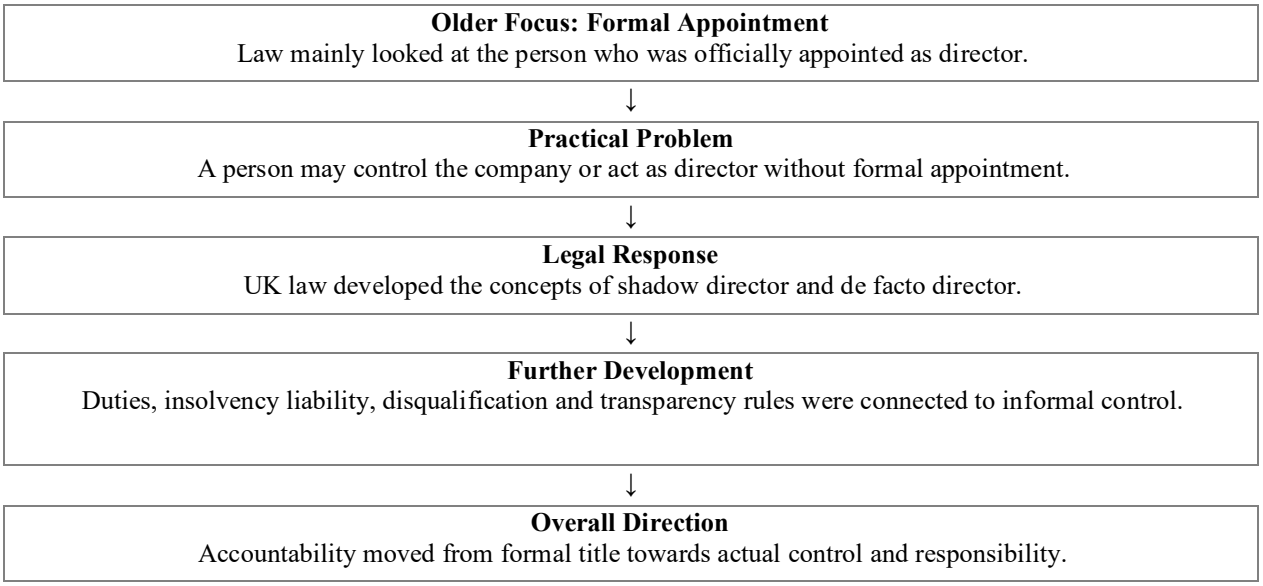


Figure 2: Development from Formal Appointment to Actual Control
Source: Authors

The distinction between shadow and de facto directors became clearer through cases such as *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180. The case is important because it explained the difference between de jure, de facto and shadow directors. A de jure director is someone who is properly appointed. A de facto director is someone who acts as a director without proper appointment. A shadow director, however, does not usually act openly as a director. He stays behind the scenes and influences the appointed directors. This distinction became a basic foundation in later UK cases because it helped the courts separate open assumption of directorial role from hidden control over the board.

Later cases further developed the test for shadow directors. In *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 (CA), the court took a more practical approach to the meaning of "directions or instructions". The court did not treat those words in an overly narrow way. The focus was on whether the alleged shadow director had real influence over the board and whether the board was accustomed to acting in accordance with that influence. This development was important because shadow control is rarely exercised through formal written instructions. In reality, influence may happen through discussions, pressure, informal communication or the position of power held by the person outside the board.

For de facto directors, the law also continued to develop through the courts. In *Holland v Revenue and Customs Commissioners* [2010] UKSC 51, the Supreme Court showed that the court will not treat a person as a de facto director merely because he is heavily involved somewhere in the corporate structure. The person must have assumed responsibility as a director of the particular company in question. This is important because modern companies often operate through groups, nominees and corporate directors. Without this limitation, a person may be too easily treated as a director of several companies simply because he is involved in the wider structure. The decision therefore made the law more careful in identifying de facto directors.

The Court of Appeal later continued this careful approach in *Smithton Ltd v Naggar* [2014] EWCA Civ 939. The case shows that the question is always fact-sensitive. The court will look at the whole picture, including what the person actually did, how he was treated by others, whether he acted on behalf of the company, and whether his conduct was consistent with the role of a director. This development is useful because it prevents the law from relying on one single factor. A person is not automatically a de facto director merely because he gives instructions, negotiates transactions, or has influence. The court must still ask whether he has truly assumed the role of a director. Table 1 below summarises the key judicial developments on shadow and de facto directors in the UK.

Table 1: Key Judicial Developments on Shadow and De Facto Directors in the UK

Case	Main Development	Effect on UK Law
Re Hydrodam (Corby) Ltd	Separated de jure, de facto and shadow directors.	Gave the basic classification used in later cases.
Secretary of State for Trade and Industry v Deverell	Took a practical approach to "directions or instructions".	Made the shadow director test less rigid and more realistic.
Holland v Revenue and Customs Commissioners	Required assumption of responsibility as director of the particular company.	Prevented the de facto director label from being applied too widely.
Smithton Ltd v Naggar	Emphasised the whole factual picture.	Confirmed that de facto directorship depends on conduct and context.

Source: Authors

Another important development is the connection between informal directorship and directors' duties. Under the Companies Act 2006, directors owe general duties such as acting within powers, promoting the success of the company, exercising independent judgment, and exercising reasonable care, skill and diligence (Companies Act 2006, ss. 171–174). The later amendment to section 170(5) is significant because it provides that general duties apply to shadow directors where and to the extent that they are capable of applying (Companies Act 2006, s. 170(5); Small Business, Enterprise and Employment Act 2015, s. 89). This shows a clear movement in UK law. Shadow directors were no longer treated only as a definition for limited purposes. The law developed towards attaching duties to persons who exercise control even without formal appointment.

This development is important because it brings the UK approach closer to the principle that responsibility should follow power. If a shadow director is able to influence the company's decision-making, it would be difficult to justify allowing him to avoid all duties. However, the wording "where and to the extent that they are capable of so applying" also shows that the law is still careful. Not every duty can apply to a shadow director in the same way as it applies to a formally appointed director. The development is therefore not absolute. It expands accountability, but still leaves room for the court to decide how far the duties should apply based on the nature of the role.

The UK framework also developed through insolvency and disqualification law. This is because the problem of shadow and de facto directors often becomes most serious when a company collapses. In insolvency situations, creditors may suffer loss while the real decision-maker remains outside the formal board. UK law responds to this by allowing liability and disqualification mechanisms to reach persons who were involved in the company's management, including shadow directors in appropriate cases. This shows that UK law not only defines informal directors. It also connects the definition to consequences (Company Directors Disqualification Act 1986, ss. 6, 22(5); Insolvency Act 1986, ss. 214(7), 251).

A further development is the UK's move towards corporate transparency. The introduction of the People with Significant Control regime shows that UK company law is also concerned with identifying persons who have real influence or control over companies (Companies Act 2006, Part 21A, ss. 790C, 790M; Department for Business and Trade et al., 2026). This regime is not the same as shadow directorship. A person with significant control is not automatically a shadow director. However, the development is still relevant because it shows the same policy direction: company law should not only focus on visible office-holders, but should also pay attention to those who exercise actual control behind the company. Table 2 below summarises the timeline of the development of UK Law on Informal Directors.

Table 2: Timeline of the Development of UK Law on Informal Directors

Period / Source	Development	Why It Matters
Companies Act 1985 and Insolvency Act 1986	Earlier recognition of shadow director concepts.	Showed that hidden control was already a legal concern before the Companies Act 2006.

Period / Source	Development	Why It Matters
1994: Re Hydrodam	Clarified the difference between de jure, de facto and shadow directors.	Built the foundation for later judicial analysis.
2001: Deverell	Developed a practical view of directions and instructions.	Allowed the law to reflect how influence is actually exercised.
2006: Companies Act 2006	Codified the statutory meaning of shadow director in section 251.	Placed the concept within the modern UK company law framework.
2010-2014: Holland and Smithton	Refined the test for de facto directors.	Made the court focus on whether the person truly assumed the role of director.
2015 onwards: SBEE Act and PSC regime	Extended duties to shadow directors where capable of applying and improved transparency.	Connected informal control with duties, disclosure and accountability.

Source: Authors

Overall, the development of the UK law shows a gradual shift from formal appointment towards actual control and responsibility. Shadow directorship developed mainly through statute, while de facto directorship developed mainly through case law. The courts then refined the distinction between the two so that hidden control and open assumption of directorial role are treated separately. Later statutory developments, especially the application of general duties to shadow directors and the transparency reforms through the PSC regime, show that the UK has continued to strengthen accountability for persons who influence company management without formal appointment. Therefore, the UK position is not merely based on definition. It has developed into a broader framework that connects informal control with duties, liability, enforcement and transparency.

4.3 Comparative Analysis

Both Malaysia and the UK recognise that directors' liability should not depend solely on formal appointment; rather, actual control, influence, and conduct should also be considered. However, the UK framework governing the accountability of shadow directors is more developed, as it combines clear statutory provisions, extensive case law, insolvency liability, disqualification mechanisms, and transparency requirements. In contrast, Malaysia has a broad statutory foundation, but practical uncertainty remains due to limited judicial development, evidential difficulties, and less specific guidance on informal control. Table 3 below illustrates the differences between Malaysia and the UK in their legal treatment of de facto and shadow directors.

Table 3: Comparative Analysis between Malaysia and the UK Framework

Aspect	Malaysia	UK	Comparative Finding
Definition	Section 2 of The Companies Act 2016 provides broader meaning of director including person who act like directors and persons whose instruction is followed by majority of directors	Section 250 and 251 of the Companies Act 2006, director and shadow director are defined separately	Both emphasised actual control but UK is clearer as shadow directors are defined separately
De facto directors	Covered through the broad wording of occupying the position of director	Developed through the cases . E.g *Re Hydrodam, Holland, Smithton*	Malaysia has statutory basis but the UK is clearer on judicial guidance

Aspect	Malaysia	UK	Comparative Finding
Shadow directors	Definition covered in section 2 of Companies Act 2016 but there is limited guidance on level of influence required	Section 251 of Companies Act 2006 expressly mention on exclusion for professional advisers	UK law gives more certainty on degree of influence required to be regarded as shadow directors and distinguishing real control from professional advice
Director's duties	Section 213 imposes duties to act for proper purpose, in good faith, and with reasonable care, skill and diligence.	Section 171-177 set out directors' duties and section 170(5) extend duties to shadow directors where capable of applying	The UK expressly link shadow directors with statutory duties
Enforcement	SSM Investigates and enforces compliance with company law, but enforcement is difficult if hidden control exists	Enforcement supported by company law, insolvency law, disqualification law and transparency rules	The UK consist of wider enforcement structure
Insolvency Liability	No specific provision on wrongful trading for shadow director	Section 214 of the Insolvency Act 1986 extends wrongful trading liability to shadow directors	The UK gives stronger protection to creditors when company become insolvent
Disqualification	Malaysia has company law sanction however no separate shadow director disqualification model as developed as the UK	The Company Directors Disqualification Act 1986 includes shadow directors	The UK has stronger prevention for unfit informal controllers from managing companies in future
Transparency	Informal controllers remain hidden until dispute arises or investigation is held	The UK has the People with Significant Control regime to identify persons with significant control	The UK is stronger in preventive transparency
Overall Position	Strong foundation but practical uncertainty remains	Well established control-based accountability model	Malaysia can learn from the UK by clarifying tests and strengthening enforcement

Source: Authors

4.4 Proposed Amendments to the Companies Act 2016

The Companies Act 2016 should be refined to address three related gaps in the regulation of informal corporate control: the absence of a clear definition distinguishing shadow directors from de facto directors, the practical difficulty of enforcing accountability against persons who do not appear in a company's formal records, and the limited transparency of board-level influence that falls outside the existing beneficial-ownership framework. These gaps are interconnected, as a person cannot be held accountable as a shadow or de facto director if their status cannot first be clearly defined, identified, and made visible to those responsible for enforcement. Table 4 sets out the proposed amendments to the Companies Act 2016, together with the justification for each, addressing the gaps identified above in relation to statutory clarification, enforcement, and transparency.

Table 4: Proposed Amendment to the Companies Act 2016 on Shadow and De Facto Directors

No.	Original Provision	Proposed Amendment	Justification
1.	Section 2 Interpretation 2. (1) In this Act, unless the context otherwise requires— "director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act and an alternate or substitute director;	Section 2 Interpretation 2. (1) In this Act, unless the context otherwise requires— "director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act (including a shadow director), a de facto director and an alternate or substitute director;	This amendment keeps the existing broad definition of "director", but makes the position clearer by expressly recognising shadow directors and de facto directors. The current wording already covers the shadow director idea, while the new wording gives the concept a clear statutory label and expressly adds de facto directors.
2.	Section 2 Interpretation There is no express definition of "shadow director" or "de facto director" under section 2(1) of the Companies Act 2016.	Section 2 Interpretation 2. (1) In this Act, unless the context otherwise requires— "shadow director" means a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act, whether such directions or instructions are given directly or indirectly; "de facto director" means a person who, although not formally or validly appointed as a director, acts as a director or assumes the functions of a director in the management of a corporation;	This provision is added to separate shadow directors and de facto directors clearly. A shadow director is concerned with hidden control over the board, while a de facto director is concerned with a person who acts as a director in practice without proper appointment.
3.	Section 2 Interpretation 2. (2) A person shall not be regarded as a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.	Section 2 Interpretation 2. (2) A person shall not be regarded as a shadow director or a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.	This amendment keeps the existing protection for professional advice. It prevents lawyers, accountants, consultants, bankers and other professional advisers from being treated as shadow directors merely because the board follows their professional advice.
4.	Section 210 Interpretation For the purposes of this Subdivision, in sections 213, 214, 215, 216, 217, 218, 223 and 228, in addition to the definition of "director" in section 2, "director" includes chief executive officer, chief financial officer, chief operating officer or any other person primarily responsible for the management of the company.	Section 210A Application of duties to shadow directors and de facto directors 210A. For the purposes of this Subdivision, a shadow director and a de facto director shall be subject to the duties, responsibilities and obligations of a director under sections 213, 214, 215, 216, 217, 218, 223 and 228, to the extent that such duties, responsibilities and obligations are capable of applying to them, having regard to their role, conduct and influence in the company.	This new provision connects the recognition of shadow and de facto directors to directors' duties. It prevents a person from arguing that the statutory duties do not apply to him merely because he was not formally appointed as a director.

No.	Original Provision	Proposed Amendment	Justification
5.	Section 211 Functions of Board 211. (1) The business and affairs of a company shall be managed by, or under the direction of the Board. 211. (2) The Board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the company subject to any modification, exception or limitation contained in this Act or in the constitution of the company.	Section 211A Determination of shadow directors and de facto directors 211A. (1) In determining whether a person is a shadow director, the Court may consider whether— (a) the person gave directions or instructions to the directors, whether directly or indirectly; (b) the majority of directors were accustomed to act in accordance with those directions or instructions; (c) the person exercised real influence or control over the board; and (d) the conduct of the person affected the management or affairs of the company. (2) In determining whether a person is a de facto director, the Court may consider whether— (a) the person acted as a director although not formally or validly appointed;	This new provision gives the court guidance without turning the law into a strict checklist. It reflects the main issue in this research, which is that shadow and de facto directors are difficult to identify because they depend heavily on facts.
6.	Enforcement / Investigation Existing enforcement mechanisms under the Companies Act 2016, including regulatory and insolvency powers.	Where the Registrar or Court has reasonable grounds to believe that a person may be exercising undisclosed directorial control, the company and relevant persons may be required by lawful notice to provide information and records relevant to determining the person's role, directions, instructions or participation in management.	This helps to address the difficulty of identifying and proving informal directorial control without making liability automatic merely because a person exercises influence.
7.	Beneficial Ownership / Transparency Division 8A, sections 60A–60D and the related SSM framework.	The existing beneficial-ownership framework should be complemented by a controlled-access mechanism for information concerning persons who are identified as exercising board-level control within the shadow-director concept.	This strengthens transparency while maintaining the distinction between beneficial ownership and shadow directorship and balancing the need for enforcement with confidentiality.

Source: Authors

5. CONCLUSION

Shadow and de facto directors present a significant corporate governance challenge because they demonstrate that actual corporate power does not always correspond with formal board membership. Malaysian corporate law already provides an important foundation for addressing this problem. Section 2(1) of the Companies Act 2016 adopts a broad conception of directorship capable of extending beyond formally appointed directors, while section 213 imposes significant duties upon persons falling within the definition of director. Nevertheless, the present framework remains uncertain in several respects. Shadow and de facto directors are not expressly distinguished as separate categories, judicial guidance remains comparatively limited, and hidden corporate influence presents substantial evidentiary and enforcement difficulties. The UK provides useful comparative guidance. Its framework combines statutory recognition, judicially developed principles, the application of directors' duties and additional mechanisms involving insolvency and disqualification. The result is a more developed system for connecting informal corporate control with legal accountability. Malaysia should nevertheless avoid

simply copying the UK approach. Reform should build upon the existing Companies Act 2016 by expressly recognising shadow and de facto directors, providing non-exhaustive factors for their identification, clarifying the application of directors' duties and maintaining protection for legitimate professional and commercial influence. Ultimately, the legal framework should reflect a simple principle: those who exercise real directorial power should not be permitted to avoid corresponding responsibility merely because they lack formal appointment.

ACKNOWLEDGEMENT
This research received no external funding.

DATA AVAILABILITY
The data supporting the findings of this study are available from the corresponding author upon reasonable request.

CONFLICT OF INTEREST
The authors declare that there is no conflict of interest in relation to this article.

ETHICS APPROVAL
This study is a doctrinal legal analysis of primary and secondary legal materials and did not involve human participants.

USE OF GENERATIVE ARTIFICIAL INTELLIGENCE
The authors used ChatGPT (OpenAI) to assist with brainstorming, structuring, and language editing. All AI-assisted content was reviewed and verified by the authors, who take full responsibility for the article.

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