Legal Update

Federal Court Clarifies "Double-Hatting" Principle in Landmark Acexide Technology Ruling

1. Introduction

The Federal Court of Malaysia's recent decision in *Acexide Technology Sdn Bhd & Anor v Chang Heng Keong & Anor* [2026] CLJU 2221 is one of the most significant Malaysian employment law decisions in recent years concerning when a director may also be considered an employee of a company.

The judgment in the case addresses a recurring dilemma as to whether a company director can simultaneously be an employee of the same company.

While this question has long generated uncertainty in Malaysia, particularly where founder-directors and shareholders are involved, the Federal Court has now provided comprehensive guidance. Beyond reaffirming that an individual may hold both positions concurrently, the Federal Court clarified how the *Companies Act* 2016 ("**Companies Act**") and the *Industrial Relations Act* 1967 ("**IRA**") may operate in tandem with each other.

2. Background

Acexide Technology Sdn Bhd ("Acexide Technology") the appellant in the case was established by three promoters Lim BH ("Mr. Lim"), Woon Kim Choy ("Mr. Woon"); and Chang Heng Keong ("Mr. Chang") and all three later became shareholders as well as directors in Acexide Technology. The company is primarily involved in the business of installation and maintenance of fire lighting systems, trenchless technology and transportation. On Acexide Technology's incorporation in 1996, each of the three promoters, as was not uncommon at the time, became shareholders as well as directors of the company.

Further, the company documents also documented that Mr. Lim, Mr. Woon and Mr. Chang as the managing director, the technical director and the project director of the appellant company, respectively.

At the behest of Mr. Lim, an Extraordinary General Meeting was subsequently convened whereby the majority shareholders passed resolutions removing Mr. Woon and Mr. Chang as directors in Acexide Technology. The Respondents (Mr. Woon and Mr. Chang) pursued two separate legal remedies as follows:

a) a minority oppression action in their capacity as shareholders; and
b) a claim under section 20 of the Industrial Relations Act 1967 alleging that they had been dismissed without just cause or excuse as employees.

3. Fundamental issues

A. Federal Court's "Double-Hatting" principle

The principal question before the Federal Court was whether the respondents were "workmen" under section 2 of the IRA. The Federal Court reaffirmed that Malaysian law recognises that an individual may simultaneously occupy two entirely distinct legal capacities, company director; and employee.

[110] *The position of an executive director is a perfect and classic example of this mutual exclusivity and distinction of the two roles in action.* ***By definition it can be said that an executive director means the individual holding this position is a company director appointed under the Companies Act 2016 who is also an executive or employee of the company pursuant to a contract of employment.*** *We stress that it may be possible that the constitution of the company also provides for specific provisions on the appointment of executive directors, but this is not the case presently.*

[111] *When it is said that a* ***director can also be an employee if a genuine contract of service exists, it must mean that an individual who is appointed as director can also be an employee under an employment contract.*** *The status as an employee or workman originates and is derived from the contract of service, not from the position of directorship, and vice versa.* ***When he is double-hatting, the two roles are combined or coalesce in one individual, but they remain conceptually separate, functionally distinct and unmistakably mutually exclusive.***

However, the Federal Court made an important refinement. It explained that it is technically inaccurate to say that the office of director itself possesses dual capacity. Rather, it is the individual who may perform two legally distinct roles at the same time. The office of director remains separate from the office of employee.

[92] *It is therefore absolutely critical for the proper appreciation of the true legal position that a distinction in this context must be made, between the position and the person holding it. Thus the* ***position of a director is not and cannot be equated with that of an employee****. However - and this is very crucial -* ***an individual may hold and perform these two distinct roles at the same time****. This in our view was what was meant by the Supreme Court in Inchcape. Inchcape however did not consider double hatting and in any case, the issue appeared not to have been raised.*

B. A director is not an employee

The governance of a directorship position within a company arises under the Companies Act whilst employment arises from a contract of service governed under the auspices of Malaysia's various laws governing employment. The Federal Court carefully distinguished between the position and the person occupying the position. A director is not automatically an employee and likewise an employee is not automatically a director. The two legal relationships coexist independently.

Consequently, the removal of a director, as occurred in the Acexide Technology case, does not automatically terminate the individual's employment with the company in question, just as dismissal from employment does not automatically remove the individual as a director.

[120] *It cannot therefore be emphasised enough that* ***whilst a person can be both, distinguishing the two roles is essential to determine not only the rights of the person involved, precisely because it is from this relationship that rights and duties flow*** *- including not only on whether remuneration, taxation and remission of statutory deductions would be required, but also which Court has the jurisdiction over a legal claim in the event of a dispute.*

[121] *If the person who wears the two hats is pursuing a claim concerning his rights as a company director, then he must seek reliefs in the civil court. But if it is about his employment with the company, as an employee who falls under the definition of a workman under the IRA 1967, he must turn to the Industrial Court.*

C. Removal as director does not equate to full dismissal

Perhaps the most practically important aspect of the judgment concerns removal under section 206 of the Companies Act. The Federal Court accepted that shareholders possess the statutory right to remove directors; however, exercising the statutory right to removal does not determine the person's employment rights.

If the director is also an employee, termination of employment must independently comply with the relevant sections of the IRA.

Accordingly, removal under the Companies Act and dismissal under employment law are separate legal processes governed by different statutes. This distinction is likely to influence future disputes involving founder-directors and executive directors.

D. How do the courts determine whether a director is also an employee?

Under Malaysian law, there is no definitive checklist for determining whether a director is also an employee. Instead, the Federal Court in the case endorsed a holistic, fact-specific inquiry, recognising that no single factor is determinative.

In their judgement, the court noted that relevant factors may include the following:

a) existence of an employment contract (written or oral);
b) payment of monthly salary;
c) payment of allowances;
d) EPF contributions;
e) SOCSO contributions;
f) PCB deductions;
g) inclusion in the company's register of employees;
h) classification in company financial statements as employees;
i) actual day-to-day executive responsibilities; and
j) the overall conduct of the parties.

***[168]** The above, in our view, is entirely in keeping with the trite law that the existence of an employment relationship must be assessed holistically and in substance, and that no single factor is conclusive.*

***[169]** We must also state that we have no quarrel with the appellant's submission that case authorities, albeit Industrial Court decisions appear to hold that statutory contributions, designations, or payroll entries cannot by themselves establish a contract of employment in the absence of a superior-subordinate relationship. Cases such as Actacorp Holdings Bhd v. Helen Tang Chiew Yien [2005] 2 ILR 641 Beh Keang Yu v. Fairtrio Marketing Sdn Bhd [2006] 3 ILR 2037, National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia v. Muhammad Zailani Mat Zin [2022] 7 CLJ 980 were referred to in support.*

***[170]** However, we need not address this any further since we have, at the risk of repetition, already found that the respondents were "workmen" in their position as executive directors and employees, and that the Court of Appeal is also correct in its finding precisely because the appellant's principal premise that there was no superior-subordinate or master-servant relationship in this case is totally without merit.*

***[171]** At the same time we are also of the view that the fact of contributions to EPF under the Employees Provident Fund Act 1991 and SOCSO under the Employees' Social Security Act 1969, and the filing of deduction of monthly income tax on salaries are proper indicia of contract of employment - which in this case was not rebutted by the appellant company.*

***[172]** For instance, both the employer (the appellant) and the employee (the respondents) here contributed their respective portions to the EPF. It cannot be denied that this is exactly the arrangement mandated under the EPF Act 1991 in an employer-employee relationship. And the form prescribed for SOCSO contribution declares the company to be the employer of the respondents whose contributions are included.*

E. The modern control test

Acexide Technology also argued that because the respondents in the case did not report to anyone within the company, there was no official employer-employee relationship. The Federal Court rejected this submission. The Federal Court recognised that senior executives do not ordinarily "clock in" or operate under close supervision. However, the court recognised that executive directors remain accountable to a board as a collective body, corporate governance requirements and organisational objectives. Accordingly, modern employment relationships cannot be assessed solely through the traditional master-servant model. Performance accountability, strategic responsibilities and board oversight are equally relevant.

***[146]** In our view, more accurately, these items on performance targets and deliverables unmistakably demonstrate the accountability of these employees to the employer - in this case, as the two respondents are executive directors, to the board of directors. The Court of Appeal from the said passages has in fact said exactly this. That there is accountability to the board of directors, and that the executive directors are answerable to the board as a whole.*

***[147]** From the above, we wish to reiterate two key points. First, there is no lack of a master-servant or employer-employee or superior-subordinate relationships in situations where an individual such as each of the two respondents who were company director were also company employees. It is irrefutable that not only are individual ordinary company directors* *answerable and accountable to the entire board of directors of the company, but that so too are high ranking employees such as executive directors of the company.*

[148] *Secondly, there is absolutely no legal incoherence or incompatibility in the fact that these executive directors (just like any individual ordinary director) are individually and separately answerable and report to the board as a whole, of which they are by definition also members. The stance of the appellant to the contrary on these two points which constitute the foundation of its challenge in the two appeals before us is as such misconceived and not tenable.*

F. Employment and termination without formal documentation

The Federal Court also made two further observations of practical significance.

First, the absence of a written employment agreement is not fatal to a claim that an employment relationship existed. Section 2 of the IRA recognises that a contract of employment may be written or oral, and express or implied. The existence of such a contract may therefore be established from the parties' conduct and the surrounding circumstances. In this case, the respondents' receipt of regular salaries and allowances, the company's payment of EPF and SOCSO contributions, income tax deductions, payroll records and their inclusion in the register of employees collectively supported the existence of an oral or implied contract of employment.

Secondly, the Federal Court held that the absence of a formal letter of termination was immaterial to the facts. The EGM minutes made clear that the respondents were discharged from all their duties and would no longer receive salaries, thereby ending their roles both as directors and employees. The decision therefore illustrates that a formal termination letter is not invariably necessary where the employer's intention to terminate the employment relationship is otherwise sufficiently clear from the relevant documents and surrounding circumstances.

[159] *We note that factually there is without any dispute no written contract of employment to which the respondents were parties as employees or executive directors. But this does not mean that an oral contract of employment cannot subsist between the appellant company and each of the respondents. Indeed, we reiterate that section 2 of the IRA 1967 defines the "contract of employment" as among others, any agreement, which can be oral or in writing and whether express or implied. In this case the oral nature of the agreement is further fortified by the conduct of the parties. We stress further that the abovementioned case of Hoh Kiang Ngan had held that to ascertain whether a person is an employee, regard must be had not only to the nature, degree and extent of control of his duties and functions, which are* *not limited to the terms of a written contract, but significantly also encompasses the conduct of the parties at the material time.*

[188] *This, in our assessment, is incorrect, since the minutes of the said EGM that recorded that both the respondents were removed as directors also stated that they were relieved of all their duties and that the appellant company would no longer pay "salaries" to the two respondents, unmistakably underscoring the fact the company had also treated them as its employees (in addition to as directors). The minutes of the meeting at paragraph 5 recorded in verbatim as follows:*

> *"5. WWF asked Chairman when should CHK and WKC stop their duties as directors and are there any compensation for the loss of office.*
>
> *Chairman informed that the removal of directorship will take immediate effect and CHK and WKC will be discharged of all their duties in the Company. The Company will no longer be paying salaries to CHK and WKC. Chairman further added that they only have the right to receive dividend in the future.*
>
> *WWF questioned who will replace the duty of the removed director.*
>
> *LBH informed that he will source for correct candidate for replacement."*

[189] *In light of the above, and given the facts and circumstances of this case, in our view, the absence of any letter of termination of services of the respondents as employees in this case is immaterial. In our view, the removal of the respondents had clearly been stated and understood as having the effect of the termination and discharge of all their duties to the appellant company and this must mean responsibilities both as company directors and as company employees (vis-à-vis their respective positions as project director and technical director).*

4. Practical considerations for companies to consider

The decision in Acexide Technology Sdn Bhd & Anor v. Chang Heng Keong & Anor offers several important practical considerations for companies to consider when considering dismissal of directors who hold dual roles within a company.

Executive directors should have clearly drafted employment contracts that are separate from their appointments as directors, and companies should distinguish between directors' fees and remuneration paid for employment services. Companies should also avoid assuming that removal from office under the Companies Act automatically terminates the individual's employment. Where an executive director also falls within the definition of a “workman”, the relevant dismissal procedures under the IRA must still be followed.

5. Conclusion

The decision is far more than another unfair dismissal case. It harmonises company law and employment law by recognising that a single individual may simultaneously occupy two legally distinct relationships with the same company.

For founder-managed companies, family businesses and private corporations where directors commonly perform executive functions, the ruling from the Federal Court provides long-awaited certainty.

Removing a person from the boardroom does not necessarily remove them from the workplace. Where an individual wears two hats, each relationship must be terminated according to the legal regime governing that particular role.

The decision will have significant implications for founder-managed companies, family-owned businesses, SMEs, private companies and corporate governance generally.

Further information

Should you have any questions on how the judgement in Acexide Technology may affect your business, please contact the team at TSL Legal:

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