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Can Directors Also Be Employees? The Federal Court Clarifies The Dual Status Of Directors And Employees

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The Federal Court's decision in *Acexide Technology Sdn Bhd & Anor v Chang Heng Keong* & Another Appeal [2026] 3 ILR 203 provides an authoritative clarification on the legal relationship between directorship and employment. This decision is significant because it affirms that the office of director and the status of employee are legally distinct, notwithstanding that the same individual may concurrently occupy both positions within a company. The removal of a person from the office of director does not, by itself, bring the person's employment to an end where a separate contract of service exists.

The respondents, who were founders, shareholders and directors of the company, had also performed executive functions for over 20 years and received monthly salaries, with EPF, SOCSO and PCB contributions made on their behalf and their income reported through EA Forms as salaried employees. Following their removal as directors at an Extraordinary General Meeting, their salaries ceased without a show cause letter, domestic inquiry or formal termination. The central issue was whether their removal as directors also terminated their employment under *the Industrial Relations Act 1967* (IRA 1967). The Federal Court held that they remained employees and had been dismissed without just cause or excuse, upholding the total award of RM2,044,500, comprising compensation in lieu of reinstatement and backwages.

The Facts

The respondents, Woon Kim Choy and Chang Heng Keong, were founders, shareholders and directors of Acexide Technology Sdn Bhd and they also performed executive functions. They received fixed monthly salaries, were listed in the company's register of

employees, had EPF, SOCSO and PCB contributions made on their behalf, and their remuneration was recorded as "Staff Costs" and "directors' salaries" rather than directors' fees. Following an Extraordinary General Meeting in November 2019, they were removed as directors and their salaries ceased without a show cause letter, domestic inquiry or formal dismissal.

They subsequently filed representations under Section 20 of the Industrial Relations Act 1967, alleging dismissal without just cause or excuse. The Federal Court placed significant weight on the EGM minutes, which stated that they would be "discharged of all their duties" and that the company would "no longer be paying salaries", finding that these records demonstrated the company had treated them as employees as well as directors.

The Relationship Between Directorship And Employment

The Federal Court reaffirmed that the offices of director and employee arise from distinct legal relationships and must not be conflated. A directorship is created and governed by the Companies Act 2016, whereas an employment relationship arises from a contract of service and is governed by employment legislation, including the Industrial Relations Act 1967 (IRA 1967). Although an individual may simultaneously hold both positions, the two relationships remain legally distinct. Accordingly, removal as a director does not, in itself, terminate that individual's employment, and each relationship must be brought to an end in accordance with its respective legal requirements.

In reaching this conclusion, the Federal Court clarified the position under Malaysian law by explaining that the earlier decision in *Inchcape (M) Holdings Bhd v RB Gray & Anor* [1985] 2 CLJ 305, which had been understood as excluding directors from the definition of "workman" under the IRA 1967, had subsequently been overruled by the Supreme Court in *Kathiravelu Ganesan & Anor v Kojasa Holdings Bhd* [1997] 3 CLJ 777. The Federal Court therefore reaffirmed that holding the office of director does not, by itself, preclude an individual from also being an employee or "workman" under the IRA 1967, confirming that a person may simultaneously be both a director and employee, with each legal relationship requiring separate consideration.

The Determination Of Employment Status: Substance Over Form

The Federal Court reaffirmed that the existence of an employment relationship is determined by the substance of the relationship rather than the title or designation of the individual. A person described as a director, shareholder or executive director may nevertheless be an employee if the overall circumstances establish a contract of service. In *Acexide Technology*, the Industrial Court and High Court accepted the company's argument that the respondents were directors rather than employees, despite evidence of EPF and SOCSO contributions, PCB deductions and their inclusion in the company's register of employees. The Court of Appeal reversed that finding, holding that the company's payroll records, statutory contributions, employment records, EA Forms and financial records, which classified their remuneration as "Staff Costs" and "directors' salaries", demonstrated the existence of an employment relationship. The court further held that, under Section 2 of the IRA

1967, a contract of employment may be oral or implied, and the absence of a written contract, fixed working hours or conventional employment arrangements does not necessarily negate an employment relationship, particularly for senior executives.

The "No Superior" Argument

The company contended that the respondents could not be employees because, as founder-directors and co-equal promoters, they were not subject to any superior authority and therefore lacked the essential employer-employee relationship. The Federal Court rejected this argument, emphasising that it failed to distinguish between the respondents' separate capacities as directors and employees. While they participated in the management of the company as directors, they remained accountable to the board as executive directors and employees. The fact that they were members of the board did not negate that accountability.

The Federal Court further held that the traditional control test must be applied flexibly to senior executives. Control need not be demonstrated through conventional indicators such as fixed working hours, attendance requirements or leave approval. Instead, it may be reflected by accountability for performance, strategic objectives, risk management and other executive responsibilities. The control test therefore remains applicable, but its application must be adapted to the realities of senior executive employment.

The Risks Of A Jurisdiction-Only Defence

The company's defence was based principally on the argument that the respondents were not "workmen" within the meaning of the IRA 1967. Consequently, it did not adduce evidence to justify the dismissal on the merits. Once the Federal Court held that the respondents were employees, the company's defence effectively collapsed. The company had failed to adduce evidence to substantiate the alleged misconduct or breach of fiduciary duties. Further, it failed to establish that the respondents had not mitigated their losses, particularly when both respondents had given evidence that they remained unemployed following their dismissal, which evidence went unrebutted. Accordingly, the Federal Court declined to remit the matter to the Industrial Court, as doing so would have afforded the company a second opportunity to advance a case it had chosen not to pursue.

The Significance Of The EGM Minutes

The language adopted in corporate resolutions and EGM minutes may have consequences extending beyond corporate law. In *Acexide Technology*, the company's own description of the respondents' removal was central to the determination that their employment had also been brought to an end. The reference to the cessation of "salaries" and the discharge of "all their duties" supported the conclusion that the company had intended to terminate both their directorship and their employment.

The decision therefore reveals the importance of maintaining a clear distinction between corporate office and employment. Where a company intends only to remove

an individual from the office of director while allowing the employment relationship to continue, the resolution and minutes should make that intention clear. Conversely, where both the directorship and employment are to be terminated, the company must recognise that the termination of employment remains subject to the requirements of employment law. Removal from the board cannot be used as a substitute for a lawful termination of employment.

Practical Implications

The decision in *Acexide Technology* carries important implications for employers, directors and advisers. Removal from the board does not, by itself, terminate a separate contract of service, and any employment relationship must be independently terminated in accordance with employment law. Employment status depends on substance rather than labels, with the court examining the totality of the evidence, including remuneration, statutory contributions and the company's treatment of the individual in its records. Employers should ensure consistency in their classification and treatment of individuals who occupy dual corporate and employment roles.

Corporate resolutions and EGM minutes should clearly distinguish the termination of a directorship from the termination of employment, which remains subject to the applicable legal requirements. The absence of a written employment contract is not determinative, as a contract of service may be oral or implied. Finally, employers should not rely exclusively on jurisdictional or status-based defences without also adducing evidence to justify the dismissal on its merits.

The Federal Court's decision in *Acexide Technology* is a timely reminder that employment relationships are determined by substance, not corporate titles. While a person may simultaneously hold the offices of director and employee, each relationship remains legally distinct and must be separately created and terminated in accordance with the applicable legal framework. For employers, the decision underscores the importance of consistent employment records, carefully drafted corporate documents and well-prepared litigation strategies. Ultimately, corporate governance cannot override employment law, and removing a director from the board is not, without more, the same as lawfully terminating an employee.

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