

SHAREHOLDERS DEMOCRACY: RETIREMENT OF A DIRECTOR REQUIRES GENERAL MEETING

1.0 Introduction

The removal of a director from the board of directors or the retirement of a director at the end of his/her tenure are routine aspects of corporate governance, occurring regularly across boardrooms. These processes are typically governed by provisions in the company's constitution. In the absence of such provisions, the default provisions under the Companies Act 2016 ("**Act 777**") apply.

For these routine aspects, Annual General Meeting ("**AGM**") or Extraordinary General Meeting ("**EGM**") is required. Pursuant to Section 340(1) of Act 777, the election of directors in place of those retiring as well as the passing of resolutions for the removal of directors under Section 206(1), shall take place at an AGM or EGM. These procedures are deeply connected to the voting rights of the members of the company underpinning the principle of shareholders' democracy.

Recently, shareholders' democracy was thrust into the spotlight by the Court of Appeal in **Dato' Sri Andrew Kam Tai Yeow v Grandfoods Sdn Bhd & Ors [2025] MLJU 819** ("**Andrew Kam's Case**"). At the heart of the dispute was the issue:

"whether a company director who is due to retire under the articles of association of the company in an impending general meeting of the shareholders can be deemed to have retired upon the completion of the period the meeting ought to have been convened if the meeting could not be held for some reason"

This article discusses the Court of Appeal's findings and explores the wider legal framework governing the removal and retirement of directors under the Act 777 shedding light on the underlying principles of shareholders' democracy.

2.0 Brief Facts of the Case

The first respondent company ("**1st Respondent**") operates an oil palm plantation in Pahang and wholly owns the second respondent company ("**2nd Respondent**"), which

runs a palm oil mill. The appellant (“**Director**”) was a director of both companies alongside four other directors on each board. The events unfolded as follows:

Date	Events
07/08/2017	The respondents issued notices to convene EGM to move a resolution to remove the Director.
06/09/2017	The Director initiated Civil Suit No. WA-22NCC-352-09/2017 (Suit 352) against the respondents and obtained an ad interim injunction to prevent the EGMs and his removal.
14/05/2019	The Director served two letters, both of which dated 10 May 2019 on each of the respondents, requesting for their financial statements, ledgers and certain contractual documents.
28/05/2019	The respondents refused the request, arguing that the Director had already retired and therefore had no locus to make such demands.

This led to the filing of five originating summons. The Director filed two seeking access to documents as a director. In contrast, the respondents filed three (OS 574, OS 609, and OS 642) seeking a declaration that the Director had retired under the articles of association.

All five matters were heard together, with the High Court's ruling in OS 574 deemed applicable to OS 609 and OS 642. The High Court ruled in favour of the respondents, declaring that the Director had automatically retired even though no general meeting was held. As a result, the court dismissed the Director's claims. The Director then appealed the High Court's decision in all three cases, which forms the subject matter of the present case.

3.0 Legal Framework: Removal & Retirement of Directors

3.1 Removal of Directors

Section 206 of Act 777 provides for the procedure of removal of directors. The section reads as follows:

(1) A director may be removed before the expiration of the director's period of office as follows:

- (a) subject to the constitution, in the case of a private company, by ordinary resolution; or
- (b) in the case of a public company, in accordance with this section.

(2) Notwithstanding anything in the constitution or any agreement between a public company and a director, the company may by ordinary resolution at a meeting remove the director before the expiration of the director's tenure of office.

(3) Special notice is required of a resolution to remove a director under this section or appoint another person instead of the director at the same meeting.

(4) Notwithstanding paragraph 1(b), if a director of a public company was appointed to

represent the interests of any particular class of shareholders or debenture holders, the resolution to remove the director shall not take effect until the director's successor has been appointed.

(5) A person appointed as director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

3.2 Retirement of Directors

Section 205 of Act 777 provides for the procedure of retirement of directors. The section reads as follows:

(1) The provision under this section shall apply with regards to the retirement of directors unless there is specific provision in the company's constitution or the term of appointment regarding retirement of directors.

(2) Notwithstanding subsection (1), a private company may pass a written resolution in accordance with section 297 to determine the retirement of a director.

(3) The director shall retire as follows:

(a) at the first annual general meeting of a public company, all directors shall retire from office at the conclusion of the meeting; and

(b) at the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office at the conclusion of the meeting.

(4) The directors to retire in every year shall be the directors who have been longest in office since the directors' last election, but as between persons who became directors on the same day, the directors to retire shall be determined by lot, unless they otherwise agreed among themselves.

(5) A retiring director shall be eligible for re-election as if he is not disqualified under this Act.

(6) Unless otherwise provided in the constitution, the company may appoint any person who is not disqualified under this Act to fill in the vacancy at the annual general meeting at which a director so retires, and if no appointment was made to fill the vacancy, the retiring director shall, if he offers himself for re-election, be deemed to have been re-elected, unless—

(a) at that meeting the company expressly resolved not to fill the vacated office; or

(b) a resolution for the re-election of the director is put to the meeting and lost.

4.0 Court of Appeal's Findings and Legal Analysis

4.1 Retirement and Re-Election Must Take Place at a General Meeting

"Retirement and re-election are intertwined and are but a single process at the general meeting"

The Court of Appeal emphasized that under **Section 340(1)(b)** of Act 777, every public company shall hold an AGM in every calendar year in addition to any other meetings held during that period, to elect directors in place of those retiring. Failure to convene an AGM cannot justify a director's retirement by default. It is an established practice that an election of directors in place of those retiring is a matter to be conducted at an AGM of a company. The Court of Appeal stated:

"[21] The retiring directors - either due to retirement by rotation or having been appointed to fill a casual vacancy - generally have the right to seek re-election. In that sense, the retirement and re-election are intertwined and are but a single process at the general meeting. This is where the directors concerned retire at the end of the meeting but whose re-election, if voted for at the meeting, takes effect upon the conclusion of the same meeting. This is an important aspect of shareholder democracy in modern company law which did not appear to feature in any substantive fashion in the submissions of counsel for parties before us."

Section 340(1) of Act 777 has provided certain matters to be conducted in an AGM of a company. This is a mandatory provision, meaning a company is legally required to convene an AGM to address these matters. A company cannot dispense with holding an AGM, regardless of any delays or other circumstances. The obligations under Section 340(1) remain enforceable until properly fulfilled.

4.2 Eligibility for Re-Election Is a Core Tenet of Shareholder Democracy

"Eligibility for re-election is an important aspect of shareholder's democracy in modern company law"

Section 205(5) of the Act 777 explicitly provided that a retiring director shall be eligible for re-election as if he is not disqualified under this Act. This means, the retiring directors have the rights in law for re-election. The retirement of directors is not meant to function as a silent or automatic removal mechanism. Rather, it is designed to trigger a democratic process where shareholders exercise their rights to vote on whether a director should be re-elected.

As such, the Court of Appeal held that retirement and re-election are intertwined in the general meeting. Without such a meeting, a retiring director is unjustly denied the opportunity to seek re-election, and shareholders are correspondingly denied the right to decide the future composition of their board.

"[22] It must be highlighted that if the directorship of a director is merely deemed terminated by retirement (even if properly due, pursuant to the retirement by rotation

provision) upon the expiry of a time period without a general meeting of the shareholders being convened, that director is deprived of his right to stand for re-election and the shareholders are likewise denied the opportunity to vote on the re-election proposal and the continued service of that individual as a director of the company.”

This observation reinforces that retirement under the Act 777 is not effective in isolation. It must be accompanied by the opportunity for re-election, as prescribed by law. Deeming a director to have retired without convening a meeting undermines both the director's rights and the shareholders' authority, striking at the core of corporate democracy.

4.3 The Deemed Re-Election of Retiring Directors

“A company cannot cherry pick the statutory consequences of an AGM”

Based on **Section 205(6)** of the Act 777, unless otherwise provided in the constitution, the company may appoint any person who is not disqualified under this Act to fill in the vacancy at the AGM at which a director so retires, and if no appointment was made to fill the vacancy, the retiring director shall, if he offers himself for re-election, be deemed to have been re-elected, unless at that meeting the company expressly resolved not to fill the vacated office; or a resolution for the re-election of the director is put to the meeting and lost.

This provision further reinforces the interdependency of retirement and re-election, both of which must take place within an AGM. A company cannot cherry pick the statutory consequences of an AGM by invoking deemed retirement without acknowledging the applicability of deemed re-election.

In a clearly worded judgment, the Court of Appeal stated:

“the presence of this deemed re-election provision instead further reinforces the requirement that the retirement by rotation provision must always be applied with the re-election process. But the respondents should not take a contradictory stand by arguing for deemed retirement in the absence of an AGM but insisted that deemed re-election cannot take place without an AGM. An AGM is necessary in both related situations.”

Thus, where an AGM has not been held, neither retirement nor re-election can legally occur, as both are procedurally tied to the conduct of that meeting.

4.4 The Deemed Retirement Is Inconsistent with Shareholder's Democracy

“The deemed retirement is a grave hindrance to corporate democracy”

The Court of Appeal rejected the deemed retirement approach. The Court held that this approach is incompatible with the spirit of the law particularly the provisions of Section 205 and Section 340 of the Act 777. The deeming approach ignores the language of the governing statutory provisions and would result in the denial of re-election rights of the

retiring directors and denial of the shareholder's rights to consider and vote on the re-election.

The deemed retirement would sidestep statutory safeguard and subvert the democratic framework embedded in the Act 777. The Court stated:

"This deeming approach ignores the language of the governing statutory provisions and articles of association, and worse, outrightly dismisses the entrenched right of the retiring directors to seek re-election, and the corresponding right of the shareholders to consider and vote on any such proposal. In the final analysis the deeming approach may even be argued to represent a grave hindrance to and an interference with corporate democracy in modern company law."

In the absence of a general meeting, retirement provisions cannot be triggered, and shareholders must still be afforded the opportunity to exercise their oversight through the ballot.

4.5 Deemed Retirement Is Not In the List of Situations under Section 208

"Non-holding of an AGM is a bypass of rights of re-election"

Section 208 of the Act 777 provides for the retirement of directors who are not re-elected. Under subsection (b), the office of a director of a company shall be vacated if the person holding that office has retired in accordance with this Act or the constitution of the company but is not re-elected. The Court of Appeal rejected the contention that the Director construed as having vacated his office under this provision. The Court stated:

"[108] Here, as a matter of fact the appellant was deemed to have retired and not re-elected. But it must be stressed that not only did the appellant not retire in accordance with the articles of the relevant companies in the absence of an AGM but that he also did not get to even exercise his eligibility to seek re-election (due to the absence of AGM)."

The Director had not retired in accordance with the constitution or the Act 777 due to the non-holding of an AGM and he was not given an opportunity to stand for re-election as the statutory mechanism for doing so (general meeting) was bypassed.

5.0 Conclusion

The decision in **Dato' Sri Andrew Kam Tai Yeow v Grandfoods Sdn Bhd & Ors [2025] MLJU 819** stands as a reaffirmation of shareholders' democracy and procedural accountability under Malaysian company law.

The Court of Appeal made it clear that:

- Director retirement cannot be deemed to occur without a general meeting;
- Re-election eligibility is a statutory right that must be preserved;
- Shareholders' voting rights are central to corporate governance and cannot be bypassed;

- Deemed re-election and retirement are legally inseparable, and both require the holding of an AGM; and
- Section 208 does not apply in circumstances where directors are denied the opportunity to be re-elected due to procedural lapses.

Ultimately, the ruling sends a strong message to corporate stakeholders that democratic governance within companies must be upheld, even amidst conflict or delay. Circumventing AGMs or other statutory mechanisms cannot be used as a backdoor to restructure boards or sideline dissenting directors. This case now serves as a crucial precedent in protecting the rights of directors and the powers of shareholders, ensuring that corporate control remains grounded in transparent, lawful processes.

References:

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