

PROFILE



Partner
Employment & Administrative Law
Shearn Delamore & Co., Kuala Lumpur, Malaysia
wongkj@shearndelamore.com
T +603 2027 2654

Qualifications
LL.B (Hons), University of Sheffield
Barrister-at-Law, Inner Temple
Advocate & Solicitor, High Court of Malaya

Languages
English, Malay

WONG KIAN JUN

ABOUT KIAN JUN

Kian Jun advises and acts on cases related to employment litigation at the Labour Court, Industrial Court, High Court and Court of Appeal. He is also involved in numerous administrative law matters and judicial review proceedings at the High Court level and up to the Federal Court. He handles issues relating to dismissals, internal disciplinary proceedings, employee management, terms and conditions of employment, compliance with employment legislation, issues relating to Union recognition, and Collective Agreements.

Kian Jun is experienced with legal matters involving the Personal Data Protection Act 2010. He has given numerous talks and conducted many training sessions on employment and personal data protection laws both in Malaysia and abroad.

EXPERIENCE

- **The conversion of the status of a long service permanent employee to a fixed term employee - High Court Judicial Review Application WA -25-410-12/2018: - *Lim Boon Leong v Sime Darby Auto Selection***

The issues above are important as it involved the conversion of a permanent employee into a fixed term employee and general practice of many organisations in placing its high ranking employees on a fixed term contract.

The High Court ruled that an employer is entitled to convert the status of permanent employee to that of a fixed term employee if both parties agreed to the change in employment status.

- **Defended the challenges to the constitutionality of legislation - Judicial Review Application No: 25 – 213 -07/15 *Cassandra Ng Leih Cum v Minister of Human Resources of Malaysia and Another* and Judicial Review Application No: 25-230-08/15 *Sawarn Singh S/O Mehar Singh v Malaysian Airlines System Berhad and Another***

Pursuant to the restructuring of Malaysian Airline System Berhad (“MAS”), the organisation had reduced its workforce by approximately 6000 employees. To facilitate the restructuring exercise the Malaysian Airline System Berhad (Administration) Act 2015 (“MAS Act”) was enacted whereby amongst others an express provision stipulates that no legal proceedings could be commenced or continued against MAS during the period when MAS is under Administration. The MAS Act provides that any legal proceedings can only be commenced or continued if written approval was obtained from the Administrator.

The judicial review was filed by former employees of MAS. One of the points of contention raised by the former employees were that the MAS Act was unconstitutional as it curtailed their legal right to file claims against MAS.

We represented MAS in both these matters and the High Court ruled in both cases that the MAS Act was not unconstitutional and represented valid law. As such, the intention of the MAS Act must be given effect by the courts and adhered to by all parties. These were among the first cases to establish the validity of the MAS Act and affected all other pending cases involving MAS.

- **The treatment for illegally obtained documents before a court of equity - Judicial Review Application - WA-25-310-10/2018 - *Suberan Chandran v Xerox Business Services Malaysia Sdn Bhd***

An important issue was raised during the Industrial Court hearing, wherein the Claimant had attempted to tender certain confidential documents belonging to the Company without the knowledge and authorisation of the Company. The tendering of these documents were objected to on the following grounds:-

- The Industrial Court being a Court of equity and good conscience cannot admit documents which were improperly obtained by the Claimant.
- This approach is different from the test applied in the civil courts wherein illegally obtained documents may be admitted if it was relevant to the matters in issue.

The Industrial Court agreed with us in our submissions and rightly excluded the said documents. The decision of the Industrial Court was subsequently affirmed by the Court of Appeal.

- **Union recognition**

We represented our clients in challenging the Minister of Human Resources decision to grant recognition to the National Union. The Court of Appeal considered important points of law which involved amongst others:-

- Competing interest between the National Union and the existence of an In House Union representing the same category of employees;
- The conduct and procedures of the Secret of Ballot;
- The members of the In House Union were misled to vote for the National Union

The Court of Appeal agreed with our argument and agreed to quash the decision of the Minister.

APPOINTMENTS/MEMBERSHIPS

- Member, Malaysian Bar
- Member, International Bar Association (IBA)

PUBLICATIONS

- *Key records retention requirements relating to personal data in Malaysia* – published by Practical Law, Thomson Reuters
- *Lexis Nexis – Practical Guidance, Malaysia*, various content on employment related matters
- *Can Different Punishment Be Meted Out for the Same Misconduct* - article published by the World Law Group
- *A Re-Look on the Laws of Retrenchment in Malaysia* - article published by the Employment Law Alliance (2016)
- *Fraud at the Workplace – Key Issues Affecting Employers in Malaysia* - published by Financier Worldwide (February 2015)