

PROFILE



Partner
Head, Immigration
Employment & Administrative Law
Shearn Delamore & Co., Kuala Lumpur, Malaysia

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Qualifications

LL.B (Hons), University of Manchester
LL.M, University of Malaya
Certificate in Legal Practice
Advocate & Solicitor, High Court of Malaya

Languages

English, Malay

SUGANTHI
SINGAM

ABOUT SUGANTHI

Suganthi is a Partner in Messrs Shearn Delamore & Co specialising in employment and immigration areas in both contentious and non-contentious matters. She is engaged in trial and appellate advocacy at all levels of the Malaysian courts. Suganthi graduated from the University of Manchester in 1994 and after her admission to the Malaysian Bar in 1996, she went on to pursue her Masters of Law from the University of Malaya whilst practising in Messrs Shearn Delamore & Co.

For newly incorporated companies and foreign investments in Malaysia, she advises on the drafting of employment agreements, policies and handbooks as well as the entry requirements for ex patriates and corresponding legal requirements. She also trains employers to manage misconduct issues and poor performance in employees, advises on issues relating to employee stock option schemes, share awards, prepares panel members for domestic inquiries and trains personnel on how to conduct domestic inquiries.

For corporate acquisitions and mergers, Suganthi provides strategic guidance in dealing with the employment and related immigration issues that arise. She provides legal counsel in relation to business acquisitions, employment permits, long term social visit passes entry requirements, reorganisations, and voluntary and mutual separation schemes, harmonisation of employment terms and retention of key management. In relation to workplace risk management and safety, she provides legal advice on occupational health and safety issues as well as sexual harassment policies and procedures. She also handles trade union recognition.

EXPERIENCE

Ranjit Kaur S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 3 CLJ 310

Represented the Company at the High Court and Court of Appeal in defending the Company's actions in termination of an employee's services for insubordination. During the course of the Industrial Court proceedings, the employee raised several issues of victimisation which were considered and decided upon by the Industrial Court in favour of the employee. At the High Court Suganthi successfully argued that the court should not have considered such issues given the absence of pleadings on victimisation which was accepted at the High Court. On appeal to the Court of Appeal the court recognised notwithstanding that the matter originated from the Industrial Court the need for parties to be bound by the pleadings applied equally at the Industrial Court.

In **Abdul Malek Bin Mohamed v MISC Bhd** [Award 840 of 2020], she successfully defended the Company's actions in terminating the employment of a long serving employee after 32 years of service. The Industrial Court recognised that the tenure of service of an employee in an organisation does not shield the employee from having to render satisfactory performance at the level required by the Company. The Industrial Court upheld the dismissal of an employee for poor performance after 32 years of service.

Although the employee alleged that the Performance Improvement Process had been undertaken in bad faith, the person assessing his performance was incompetent to evaluate the complex tasks that he purportedly performed and that the Company had ulterior motives for terminating his employment, the Court found that the absence of such complaints, the failure to highlight his dissatisfaction with the PIP process at any point of time during the review process or after until subsequent to his termination amounted to irreconcilable behaviour for an experienced employee.

Instead the Court found that the employee's signature and acknowledgment to the performance reviews reflected that he had acknowledged his performance evaluation and reviews during the PIP without protest which was testament to his awareness of the Company's unhappiness with his performance even though he claimed otherwise. The Court also found that the allegation that he was coerced to accept monetary compensation to leave the company was unproven. Instead what was accepted by the Court was that whilst there were discussions between the parties on the options that were available if he did not wish to go through with the PIP, his conduct did not indicate that he was under any threat or coercion to leave his employment.

To the contrary the Court found that the Company met the threshold required of an employer prior to effecting the termination in that the employee had been given sufficient time to show improvement in the areas where he was found to be lacking and he had also been sent for trainings to raise his level of performance. Despite the participation in the PIP however he was unable to achieve the minimum performance level that was demanded by the Company and hence he was found to be unsuitable to continue in his role as an Auditor.

Mohd Fairuz bin Jamaludeen v MISC Berhad (Case No: 10/4-639/17 – Award No. 1428/2019)

In the context of employment litigation before the Industrial Court, this was the first case where the dismissal of an employee based on an analysis undertaken for drugs from a hair sample of the employee was upheld. The first test undertaken by way of a urine analysis provided a negative result. However, the Company thereafter determined to undertake a drug analysis using the hair sample belonging to the employee. When the results of the analysis undertaken on the hair sample revealed a positive identification of drugs, the Company proceeded to dismiss the employee. The court upheld the dismissal notwithstanding the earlier analysis of the employee's urine sample which reflected a negative result. The matter is presently at the High Court pursuant to an application for judicial review.

Johanis bin Aziz v. City Facilities Management Sdn Bhd (Case No: 10/4-110/19 – Award No. 836/2020)

Pending the conduct of inquiry proceedings, the employee failed to report for duty nor did he respond to the Company's calls, messages or email communications. The Company regarded the employee's actions as having abandoned his employment and thus issued him a letter to this effect. The employee however regarded the Company's notification to him as a termination of employment and brought a claim under Section 20 of the Industrial Relations Act 1967 against the Company for a termination without cause or excuse. Having heard the matter, the Court agreed with the Company that given that it was the Claimant who had essentially stopped reporting in to work or responding to the Company, it was in fact the Claimant whom had abandoned his employment which did not amount to a dismissal.

Mohd Nor Hassan & Ors v Continental Sime Tyre PJ Sdn Bhd [2014] 3 ILR 144

The Industrial court upheld the retrenchment of several employees in the Company where there was a departure from the tried and tested method of "last in first out" in the selection of employees to be retrenched. The Company formulated its own selection criteria i.e. the best fit for the job available, irrespective of years of service in the Company. This resulted in more junior employees being retained in preference to those who were longer serving employees in the Company. Having evaluated the criteria and skills set required of the Company the Court found that this was an objective criteria and upheld the selection of the employees to be retrenched.

ACCOLADES**Chambers Asia-Pacific**

Employment & Industrial Relations 2024 – Band 3 from 2022 - 2024; Band 4 Leading Individual for 5 consecutive years (2017-2021); Band 3 Leading Individual for 3 consecutive years (2011-2013)

- *"Suganthi is amazing. Fast, responsive, clever and also a genuinely great human being who cares about the client and business."*, a client remarked. - Chambers Asia-Pacific 2024
- *"Suganthi delivers consistently in all aspects of professionalism and commercial sense as well."* – Chambers Asia-Pacific 2024
- A client notes that *"Suganthi is a strong and collaborative partner who is very responsive and client centric."* - Chambers Asia-Pacific 2023
- Clients report of their pleasant experience working with her: *"She's very practical and provides very good service."* - Chambers Asia-Pacific 2019
- Sources describe Suganthi Singam as *"quite a tenacious lawyer and very competent."* - Chambers Asia-Pacific 2017

The Legal 500 Asia-Pacific

Labour and Employment 2022 – Recommended Lawyer for 5 years (2016-2018, 2021 and 2022)

- *"Suganthi Singam is an amazing lawyer to work with, very responsive and available at all hours of the day. She is also very knowledgeable in Employment matters, has a good balance of commercial sense and ready at hand with advice whenever approached"*. – The Legal 500 Asia-Pacific 2021

Who's Who Legal

Labour and Employment – Global Leader in 2021 and 2023

Labour, Employment & Benefits 2023 - National Leader (Southeast Asia) for 3 consecutive years (2021 – 2023)

APPOINTMENTS/MEMBERSHIPS

- Vice Chair, Human Resources Group WLG
- Member, American Immigration Lawyers Association (AILA)
- Member, Malaysian Bar
- Member, International Bar Association (IBA)
- Member, World Law Group (WLG)

PUBLICATIONS

- Law and Practice of Employment Law in Malaysia - Sweet and Maxwell, 2021 and 2022 [contributor]
- Virtual Round Table Labour & Employment Law 2021 - How Has the Covid-19 Pandemic Impacted the Labour and Employment Landscape in Malaysia - Corporate LiveWire, February 2021
- The Annotated Statutes of Malaysia 2020 Issue 179 - Lexis Nexis, 2020 [co-author]
- A Paradigm Shift Redefining the Employment Landscape - CLJ, 2020 [co-author]
- Surviving Covid – 19 Redefining the Employment Landscape - Corporate LiveWire, April 2020
- Rise of Mental Health Related Illnesses The Aftermath Covid-19 - Corporate LiveWire, June 2020
- Managing Mental Related Illness in Employment (Institute of Labour Market Information & Analysis - ILMIA, 2017
- Malaysia - A Promise Made Good? - GMS Digest, 2016 [co-author]
- Malaysian Chapter for Global Mobility: An Overview for Human Resource Professionals - LawQuest, 2015 (3rd edition)