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Opting for Optional Retirement in a Reorganisation

Liew Khim Boon v The South-East Asian Central Banks (SEACEN) Research and Training Centre
(Court of Appeal Civil Appeal No W-01(A)-398-11/2017)

The Court of Appeal recently affirmed the decision of the High Court where the High Court had quashed the Minister of Human Resources' (**Minister**) decision to refer the representation of the employee to the Industrial Court for adjudication under s 20 of the Industrial Relations Act 1967.

Following a reorganisation, the employee was identified as surplus to requirement. Employees who were eligible for optional retirement under SEACEN's terms and conditions of employment could elect for optional retirement instead of being retrenched should they be identified as surplus to requirement. The employee submitted his application for optional retirement, which was approved by SEACEN. As a retiree, he and his family would be entitled to post-employment medical and dental benefits. Accordingly, he was not paid retrenchment benefits.

Dissatisfied with the Minister's decision to refer the representation to the Industrial Court, SEACEN applied to the High Court to quash the Minister's decision and to prohibit the Industrial Court from adjudicating upon the representation. In allowing SEACEN's judicial review application, the learned High Court judge held as follows:

- (a) SEACEN had undertaken a reorganisation. Employees who were surplus to requirement could either opt for retrenchment benefits or for optional retirement;
- (b) The employee had voluntarily exercised the option to retire and had received the retirement benefits;

- (c) The employee did not protest against the optional retirement offer which he had accepted and continued to work until his retirement day;
- (d) The employee must not be allowed to renege or resile from the optional retirement he had taken;
- (e) Having reaped and received the retirement benefits, the employee should not be permitted to approbate and reprobate his decision;
- (f) There were no serious issues of law or fact that the employee had contractually agreed to opt for optional retirement.

Dissatisfied with the decision, the employee appealed to the Court of Appeal. In affirming the High Court's decision, the Court of Appeal held as follows:

- (a) The employee could opt for optional retirement or retrenchment and it was up to him to pick;
- (b) The employee had, on a voluntary basis, decided on optional retirement. He was not forced to take optional retirement; and
- (c) In light of the foregoing, there are no serious issues of facts or law which require adjudication by the Industrial Court.

SEACEN was represented by partner Lim Heng Seng, and senior associate Amardeep Singh Toor, of [Lee Hishammuddin Allen & Gledhill](#).

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