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EMPLOYMENT & INDUSTRIAL RELATIONS

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26 MAY 2026

DEATH THREATS JUSTIFIED DEVIATION FROM THE CODE OF CONDUCT FOR INDUSTRIAL HARMONY

by Shariffullah Majeed & Arissa Ahrom

MOHAMAD ELMI BIN MD SAWAL v BAFCO ASIA SDN BHD
(Kuala Lumpur High Court Civil Appeal No. WA-16A-6-01/2025)

The High Court recently affirmed the Industrial Court's findings in Award No.: 67 of 2025 ("**Award**"), among others, that employers may justifiably depart from certain requirements under the Code of Conduct for Industrial Harmony ("**Code**") where exceptional circumstances exist, including serious threats to the safety of management personnel. Accordingly, the High Court dismissed the Appellant's appeal against the Award.

The matter arose from the retrenchment of employees by the Company pursuant to a global restructuring exercise during the COVID-19 pandemic. The Company had consistently suffered substantial losses since 2016, which were further exacerbated by the Movement Control Orders imposed during the pandemic. As part of its global restructuring exercise, the Company streamlined its operations and transitioned its business model from manufacturing and research & development ("**R&D**") to supply chain management, resulting in the abolishment of multiple divisions and the retrenchment of 63 employees.

KEY LAWYERS

SHARIFFULLAH MAJEED
Partner
sha@lh-ag.com



ARISSA AHROM
Partner
aa@lh-ag.com



Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

51-12-E, Menara BHL Bank,
Jalan Sultan Ahmad Shah,
10050 Penang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com

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A key issue before both the Industrial Court and the High Court was the Company's failure to provide employees with early warning or prior consultation before the retrenchment exercise, as recommended under the Code. The Appellant contended that the retrenchment exercise was therefore not carried out bona fide. However, the Company's position was that it had been unable to provide advance notice of the retrenchment exercise due to a series of anonymous emails containing threats against its Managing Director and his family. Evidence adduced during the proceedings before the Industrial Court showed that the threats were sufficiently serious that police reports had been lodged, and additional security personnel had to be deployed during the townhall conducted with employees prior to retrenchment notices being handed to the employees.

The Industrial Court accepted the Company's explanation and found that the threats justified the Company's decision not to provide early notice of the retrenchment exercise. In affirming the Award, the High Court recognised that the Company's concerns for the safety of its management and employees constituted a legitimate and compelling justification for deviating from the Code's recommendation on prior consultation and early warning. Importantly, the High Court reaffirmed the established principle that the Code does not operate as a binding statute. While the Code remains the "gold standard" in assessing whether a retrenchment exercise had been carried out bona fide, strict compliance is not mandatory in every circumstance.

This decision is particularly noteworthy as it underscores that the courts will adopt a practical and fact-sensitive approach when assessing compliance with the Code. While employers are generally expected to adhere to the Code's recommended practices, the courts recognise that extraordinary circumstances, including genuine safety and security concerns arising from threats against management may justify deviations from those requirements without rendering an otherwise bona fide retrenchment exercise unlawful.

The Company was represented before the Industrial Court and High Court by Partners Shariffullah Majeed and Arissa Ahrom of Lee Hishammuddin Allen & Gledhill.

The Industrial Court Award may be found [here](#).

*If you have any queries, please contact **Shariffullah Majeed** (sha@lh-ag.com) or **Arissa Ahrom** (aa@lh-ag.com).*