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EMPLOYMENT & INDUSTRIAL RELATIONS

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HIGH COURT AFFIRMS GLCS' PREROGATIVE TO STRUCTURE WORKFORCE THROUGH GENUINE FIXED-TERM CONTRACTS

by Shariffullah Majeed, Arissa Ahrom & Sarah Heyrissa

ZURINA OTHMAN v BANK PERTANIAN MALAYSIA BERHAD

(KUALA LUMPUR HIGH COURT CIVIL APPEAL
NO.: WA-16A-176-10/2025)

Security of tenure in employment which has been recognised by the Malaysian courts¹ has to co-exist with employers' prerogative to make commercial decisions in the interests of better economy and management². This balance is particularly significant for Government-Linked Companies ("GLCs"), whose employment structures may be shaped by governance and / or policy considerations.

The recent High Court decision in **ZURINA OTHMAN v BANK PERTANIAN MALAYSIA BERHAD** affirmed that GLCs may structure their workforce through genuine fixed-term employment arrangements, even where the position concerned performs an essential or continuing

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[1] HONG LEONG EQUIPMENT SDN BHD v LIEW FOOK CHUAN AND ANOTHER APPEAL [1996] 1 MLJ 481
[2] HARRIS SOLID STATE (M) SDN BHD & ORS v BRUNO GENTIL PEREIRA & ORS [1996] 3 MLJ 489

function within the organisation. In this case, the Employee had been engaged as the Chief Credit Officer (“**CCO**”) of the Bank under a 2-year fixed-term contract (“**1st Fixed-Term Contract**”) and was subsequently offered a further 2-year fixed-term contract (“**2nd Fixed-Term Contract**”). Both contracts expressly provided for a defined period of employment and made clear that there would be no continued employment beyond the agreed term unless a further agreement was entered into between the parties. When the Bank decided not to renew the 2nd Fixed-Term Contract, the Employee contended that her employment was, in substance, permanent and that the non-renewal amounted to a dismissal.

In determining the true nature of the arrangement, the Industrial Court considered the intention of the parties, the Bank’s subsequent conduct and the nature of the Bank’s business and the work performed by the Employee. The Bank’s conduct was consistent with the contractual terms. When the 1st Fixed-Term Contract was renewed, the Bank issued a fresh offer and the parties entered into the 2nd Fixed-Term Contract instead of allowing the employment to continue automatically. The evidence also showed that the Bank’s other C-suite personnel were similarly engaged on fixed-term contracts and that there were differences between the terms and benefits applicable to its fixed-term employees and permanent employees. These circumstances supported the conclusion that the arrangement was genuinely fixed-term and formed part of the Bank’s wider senior management employment structure. Aggrieved by the Industrial Court’s decision, the Employee filed an appeal to the Kuala Lumpur High Court.

In dismissing the appeal, the High Court upheld the finding that the Employee’s employment had come to an end by effluxion of time and that there had been no dismissal. Y.A. Dato’ Azizan Md. Arshad placed emphasis on the terms of the 2nd Fixed-Term Contract, which the Employee had knowingly and voluntarily accepted. In particular, there was no guarantee that the 2nd Fixed-Term Contract would be renewed and no contractual requirement for the Bank to provide reasons for its decision not to renew. These matters had been made clear to the Employee when she accepted the 2nd Fixed-Term Contract. Significantly, the High Court also rejected the argument that the importance of the CCO position meant that the Employee ought to have been regarded as a permanent employee. The fact that the position performed an essential or continuing function within the Bank did not prevent the Bank from engaging the person occupying that position on a fixed-term basis.

For GLCs, the decision serves as a reminder that fixed-term arrangements for senior management employees should be structured and implemented in a manner which clearly reflects the genuine intention of the parties. While the courts recognise an employer’s prerogative to determine its employment structure, the description of an employment contract as “*fixed-term*” alone will not necessarily be conclusive. The contractual terms, the conduct of the parties and the employer’s wider employment

practices remain relevant in determining the true nature of the arrangement. Accordingly, GLCs should consider the following:

- (1) ensuring that the fixed-term contract clearly stipulates a defined period of employment, expressly provides that the employment will expire automatically upon expiry of that period, and specifies that any continued employment is subject to a further written agreement between the employer and employee;
- (2) making clear that any renewal is subject to a fresh decision by the employer and is not automatic or guaranteed, and avoiding any representations or practices which may give rise to an expectation of continued employment;
- (3) where positions are intended to be held on a fixed-term basis, adopting and consistently applying a clear employment framework across comparable positions so that the employer's actual practices correspond with the contractual arrangements; and
- (4) where the fixed-term contract is not renewed, ensuring that the employee is informed that the employment is coming to an end in accordance with the agreed contractual term, and that the employer continues to comply with its contractual obligations up to the expiry date.

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

The Bank was represented in the High Court by Partners, Shariffullah Majeed and Arissa Ahrom of Lee Hishammuddin Allen & Gledhill.

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