

Neutralising a necessary evil

Retrenchment is meant to be a last resort for companies for a reason – the cost to both employees and employers is hefty

THERE are no heroes in a retrenchment exercise. Whether you are the boss or the employee, you lose one way or another.

Consider the 20,000 Malaysians who found themselves yanked from the workforce in 2015. This, coupled with the hiring freeze in many industries, rendered the affected employees and their families vulnerable against the turbulent economy.

Those who have not found employment will have to compete with more jobseekers this year, as the retrenchment trend is showing no signs of slowing.

Downsizing has its victims, but that does not always make it a villainous ploy. Companies do run into financial hiccups, especially when the global economy is peaky, that makes it necessary for them to cut cost.

As Asian Development Bank lead economist (trade and regional cooperation) Jayant Menon told *Malay Mail Online*, the ongoing layoff exercises by government-linked banks is likely a result of dipping federal revenues due to oil and commodity price decline.

The Code of Conduct for Industrial Harmony, which is not legally binding, states that retrenchment should be the last resort. Bosses should slash operating cost via other measures first, such as limiting recruitment of new employees, restricting overtime work, reduce working hours, transfer employees to other suitable positions and so on.

Yet, if retrenchment is still the cure a company needs, there are pills that are less bitter to swallow. A voluntary separation scheme (VSS) allows employees to choose if they want to accept the lay-off package, or remain working. On the other hand, a mutual separation scheme (MSS) gives employers the right to select who to lay off, but the affected employee can negotiate terms and conditions of retrenchment.

Ultimately, downsizing is a company's prerogative. It is not a cheap one though – employers do pay a price for axing their workforce.

But who is the bigger loser? That depends on who you ask.

Lives disrupted

Nine out of 10 households have zero savings, screamed the headlines when the *Malaysia Human Development Report 2013* published its findings. Screaming even louder would be the families of retrenched employees. With nothing put aside for emergencies, the finances of the majority of households would be unable to absorb the shock of a lost paycheck.

Retrenchment compensation would help – if one is getting any. The Employment Act 1955 states that companies will have to pay severance benefits to retrenched employees.

Unfortunately, the Act protects workers earning only below RM2,000 a month, as well as any worker involved in manual work.

The compensation amount depends on how long one has been employed, with a maximum of 20 days' wages for each year of service for those employed for more than



In an economic slowdown, some companies choose to retrench in a bid to lower operating costs



by FOONG LI MEI

five years.

With a monthly pay of RM2,000 or below, compensation based on daily wages may not be enough to sustain the dismissed workers until they find a new job, Malaysian Trades Union Congress (MTUC) secretary-general N Gopal Kishnam tells *Focusweek*.

For axed employees earning above RM2,000, it would be time to dust off that employment contract as its terms will determine if they get any benefits at all.

If they believe that their dismissal was unreasonable, they can invoke the Industrial Relations Act 1967 and haul employers to the Industrial Court. The claim, however, would have to be for reinstatement to their positions, not compensation.

In practice, though, reinstatement by the court is rare these days.

Malini Subramaniam, a lawyer at Thomas Philip Advocates and Solicitors, explains that the court case would have soured the relationship between employee and employer.

"When the Industrial Court finds that reinstatement is not the most appropriate remedy, which is usually the case, compensation in lieu of reinstatement will be awarded instead," says Malini.

Regardless of the soured relationship, Gopal observes that most employees who take their employers to court do want their jobs back. This is because even if they manage to find new employment, they would have to start from a lower pay.

No such thing as a free lay-off

The Malaysian Employers Federation (MEF) argues that it may be easier for an employee to bounce back from retrenchment compared with a company. Armed with work experience, the laid off employee can find a job elsewhere. A struggling company that opts for downsizing, on the other hand, has to let go of skilled talents that it has trained to benefit its competitors.

Every retrenched employee in Malaysia will typically cost 24 weeks of salary, according to the *Global Competitiveness Report 2015* by the World Economic Forum, which based its figures on surveys with top business executives.

"When the company's [financial health] picks up again, it does not have enough manpower to fulfil the increased orders," says MEF executive director Datuk Shamsuddin Bardan.

Replacing laid-off workers is expensive. A study in 2014 by

Oxford Economics estimates that a British company coughs up about £30,000 (RM189,270) due to lost productivity, recruiting and training new staff. In the United States, the Center for American Progress found in 2012 that for workers earning less than US\$50,000 (RM221,252) per year, the cost of replacing them is 20% of the annual salary.

To top it off, companies risk being entangled in a year-long court battle if employees sue for unfair dismissal. The burden lies with the employers to prove that they have valid reasons to cut workforce.

If the court is unconvinced, employers may be ordered to pay up to 24 months of backdated wages to the retrenched employee, if reinstatement is not awarded.

With all the cost incurred, companies should be avoiding retrenchment like the plague. But a plague it did turn into in 2015; downsizing exercises spread across various key sectors including oil and gas, aviation, banking and manufacturing. Standard Chartered Bank Malaysia and CIMB Group Holdings Bhd each shaved 11% off their workforce, while 1,300 employees of Shell Malaysia are expected to pack their belongings over the next two years.

One big reason for this is that the savings outweigh the cost. Maybank Investment Bank Research calculated that while RHB Capital Bhd's MSS schemes will cost about RM332 mil, the exercise would save the bank RM219 mil every year from then on. Theoretically, this translates to an 8% gain in earnings for the bank this year.

The same goes for CIMB – by paying RM443 mil to run MSS schemes for 3,599 employees, the bank saves RM292 mil annually.

The way forward

While there are no winners in downsizing, there are ways to help everyone minimise the impact.

In light of more retrenchments taking place this year, Shamsuddin thinks it is worth exploring the

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A voluntary separation scheme (VSS) allows employees to choose if they want to accept the layoff package

Lawyer Malini Subramaniam



Ways to soften the retrenchment blow

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“time bank” model. Citing successful implementation in Sweden, he proposes that part of employees’ overtime pay gets “credited” into their account in the company. Should the company need to cut cost, the accumulated overtime remuneration can help employers to keep paying their talents, thus retaining them.

This way, a company does not have to rehire when its finances recover, and the impact on workers is much softer compared with being axed from their jobs.

Malini believes that the retrenchment process can benefit from making the Code of Conduct for Industrial Harmony legally binding.

Part of the code covers measures that an employer needs to take should retrenchment become necessary. This includes advanced notification to the affected employee, introducing schemes for voluntary retrenchment and paying redundancy benefits, assisting laid-off workers to find new employment and so on.

“While [the code] is not legally binding,

Retrenchments are actually costly and not beneficial to both the company and the employee

Downsizing exercises are spread across various key sectors including oil and gas, aviation, banking and manufacturing

SHARIL AMIN ABDUL RAHIM/FocusW



recent trends show that the Industrial Court does refer to it when determining if a retrenchment was done in good faith,” says Malini.

Nonetheless, the court still has the final say on the extent the code should apply.

“For now, companies have some room to not abide by all the provisions of the code, but they run the risk of the Industrial Court ruling their retrenchment as invalid. Why not reduce that [uncertainty]?”

“We should make the code a default position. Companies that do not adhere to it would need to have valid reasons, or their retrenchment would be ruled as unfair,” reasons Malini.

She adds that before the code can be made mandatory, however, its provisions would need to be made more specific. For example, the code now vaguely tells employers to “give as early a warning, as practicable, to the workers concerned.”

In contrast, UK law specifies that, unless the employment contract says otherwise, fixed-term employees are entitled to at least a notice period of one week after one month’s employment. After this, entitlement increases at the rate of one extra week per year to a maximum of 12 weeks.

On Labour Day in 2014, Prime Minister Datuk Seri Najib Razak announced that the Industrial Relations Act 1967 is under review to improve the efficiency of resolving dismissal disputes. Little has been revealed about its progress since, but judging by the divided interest of employees and employers, one can imagine that the review has a long journey ahead.

That does not mean nothing can be done now. In Shamsuddin’s books, a pressing area to improve on is the cooperation between employers and the government to “tide over the difficult period.”

“MEF has proposed to the government to provide incentives for companies to retain their employees during hard times,” says Shamsuddin. He cites the example of a wage subsidy scheme by Singapore that supports the salaries of older professionals, who are often the worst hit in a retrenchment exercise.

After all, he justifies, companies are also taxpayers.

If supporting employers with national funds can keep thousands of employees from further saturating a soft job market, perhaps there are small victories for everyone even during a financial flop. **FocusW**

Employment insurance scheme fails to assure stakeholders

PUTRAJAYA seems to have unwittingly united two opposing sides that rarely see eye to eye. Its Employment Insurance Scheme (EIS) is drawing fire from both the Malaysian Trades Union Congress (MTUC) and Malaysian Employers Federation (MEF).

The justification for EIS is to safeguard workers’ interest in the case of retrenchment. Government statistics showed that between 2003 and 2012 non-payment of compensation to laid-off workers stands at about RM40 mil per year.

To mitigate the problem of workers being retrenched without any compensation, the EIS will reportedly mandate both worker and employer contribute 0.25% each for every RM1,000 of salary per month. In case of retrenchment, the scheme will fund affected employees in terms of temporary financial assistance, upskilling and reskilling.

“Why should employees pay for their own retrenchment?” asks MTUC secretary-general N Gopal Kishnam.

While employers are supposed to fork out for displaced workers’ compensation, Gopal opines that the government should share the responsibility, as all workers are taxpayers since the introduction of the Goods and Services Tax (GST).

MTUC also thinks that the math does not add up – the amount that EIS will collect from the 6.5-million-strong workforce and their employers far exceeds the non-payment of compensation.

The scheme’s focus on retrenchment is also too narrow, according to Gopal. This is in contrast with the returns of a similar scheme in South Korea, which includes other employment benefits such as childcare, maternity and so on.

Our retrenchment rate also does not seem to reflect a need for the scheme yet.

“EIS being an insurance means your resources are being pooled, but you will benefit from the scheme only if your company runs a retrenchment exercise. In the last global economic crisis in 2008, the local workers laid off accounted for only about 0.6% of the 6.5 million private sector workers in the country.

“In other words, if you contribute to such a scheme, your chance to benefit from it is only 0.6%,” says MEF executive director Datuk Shamsuddin Bardan.

Shamsuddin also points out that there was a 95% compliance rate in payment of retrenchment benefits even during the 1998 financial crisis. Hence, the EIS is akin to making majority of compliant employers pay for a few errant ones.

Both MTUC and MEF share the view that EIS is best scrapped.



MTUC secretary-general N Gopal Kishnam

A better retrenchment fund model, according to MTUC, would be to split the contribution three ways – among government, employers and workers. Gopal stresses that the workers’ portion should only be miniscule, such as “RM1 per month”, so as not to further burden them.

MEF agrees on the tripartite arrangement, but proposes that the insurance model be turned into a savings scheme instead.

The federation suggests that the employer, employee and government each sets aside one month’s salary. This money, however, is not put into a common fund shared by the whole country. The employer credits the contribution into its own retrenchment account; the employee keeps it in his Employees Provident Fund (EPF) account, while the government holds

it in its coffers.

If the employee is dismissed, he will receive three months of wages to sustain himself. If he stays employed, his contribution goes to his retirement fund, with added interests and dividend. The employer and the government both get to keep their money as well.

“We have calculated that if you contribute only 1% of wages every month into the retrenchment savings scheme, you’d have one month’s salary in your account in seven years,” says Shamsuddin, adding that their proposal to Putrajaya has been met with tepid responses.

Part of EIS’ funds also goes to upskilling and reskilling dismissed workers, leaving many employers puzzled. This is because companies are already levied a percentage from their total payroll as contribution to the Human Resources Development Fund (HRDF), which handles upskilling.

“Of course, only 15,000 employers are forking out for the HRDF now. Out of 650,000 active businesses in the country, the contribution rate is low,” admits Shamsuddin.

“But the ultimate aim here would be to make all companies contribute to the HRDF. Companies that are retrenching can then be mandated to retrain their employees by [drawing out] from the amount they paid to HRDF,” reasons Shamsuddin.

Focusweek could not reach the relevant government departments to comment on EIS.