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Prevention of Insider Jobs Within Financial Institutions

In a recent report by the New Straits Times on 12 July 2024, concerning the theft of over RM2 million from the savings account of a bank customer in Perak, Federal Commercial Crime Investigation Department (CCID) director Datuk Seri Ramli Mohamed Yoosuf stated that a bank staff member is suspected of being involved.

Earlier, on 22 June 2024, The Star reported that millions were stolen from a bank, with victims targeted based on insider information. It is highly likely that syndicate members working within the bank directly facilitated these transactions.

Beyond a critical review of security measures, these incidents should prompt employers to evaluate and enhance strategies aimed at discouraging and preventing unethical or illegal activities by employees. The objective is to create an environment where such actions are less likely to occur due to the presence of strict policies and the potential consequences for violations.

This is because the standard required of an employee in the banking industry, as confirmed in the case of **PERWIRA HABIB BANK (M) BHD v TAN TENG SENG @ LIM TENG HO [1997] 2 ILR 839**, is high. The banking industry belongs to a special kind of business and services rendered to the public. It is entrusted with other people's money; therefore, a high level of discipline and conduct of the highest order is expected of its staff to maintain public confidence.

Background Checks

Background checks help employers bring in candidates they believe are trustworthy in terms of work competency as well as good character by verifying the accuracy of the candidate's information. Fake degrees or fraudulent work records can be identified through proper background checks on candidates.

When conducting a background check, potential employers can review the candidate's publicly available information, such as employment history, education records, credit history, and even social media postings. Some employers even go as far as conducting criminal background checks on candidates.

Employee Documentation and Non-Disclosure Agreements

Employers should ensure that employment documentation, such as the employment contract and Employee Handbook, explicitly outlines the expectations and responsibilities of their employees. Clear documentation serves as a foundation for maintaining a disciplined and secure workplace. Examples include:

- Outlining the job responsibilities of employees, which sets out the specific duties and performance standards expected from employees.
- Ensuring that employees are aware of the company's policies and standard operating procedures.
- Implementing comprehensive policies concerning discipline and the disciplinary process.
- Providing clear criteria for evaluating employee performance and progression within the company.

Non-Disclosure Agreements (“**NDAs**”) are critical tools for protecting sensitive information within an organisation. Employers should use NDAs to explicitly specify the types of confidential information they wish to safeguard. Confidentiality clauses can also be incorporated into employment contracts and the Employee Handbook to reinforce the importance of protecting company secrets. This can include the scope of information covered by the NDA, such as trade secrets, business strategies, and customer lists.

While NDAs are enforceable in Malaysia, employers must be aware of certain limitations, particularly regarding post-employment non-compete clauses:

- **Confidentiality and Non-Disclosure Provisions:** These are generally enforceable post-employment.
- **Non-Compete Clauses:** Typically, non-compete clauses are not enforceable under Malaysian law. This means employers cannot legally prevent former employees from working for competitors, although they can restrict the sharing of confidential information.

Employers should seek legal advice when drafting NDAs to ensure compliance with Malaysian laws and to create enforceable agreements that effectively protect their interests.

Training on Anti-Bribery & Anti-Corruption Procedures

Employers can enhance workplace integrity and compliance by training employees on anti-bribery and anti-corruption procedures. Regular training equips employees to identify and respond to corruption risks, helping to maintain a corruption-free workplace. Employers should prioritise these initiatives to protect their organisations from legal and reputational risks while ensuring a secure and compliant work environment.

To train employees effectively, employers must have clear and comprehensive anti-bribery and anti-corruption policies in place. These policies should include a clear statement that the company is committed to conducting its business, to the best of its knowledge and belief, in accordance with all applicable laws, rules and regulations, and the highest ethical standards.

Whistleblowing Process

It is essential to ensure that all employees are aware of the employer's whistleblowing process. As part of good corporate governance, employers should establish a whistleblowing policy that outlines avenues for legitimate concerns to be objectively investigated and addressed. This provides a mechanism for employees to report any actual, suspected, or anticipated improper conduct within the company. Improper conduct, whether actual, suspected or anticipated, can include:

- 1) Fraud, theft, embezzlement, or dishonesty;
- 2) Corruption or bribery;
- 3) Misuse of company funds or assets;
- 4) Forgery or alteration of any documents belonging to the employer;
- 5) Misuse of position or information;
- 6) Profiteering as a result of insider knowledge; and
- 7) Assisting a person to commit any of the above instances of improper conduct.

Individuals should be able to raise concerns about such improper conduct in confidence and without the risk of reprisal. Employers should also ensure that necessary whistleblower protections are granted to individuals who make disclosures in good faith. This includes protection from any detrimental actions, such as termination of employment contract.

Conclusion

By implementing robust employee training and awareness programmes, employers can significantly enhance workplace integrity and compliance. Legal compliance, effective training strategies, and

continuous education are key to building a culture of ethical behaviour. Regular drills ensure that employees are prepared to identify and respond to corruption risks, thereby maintaining a corrupt-free workplace. Employers should prioritise these efforts to protect their organisations from legal and reputational risks while fostering a secure and compliant work environment.

If you have any queries, please contact Associate, **Summer Chong Yue Han** (yhc@lh-ag.com), or her team Partner, **Shariffullah Majeed** (sha@lh-ag.com).

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