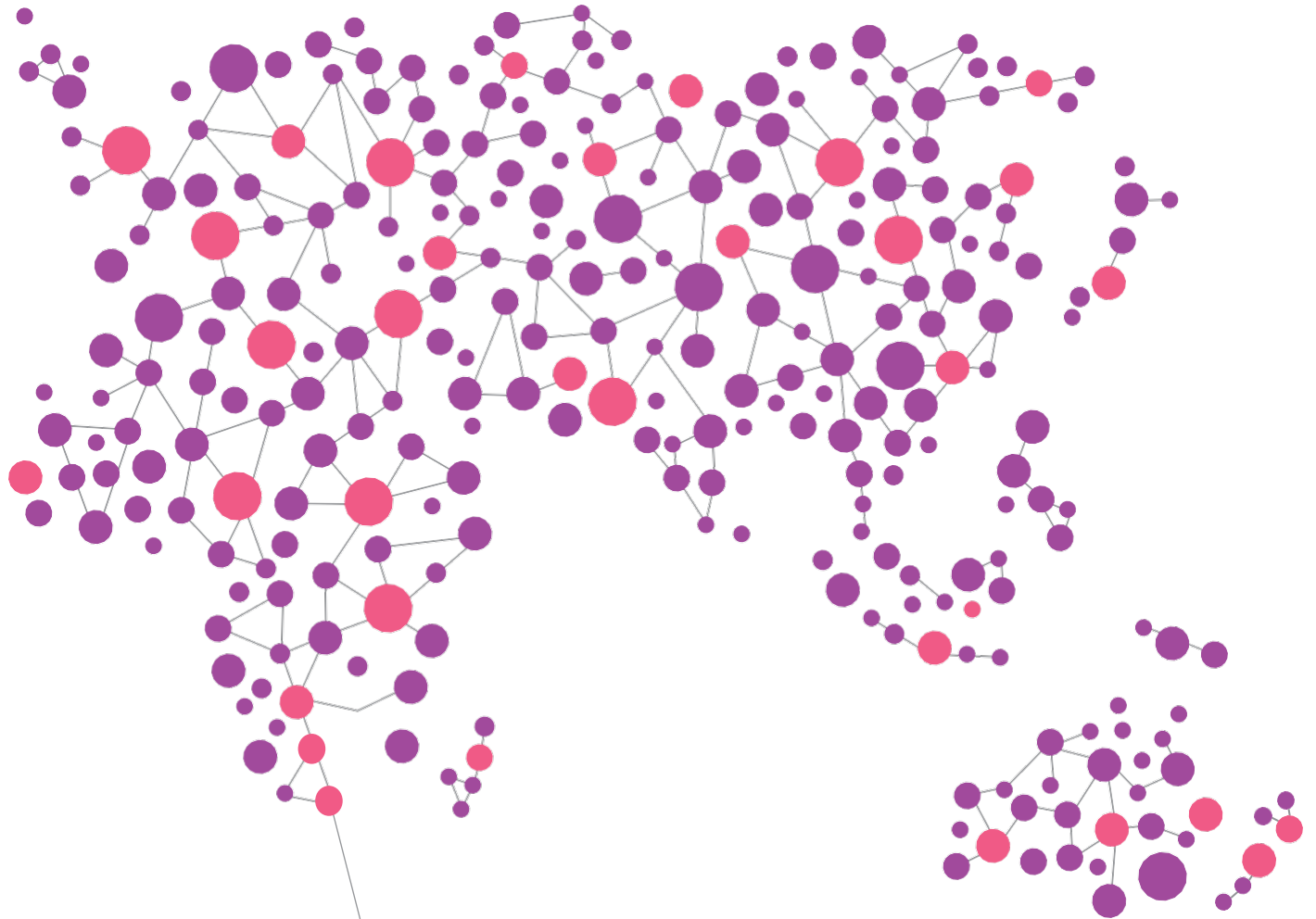




A GUIDE FOR EMPLOYERS: BACKGROUND CHECKS IN ASIA PACIFIC

INTRODUCTION

Employment law across the Asia Pacific region is undergoing significant change, driven by shifting workforce models, increased labor mobility and the rapid growth of non-traditional forms of work. For employers operating across borders, these developments have made pre-employment screening and background checks a critical, and increasingly complex, part of workforce risk management.

The rules governing background checks vary significantly across the region. In jurisdictions such as Australia and Japan, background screening practices are relatively established but subject to strict privacy and data protection requirements, with clear limits on what information can be collected and how it may be used. By contrast, in others, employers must navigate a patchwork of employment laws, data protection regimes and cultural expectations that directly affect the scope, timing and permissibility of checks.

Social media vetting presents additional challenges, as employers must balance legitimate screening interests against privacy rights, anti-discrimination laws and cultural sensitivities around personal online activity.

These legal disparities are compounded by local cultural norms, which influence how background checks are perceived by candidates and regulators alike. Practices considered standard in one country may be viewed as intrusive or inappropriate in another, increasing the risk of non-compliance or reputational harm for multinational employers.

This guide brings together insights from Interlaw's employment law experts across Australia, Indonesia, Japan, Malaysia, the Philippines and Taiwan to provide employers with a concise, practical overview of background checks and social media vetting in these key Asia Pacific jurisdictions.

Christine Chen



AUSTRALIA

What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

The Privacy Act 1988 governs the collection, storage, and use of personal information including background check data. Employers must obtain written consent from the candidate before running any background checks, limit the collection of personal information to what is necessary for the role, store data securely and ensure it is only accessible to authorized personnel, and disclose any criminal history or other sensitive information only when required by law or with the consent of the individual.

The Fair Work Act 2009 ensures fair treatment in the workplace, and this includes how employers use background check data. Under anti-discrimination legislation, it is illegal to discriminate against a job candidate on the basis of criminal history in many cases.

Each state in Australia has its own state-based legislation regarding anti-discrimination laws.

What types of background checks are commonly allowed? Are there any prerequisites or restrictions?

The most common background checks in Australia are criminal history checks, employment history verification, education verification, credit checks, medical checks, citizenship/right to work checks, and reference checks.

Would the answer differ if the company is not the formal employer?

No, the agency would be undertaking the same checks.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

Background checks are generally conducted during the hiring process, although checks can be permitted during the course of employment if there is a plausible reason to undertake such checks, such as if the employer has reason to believe the employee has been charged or convicted of an offense, or if the employee has any health conditions that make it necessary for the employer to undertake a medical check to ensure the employee can safely continue doing their job.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

Employers may be exposed to fines and penalties which are dependent upon the

relevant legislation that has been breached.

WHO TO CONTACT

Hicksons | Hunt & Hunt | Holman Webb

Joey Tass

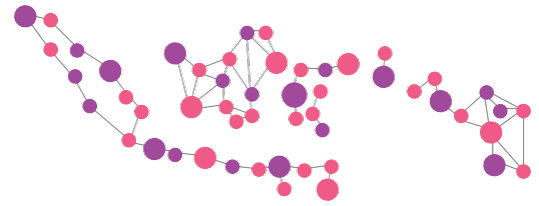
T: +61 2 9391 3031

E: joey.tass@hicksons.com.au

Sarah Cappello

T: +61 2 9391 3113

E: sarah.cappello@hicksons.com.au



INDONESIA

What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

The Indonesian Manpower Law and its implementing regulations are silent on the matter.

What types of background checks are commonly allowed? Are there any prerequisites or restrictions?

The common practice includes criminal records, where the applicant is usually requested to also submit a clearance statement from the Indonesian Police, employment records, and education records.

For employment records, it is common practice that former employers are contacted to gather information on the applicant's performance.

Background checks on financial records are sometimes conducted depending on the role and job function.

Reviewing social media records is also common in practice, but it should be conducted with the employee's consent, as it may disclose the employee's personal information or reveal potential impersonation issues.

No specific prerequisites and restrictions on performing background checks exist. General background checks are allowed to the extent that they have a lawful intention and are carried out by legal channels, i.e. they cannot be conducted through illegal acts such as wiretapping or cellphone confiscation.

Would the answer differ if the company is not the formal employer?

No. If the arrangement is through secondment or outsourcing, the actual employer is not the user, according to the employment agreement. In this regard, background checks can be carried out by either the actual employer or the service provider.

If the arrangement is with an agency, although the agency conducts all the background checks, the hiring company will be the actual employer.

Considering the long and costly process of termination in Indonesia, thorough background checks on the applicant's background should be performed prior to employment commencing.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

Background checks may be carried out at any time, but it is advisable to conduct them during the hiring process.

If background checks are conducted during employment, any report cannot be used as a basis for termination unless the employment agreement contains a clause allowing the company to terminate the employment due to falsified information.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

All information obtained from background checks should be treated confidentially.

Although proving that the hiring company has disclosed personal data would be challenging, there is still a risk that the hiring company would face criminal charges under the Indonesian Personal Data Protection Law.

WHO TO CONTACT

Mochtar Karuwin Komar

Made Barata

T: +62 21 571 1130

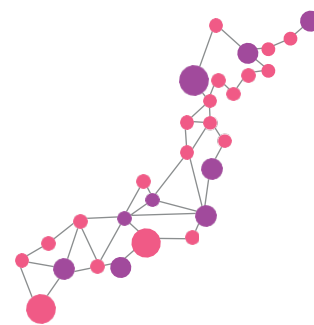
E: mb@mkklaw.net

Albertus Andhika

T: +62 21 571 1130

E: albertus.andhika@mmklaw.net

JAPAN



What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

There are no specific laws or regulations in Japan that specifically regulate employment background checks. Instead, several laws outline the scope of information that may lawfully be collected and the handling of personal information obtained:

- Act on the Protection of Personal Information
- Employment Security Act
- Labor Standards Act
- Act on Equal Opportunity and Treatment between Men and Women in Employment
- Industrial Safety and Health Act
- Act on Measures for the Prevention of Sexual Violence against Children by School Establishers and Private Education and Childcare Providers

(scheduled to take effect on December 25, 2026)

As a general rule, a prospective employer must obtain personal information necessary for recruitment directly from a job applicant. In exceptional cases where the employer obtains personal information from a third party, the information must be collected lawfully and fairly based on the applicant's prior consent.

Likewise, a former employer must obtain the former employee's prior consent before providing personal information to any third party in connection with that person's recruitment.

In practice, it is essential to obtain the job applicant's prior written consent before conducting any background checks and to avoid collecting personal information that is not necessary for that purpose.

What types of background checks are commonly allowed?

Are there any prerequisites or restrictions?

Personal information, including education verification, employment history, and qualification and license verification, may commonly be collected and used for the purpose of background checks if that purpose is identified to the extent possible, and disclosed to the public or notified to job applicants.

Sensitive information, including criminal records, medical history or examination records, physical, intellectual, or mental disabilities, may not be collected without a job applicant's prior consent.

This information must be collected solely to the extent necessary for making an appropriate hiring decision, considering the nature of the employer's business and the duties the job applicant is expected to perform.

The collection of highly sensitive information such as race/ethnicity, social status, family origin, registered domicile, place of birth, and 'other matters that may cause social discrimination' requires additional safeguards.

Even with the individual's prior consent, this information may only be collected if there is a special

occupational necessity or the information is indispensable for achieving the business purpose, and the information is collected directly from the individual after clearly indicating the purpose of collection.

Would the answer differ if the company is not the formal employer?

No. The same principles apply when the individual is engaged under a worker dispatch arrangement.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

There are no specific laws and regulations that directly regulate the timing of background checks during the hiring process.

If a post-employment background check is to be conducted, it should be approached with greater caution, ensuring not only that the purpose for obtaining the information is duly justified, but also that the information is collected solely to the extent necessary.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

Violation of certain provisions of the Act on the Protection of Personal Information may result in recommendations from the Personal Information Protection Commission to cease or correct such violation. If a business handling personal information fails to comply, the Personal Information Protection Commission may issue a corrective action order. A business that violates a corrective action order may be subject to public disclosure, or in the worst case, a fine of up to JPY 100 million (approx. USD 630,000) under the principle of dual liability. In addition, individuals responsible for violations, including company representatives, agents, employees, or other workers, may face imprisonment or a fine up to JPY 1 million.

Violation of the Employment Security Act may result in an order for improvement issued by the Minister of Health, Labour and Welfare. Any individual, including company representatives, agents, employees, or other workers, who fails to comply may face imprisonment with work for up to six months or a fine of up to JPY 300,000. The company itself may also be subject to a fine of up to the same amount.

Any violation of these laws that results in the infringement of a job applicant's privacy may give rise to civil liability in tort, including claims for damages, injunctions against the use of the collected personal information, and deletion of such information.

Reputational risk should be considered. Specifically, if the company is perceived by job applicants as handling personal information in an inappropriate or insufficient manner, this perception may negatively impact recruitment outcomes, potentially lowering applicant engagement or increasing difficulty in attracting qualified candidates.

WHO TO CONTACT

Momo-o, Matsuo & Namba

Masayuki Inui

T: +81 3 3288 2080

E: masayuki.inui@mmn-law.gr.jp

Kaori Maeda

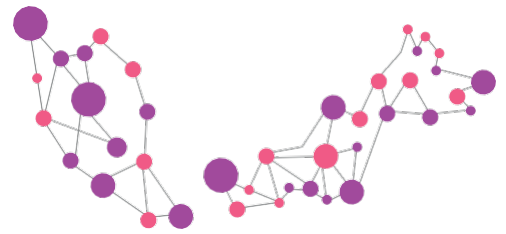
T: +81 3 3288 2080

E: kaori.maeda@mmn-law.gr.jp

Hiroki Kikkawa

T: +81 3 3288 2080

E: hiroki.kikkawa@mmn-law.gr.jp



MALAYSIA

What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

In Malaysia, there is no specific employment or labour law that directly regulates background checks on job applicants. However, such checks must comply with general laws, particularly data protection legislation and, where relevant, sector-specific regulatory requirements.

The Personal Data Protection Act 2010 applies to the processing of personal data, including sensitive personal data, in respect of "any commercial transaction" in Malaysia. Commercial transaction may include job applications and employment contracts.

Depending on the extent of the background checks required, if it is necessary to engage the services of private agencies to conduct background checks, then the

Private Agencies Act 1971 which regulates their licensing, also applies.

What types of background checks are commonly allowed?

Are there any prerequisites or restrictions?

Generally, background checks on criminal, financial, education, employment history, and social media are permissible, subject to the job applicant being notified and consenting to the processing of their personal data for such purposes. The notice provided to the job applicant must be in writing, in both the national and English languages, and should follow the Personal Data Protection Act 2010 requirements with regard to its content and timing of issuance.

Explicit consent of the job applicant must be obtained before processing sensitive personal data except in any of the situations expressly permitted in section 40 of the Personal Data Protection Act 2010. These exceptions,

however, generally do not cover recruiting and hiring.

Employers must bear in mind that the Personal Data Protection Act 2010 prohibits the processing of information that is excessive in relation to the purpose of the processing, regardless of the job applicant's consent. This means that when conducting a background check of a job applicant, employers may only process personal data that is necessary.

Our answer to this question also applies to background checks undertaken in respect of employees who are already in the company's employment.

Would the answer differ if the company is not the formal employer?

No. The answer is the same so long as a commercial transaction exists between the job applicant and the company conducting the background check.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

Unless the employer is subject to any specific statutory, industry, professional, occupational, or other applicable requirements, there are generally no strict rules on when an employer may conduct a background check provided that

the same is in compliance with the Personal Data Protection Act 2010, keeping in mind that the processing of personal data at any stage of the background check is adequate and not excessive in relation to the purposes for which it is being processed.

An employer also has an implied obligation as well as certain obligations under the Occupational Safety and Health Act 1994 to maintain a safe and healthy workplace. A pre-employment background check may help towards minimizing or averting any harm or threat of harm to others at the workplace or in the course of work.

From an industrial relations law perspective, it is generally recommended to conduct pre-employment background checks given the legal challenges in managing the employment or removal of an employee who is later discovered to be unfit for the role the employee is already hired for.

While an employer is not expressly prohibited by law from conducting background checks in the course of employment, the employer may find it prudent to have contractual terms or policies in place which put the job applicant cum employee on notice of such operational requirement or possibility in the future.

It would also be prudent to obtain the employees' explicit consent

(regarding sensitive personal data) at the onset of employment to minimize or avert the need to give such notice or obtain such consent later and having to deal with any disagreements or disputes then.

Notwithstanding any notice or obtaining consent, any processing in the course of employment must not be excessive.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

Failure to comply with the Personal Data Protection Act 2010 may result in fines and imprisonment. Employers who contravene the Seven Personal Data Protection Principles, including failing to give the requisite notice concerned or to obtain explicit consent for processing sensitive personal data, could be liable to a fine not exceeding MYR 1 million (approx. USD 250,000) or to imprisonment not exceeding three years or both.

From an industrial relations perspective, an employer also owes an implied obligation to maintain mutual trust and confidence between themselves and their employees, breach of which may risk repudiating the contract and giving the employee the right to terminate the employment contract. This includes ensuring that information obtained from background checks is not misused.

WHO TO CONTACT

Lee Hishammuddin Allen & Gledhill

Tan Hooi Ping

T: +60 3 6208 5947

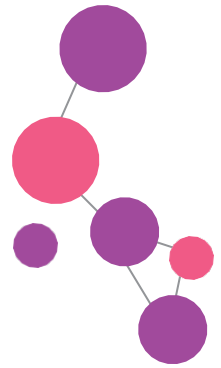
E: hpt@lh-ag.com

Arisa Ahrom

T: +60 3 6208 5835

E: aa@lh-ag.com

PHILIPPINES



What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

Laws and regulations govern the conduct of background checks on job applicants include the Labor Code of the Philippines, the Data Privacy Act, and circulars issued by Bangko Sentral ng Pilipinas, the central bank of the Philippines. These circulars require financial institutions to create a risk-based process for pre-employment or background checks.

What types of background checks are commonly allowed? Are there any prerequisites or restrictions?

Job applicants are usually asked to submit criminal record clearances from the National Bureau of Investigation, police, and from the applicant's local government. These clearances, however, cannot be issued without the consent of the individual. Information on whether a person has a criminal record can also be

verified by the courts, however, this is particularly arduous as the Philippines does not have a central court record database.

It is standard practice for employers to obtain applicants' consent prior to contacting prior employers for references. However, prior employers can be hesitant in providing information either for fear that they might be accused of tarnishing the name or reputation of the applicant or because they were not given consent to do so.

It is a standard requirement that employers ask applicants for their educational background. Schools and universities do not usually provide this information unless there is consent from the individual.

Companies operating in the Philippines do not usually require disclosure of an individual's social media accounts.

Would the answer differ if the company is not the formal employer?

No, the same legal restrictions apply.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

Background checks are usually conducted at the start. However, it has become common practice, especially for multinational and security-sensitive companies, to require background checks as a continuing requirement for one's employment.

A negative result in a background check during the course of employment may lead to termination. It is recommended that employees are informed that background checks will be undertaken during the course of employment.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

There may be both criminal and/or civil liabilities (usually the imposition of fines), for the officers who were involved in the misuse or allowed the misuse of information.

WHO TO CONTACT

Quasha Law

Conrado S. Dar Santos

T: +63 28 892 3011

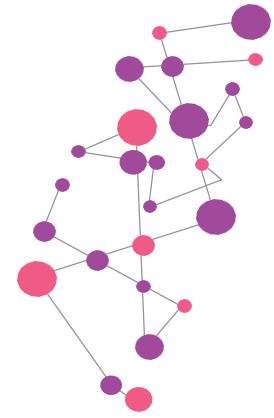
E: csd@quasha-interlaw.com

Ma Chere Reyes

T: +63 28 892 3011

E: mgr@quasha-interlaw.com

TAIWAN



What laws or regulations govern the conduct of background checks on job applicants in your jurisdiction?

Background checks are governed by the Employment Service Act, the Enforcement Rules of Employment Service Act, and the Personal Data Protection Act.

What types of background checks are commonly allowed?

Are there any prerequisites or restrictions?

Employers may conduct background checks that collect applicants' personal data, provided that the information collected relates to the position.

Under the law, and unless it is necessary for the job, the employer may not request applicants or employees to provide certain private information, including physiological information (genetic tests, medication tests, medical treatment tests, HIV tests, intelligence quotient tests, and

fingerprints); psychological information (psychiatric tests, loyalty tests, and polygraph tests); or personal information (financial records, criminal records, and plans to start a family). However, the Employment Service Act does not prohibit the employer from collecting this information themselves from publicly accessible sources.

When the employer collects personal data, the Personal Data Protection Act applies. From the perspective of personal data protection, since there is a contract or pre-contract negotiation between the employee and the employer, the employer may collect general personal data via a background check, provided that such data is necessary for employment or for human resource management purposes.

With the employee's written consent (either in the form of a provision in the offer letter or the employment agreement, or a separate letter of consent) or

from publicly accessible sources, the employer may collect the employee's "special personal data" (i.e., medical records, medical treatment, genetic information, sexual life, health examinations, and criminal records) if this personal data is necessary for employment or human resource management purposes.

Would the answer differ if the company is not the formal employer?

No. Even where the individual is engaged through a dispatch agency, the same legal restrictions apply. Background checks should be conducted by the dispatch agency, and the company should only receive information that is necessary and directly related to the outlined position duties.

At what stage of the hiring process may an employer lawfully conduct a background check? Are ongoing background checks permitted during the course of employment?

Employers may start to conduct background checks at the recruitment stage. Ongoing background checks during employment are permitted, but the employer must continue to comply with the same principles outlined under the three laws mentioned.

What liabilities or risks do employers face if they violate the applicable restrictions or misuse information from these checks?

If an employer asks a job applicant/employee to provide data that is unrelated to the job or against the job applicant/employee's will, the employer may be subject to fines ranging from TWD 60,000 (approx. USD 2,000) to TWD 300,000.

Use of special personal data without written consent, or use of data outside the scope of employment or human resource management purposes, can result in fines ranging from TWD 50,000 to TWD 500,000.

In these two instances employers who fail to rectify violations within a certain period may attract subsequent fines.

WHO TO CONTACT

Christine Chen

Winkler Partners

T: + 886 2 2311 8307

E: cchen@winklerpartners.com



www.interlaw.com

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