



WHITE PAPER

A GUIDE TO CRIMINAL BACKGROUND CHECKS IN ASIA PACIFIC



What’s Covered in this White Paper:

- Overview – What are Criminal Background Checks?
- Can Employers Obtain Their Candidates’ Criminal Records in Asia?
- 2 Case Studies: The Cost of Overlooking Criminal Checks
- Key Takeaways: Safeguarding Your Organization with Criminal Checks

Overview

Criminal background checks are commonly carried out during a pre-employment or employment background screening process. It is an examination into a candidate’s criminal history to learn whether they have a past which involves felony or misdemeanor criminal convictions or any other pending criminal cases. Criminal checks can scan national, federal, state, and county databases. However, the scale in which criminal background screening is conducted is largely dependent on the type of check selected, which differs based on the risk level posed by different job positions, nature of work and location. The key objective of criminal background checks is to aid employers with making informed hiring decisions. For example, it allows one to gauge whether an applicant is trustworthy or poses a risk to workforce safety and security. Employment screening can also help protect company assets, reduce risk, and prevent potential litigation due to negligent hiring practices.

WHAT INFORMATION IS AVAILABLE IN A CRIMINAL BACKGROUND CHECK?

As there are several different types of criminal background checks, each check reveals different details that pertain to a person’s criminal history. For example, sexual conviction record checks help uncover whether an applicant has any records against a specified list of sexual offences. Particularly when considering applicants that will undertake child or disability-related work, implementing this process can help afford vulnerable people with necessary protection from sexual abuse, and is often a mandatory requirement in many jurisdictions.

Most employers conduct background checks through screening associates, however, it is important to understand how to read a background check, and what the different terms and abbreviations mean. Proper background check evaluation is especially key in the case of a dispute or lawsuit

being lodged by an applicant or employee for workplace discrimination as a result of wrongful evaluation of his/her criminal background check. In fact, gaining a better understanding of criminal checks may prove beneficial for job applicants as well. Knowing what an employer will see about a criminal record in a background check report may make it easier for candidates to disclose their convictions and strengthen the decision to be open and honest with a prospective employer. A criminal background check report typically includes the name of the crime, [disposition \(conviction, non-conviction, or pending\)](#), and disposition date.

The following examples include types of records that may show up on a criminal background check:

Type of Record	Examples
Severe and Violent Crimes	Murder, manslaughter, rape, aggravated assault.
Misdemeanor (Less Serious Crimes)	Vandalism, trespassing, disorderly conduct, prostitution, theft.
Violations/Infractions	Jaywalking, littering, building permit violations.

Can Employers Obtain Their Candidates’ Criminal Records in Asia?

A significant challenge in global background screening is the complexity of foreign laws. As a result, criminal background checks often do not share one single global solution. Instead, based on factors such as the market, business needs, risk tolerance, and global presence, organizations must adapt their criminal background checks to their local legislation and employment criteria. To achieve legal compliance and ensure that the relevant information is accessible in practice, tailoring is often needed depending on what access is permitted when obtaining a candidate’s criminal background in a specific region. Both employers and job applicants should be aware of what information is used in each type of background check, and how such information may be used depending on the relevant laws and legislations.

In view of this, a shared rule across many Asian countries is that where conducting criminal checks is permitted, employers should always obtain consent from their candidates prior to conducting any background check

on them. Companies who do not gain consent from candidates are likely to be in violation of numerous laws and can face lawsuits from their candidates due to claims of employment-related discrimination based on their criminal record. However, it is important to note that the rule of obtaining consent is also subject to the requirements in different jurisdictions; for instance, in India, there is currently no existing employment-related discrimination legislation when conducting criminal background screening. In fact, unlike many countries, the only employment-related discrimination law in India that is applicable for employers is the prohibition of gender-based discrimination in the workplace.

On the contrary, conducting criminal background checks in countries such as Singapore is starkly different as criminal checks are restricted by the government to limited industries or employers (e.g., those working in public service or at the airport). While a spent records database exists for self-checking, it does **not** distinguish between candidates with former criminal conviction versus one who has been crime-free for the past few years. As a result, it is customary practice for employers in Singapore to mitigate their risk by asking candidates to sign a self-declaration or statutory declaration that they do not have a criminal record. Unfortunately, there is nothing to stop your candidate from lying, even on these declarations as some companies have experienced. Hence, the best practice will be to get your screening provider to do a thorough search for publicly known convictions or arrests prior to hiring. In contrast to this, in Indonesia, similar to various developing countries in Asia, there is currently **no** available centralized database to retrieve comprehensive information on individual criminal records.

Some employers may require prospective or existing employees to obtain a Statement of Good Behaviour, or Surat Keterangan Catatan Kepolisian (“SKCK”), from the Indonesian National Police, issued by or on behalf of the Chief of Police which confirms that the individual named in the letter is of good behavior and is *not currently* involved in any criminal investigation or proceedings. However, note that this is only valid for 6 months and **does not** indicate whether an individual has a prior criminal record.

The different laws across Asia Pacific reveal that organizations that choose to conduct in-house screening on candidates should stay informed about their local legislations (in case of any changes or updates to the law) or alternatively partner with a professional background screening company to take on the task in a compliant, expert, and timely manner.

The Cost of Overlooking Criminal Checks

The majority of employers in Asia Pacific permitted to conduct criminal background checks typically do this by using third party vendors such as background screening companies or by their in-house staff such as the HR manager of an organization. Companies that conduct in-house background screening need to remain vigilant by continuously referring to their local legislations (to see if any changes about criminal background screening have been made) and by obtaining the consent of their candidates. In the case where a candidate does not consent to a criminal check, or does want to disclose their criminal history, firms may be allowed



to withdraw an offer or reject candidates on the basis that the completion of a satisfactory criminal background check and disclosure of criminal history is one of the requirements of their employment offer and/or a legal requirement depending on the jurisdiction.

When criminal records are ineffectively reviewed, errors relating to the accuracy and reportability can quickly lead to an incorrect and noncompliant background screening report. It may additionally cost an applicant a job and put a prospective employer in a precarious legal situation due to obtaining misleading or false information. In fact, many employers may be surprised to know that a quick Google search uncovers various news articles and reviews on how some of the biggest background screening providers have existing lawsuits and complaints filed against them by candidates due to their poor compliance standards and inappropriate focus on fulfilling the promise of a low-priced criminal background check with a very quick turnaround time. To mitigate such risks, it is recommended that companies choose to partner with a trusted background screening provider that has a clean and longstanding history of having no lawsuits lodged against them. At the very least, it demonstrates that the chosen third-party service has been consistently compliant and will not cause damage to a company that would otherwise be easily avoidable. In view of the aforementioned factors, what exactly are the costs of overlooking a criminal background check? Consider the following case studies from APAC.

CASE STUDY 1: SEXUAL PREDATORS LURKING IN ASIA'S EDUCATION INDUSTRY

A British teacher working at an international school in Beijing, China, claimed that the school [never requested to do a background check](#) on him. In fact, he stated that the school had left it to him to arrange criminal record certificates from the United Kingdom (his home country) and China. He faced difficulty in doing this and eventually forgot about it, which means he was employed by the school despite not providing them with any proof that he was not a criminal or could pose serious harm to the children at the school. The teacher later learned that some of his colleagues were in relationships with some students and stated, "I am certain there are teachers who may be a danger to children. In conversation with other teachers, several relationships between teachers and sixth-grade girls were mentioned, but as a new teacher, I didn't know the specifics." This statement rings true as many criminals choose to land jobs in Southeast Asia – where there are no strict checks.

In one case, [a wanted man from the United Kingdom](#) was able to teach at an international school in China for 4 years while being wanted by the British Police in connection with child sex offences. In Japan, any teacher or child nurse who commits an obscene act with a minor must be terminated under the law. However, one provision (The Education Personnel Certification, 1949) under the law also states that a dismissed teacher who lost his or her teaching credential can apply to a prefectural education board once 3 years have passed and obtain the credential again. The same applies to children's nurses, except that the waiting period is even shorter at 2 years. This creates a loophole in that it is disturbingly easy for criminals to not only reacquire jobs in high-risk industries, but it also means there is a high chance they will reoffend in the future due to minimal penalties.

This loophole was reflected in a [recent case](#) involving a local teacher in Saitama Prefecture (Japan) that was arrested in a child porn case and fined. He was suspended for 6 months and eventually quit. Not long after, however, he managed to gain a new position as a temporary lecturer at an elementary school in a different prefecture. He was then arrested again in connection with an obscene act with a female pupil. To tackle this issue, Japan has introduced an "information search tool" database which allows prefectural education boards and others to use it as a reference to check their candidates before hiring them. However, the database does not state reasons for dismissal. Thus, the tool is not enough to suffice as a criminal background check as it is impossible for education boards or employers of children's nurses to know if someone was dismissed because he or she committed an obscene act.

The rising number of cases of companies that carelessly hire convicted criminals (because of not doing any background checks on them) has aroused widespread and immediate concern. Many parents and students are calling for more people in the education industry to be subject to nationwide inspection prior to being employed. These incidents are simply a few of the *hundreds* of cases where both foreign and local teachers have been exposed as being convicted pedophiles, sexual predators, or known "as a wanted person" by the authorities in their hometown.

CASE STUDY 2: REPUTATIONAL DAMAGE OF A LEADING FORTUNE 500 COMPANY IN ASIA

Reputational consequences are another detrimental cost of overlooking criminal checks. The following case highlights the repercussions of what happens when an employer maintains

blind faith in their candidates' self-disclosures and does not carry out a criminal background check on them.

Last year, a leading Fortune 500 company in Asia found themselves in the center of controversy when several members of the public combed through public sources for data on one of their employees and found that he had a previous criminal conviction. Upon outrage from the public and pressure to answer why the company had been unaware of their employee's past for this long, the company admitted that it had not known about his criminal history as they thoughtlessly believed his self-disclosure, which proved to be false as he later admitted to lying that he did not have a criminal past during the interview. Upon conducting a criminal background check on him, the company finally had concrete evidence and the employee in question finally admitted that he had lied about his self-disclosure and was then dismissed by the company for his dishonesty. However, this result only came several years after his employment. If the public had not caught wind of his criminal conviction, how much longer would the employee have gotten away with enjoying the benefits of his lies and posing a potential threat to the company?

The accuracy and trustworthiness issues that stem from the dependency on self-disclosures reflects the vital need for more employers in Asia to conduct criminal background checks on their candidates. This incident demonstrates that the public may likely be unforgiving when it comes to companies that overlook criminal matters, especially as there is an expectation that firms should have sufficient due diligence measures.

Key Takeaways: Safeguarding Your Organization With Criminal Checks

According to [research](#) from Robert Half, an overwhelming 98% of chief financial officers (CFO) in Singapore admitted to a bad hiring decision, along with CFOs in Australia and Hong Kong, who fare between **a shocking 97% to 100%**. Managing Director of Robert Half Singapore, Matthieu Imbert-Bouchard, stated, "Essentially, it is more difficult for hiring managers and their team to accommodate a poor performer than it is to invest in an effective candidate evaluation process." Therefore, here are a few recommendations on how organizations in Asia Pacific can prevent common hiring mistakes and safeguard themselves by conducting criminal checks.



1. Establish an effective and efficient candidate evaluation process and work with outside partners to expedite time-consuming steps and help secure the best match. Today, no system is foolproof and conducting in-house criminal reports may likely be inadequate, inaccurate or highly time consuming when this important responsibility is assigned to a single person in an organization, such as HR. Therefore professional expertise and cross-checking is needed. Working with a reputable background screening company such as Cive can prevent inaccuracies and help make criminal background checks easy for companies in Asia Pacific. Cive reviews applicant-identifying information up to five times and our attention to detail in every criminal history check has yielded an impressive 99.9993% accuracy rate. We have also maintained no class-action lawsuits throughout our 40 years in business — adding to the assurance that you have screened your candidate correctly and minimized any potential exposure to liability.
2. Understand that (where permitted) criminal background checks are essential for your business' future. Your employees determine whether your business succeeds, and even one discredited person can ruin your reputation. In this case, firms should remember that criminal acts are not limited to business premises, as employees can also steal from suppliers, scam clients, or commit fraud. A proper check reduces the odds of this happening and is a necessary safeguard for your business. It additionally helps fulfill one of the key responsibilities as an employer – to keep your workforce safe from potential harm. Along with carrying out criminal checks on your candidates, it is recommended that companies form clear guidelines that indicate the steps or measures they will take depending on whether an unsatisfactory criminal background check arises.
3. Comprehensive and accurate information helps you make informed decisions. But what if a candidate's criminal background check makes you aware of information that's confusing, upsetting, or undesirable? We recommend that you share the report with an applicant. This serves two purposes: 1) it allows the candidate to explain and give reasons for their past and can teach you about their true character, and 2) the wealth of information provided by a criminal background check will only benefit you if you take the time to use the information correctly – sharing the findings of the criminal background report can help companies to gauge whether the claims that a candidate has made during an interview matches the

information in their criminal background check. It also serves as a means of gauging their trustworthiness, which is an important factor to consider whenever you hire a candidate, *regardless* of whether he/she is applying for a senior or junior position in the company.

Criminal background checks are an inevitably powerful tool that helps businesses avoid repercussions that may emerge because of having no risk mitigation in place, such as harming your business' reputation or engaging in costly public relations efforts as a result of one of your employees causing harm to your business or being exposed by media/news outlets for committing a serious crime that you were unaware of due to blindly hiring them. In view of the recommendations mentioned above, implementing criminal background checks may significantly help companies improve and maintain the overall quality of new hires. As a result, it can help increase an organization's success, reputation, and profits in the future.

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Cisive's service model provides a single, integrated system throughout the globe using complete applicant information and country-specific forms. Cisive returns information to our clients through a centralized system for analysis, quality control, presentation, and billing.

With over 4 decades of experience and expertise in working with many of the world's largest financial services institutions, Cisive's deep insight into employment screening practices and industry knowhow, is unlike any other background screening provider in the industry.

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