

# A Regional Guide to Background Checks

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# Introduction

Background checks have become a critical part of the recruitment process in many countries. Employers with a global presence often seek to harmonize recruitment policies across different jurisdictions but addressing the various restrictions and regulations around background checks can be challenging.

This publication provides an overview of both the legal and practical issues relating to background checks in 17 key countries. It covers a wide range of background checks, from criminal record checks through to drug and alcohol testing, and identifies the applicable conditions, restrictions and sanctions in each country. It also incorporates 'at-a-glance' traffic lights, highlighting whether background checks are standard practice, unusual or prohibited in a particular jurisdiction.

We hope you find this publication useful. It has been compiled by lawyers from a major international law firm, as well as partner law firms based in other jurisdictions.

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## *Drug and alcohol testing*

Although Macau law does not specifically address this issue, drug and alcohol testing would, in principle, follow the same rationale as health checks and medical screening and, therefore, would only be allowed if absolutely necessary to assess the aptitude of the applicant for a particular job/role or when the performance of certain functions might affect the wellbeing of the applicant.

## *Union membership and political views*

These checks can only be carried out as long as non-discrimination, and special security measures, are assured (e.g., control of access to the data, control of data support, control of data usage, etc.). Such checks also need to be authorized in advance by the Macau Data Protection Bureau.

## *Credit/financial checks*

If an employer wants to check an applicant's credit/financial status, the employer must have written consent from the applicant and request prior authorization from the Macau Data Protection Bureau.

Further to the above, the applicant has the right to: (i) be informed about the data collected; (ii) access the data collected; (iii) object to the data collection at any time; (iv) not be subject to automatic individual decisions made in connection with the data collection; and (v) be compensated for any damages suffered in connection with the data collection.

Any data collected as a result of background checks can only be kept for the period of time necessary to achieve the purposes of the data collection.

## **7. Are there limitations on how an employer is permitted to use information arising from the above background checks when making a decision as to whether or not to employ an individual?**

The information obtained from background checks can only be used for the purposes for which it was obtained and must not be used in a discriminatory way.

## **OTHER BACKGROUND CHECKS**

### **8. Are any other background checks permitted and/or standard practice in this jurisdiction?**

No.

### **9. Are there restrictions or limitations on the scope of these checks?**

Not applicable.

## **TIMING OF BACKGROUND CHECKS ON APPLICANTS**

### **10. Would the answers to questions 1 to 9 differ depending on whether the background checks are carried out before or after the decision to make an offer of employment?**

No. The checks can be carried out at any time as long as the applicant consents to them.



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# Macau

## BACKGROUND CHECKS DURING EMPLOYMENT

**11. Does the law on background checks differ if an employer wishes to carry out such checks on existing employees (as opposed to applicants only)?**

No.

## ENTITLEMENT TO WORK

**12. What steps do employers have to take to check that an applicant or employee is legally entitled to work in this jurisdiction?**

The entitlement to work in Macau in circumstances where the applicant does not hold a Macau ID card is governed by the Macau Migration Authorities. It is not possible to hire and employ a non-resident worker in Macau without prior authorization from the Migration Authorities. To employ non-resident workers, employers must first obtain authorization to hire non-local workers (such authorization is subject to the non-availability of local workers to perform the same functions; is limited in time; needs to be previously authorized; cannot promote inequalities between local workers and non-resident workers, etc.). If such authorization is granted to the employer, the Migration Authorities will give permission to the non-resident prospective employee to stay in Macau as a worker and work for that employer.

## FULL-TIME, PART-TIME, CONTINGENT WORKERS

**13. Are there any differences in the background checks that can be carried out on full-time, part-time or contingent workers?**

No.

## SECTORS

**14. Do background checks differ in different sectors?**

Yes. Members of the board of directors and supervisory board of credit institutions, as well as the managers of branches, must register their respective appointments with the Macau Monetary Authority (AMCM) prior to commencing their duties. The application for registration includes a detailed professional curriculum and a certificate of the criminal record or equivalent document acceptable to AMCM, regarding the person or persons in question. Some insurance intermediaries' positions are also subject to prior authorization from AMCM based on, among other documents, detailed professional curriculum and a criminal record certificate.

## OUTSOURCING BACKGROUND CHECKS

**15. Are employers permitted to outsource background checks to a third party vendor?**

Yes.

**16. If background checks are outsourced to a third party vendor, does this have any impact on the checks that can be carried out or the relevant data protection obligations?**

If an employer uses a third party vendor to carry out background checks, the applicant must be informed, and the obligations established between the employer and the third party vendor must be governed by a written contract.



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If the third party vendor is outside Macau, the processing of personal information should only be undertaken in countries or territories with an adequate level of protection for the rights of individuals in relation to the processing of personal information. The level of adequacy should be assessed by the Macau Data Protection Bureau before the transfer can take place.

## DATA PROCESSING

### 17. Are there restrictions or limitations on how employers process the information collected from background checks?

The employer must ensure that the personal data collected from the background checks is:

- processed lawfully and with respect for the principle of good faith and with respect for privacy and for other fundamental rights, freedoms and guarantees enacted in the Basic Law of the Macao Special Administrative Region, the instruments of international law and the legislation in force;
- collected for specified, explicit, legitimate purposes and for purposes directly related to the activity of the controller; and not further processed in a way incompatible with those purposes;
- adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
- accurate and, where necessary, kept up-to-date; adequate measures must be taken to ensure that data which is inaccurate or incomplete, having regard to the purposes for which it was collected or for which it is further processed, is erased or rectified; and
- kept in a form that permits identification of their subjects for no longer than is necessary for the purposes for which it was collected or for which it is further processed.

## SANCTIONS/ENFORCEMENT

### 18. What restrictions or laws exist to regulate background checks?

Macau Data Protection Law – Law 8/2005.

### 19. What are the potential sanctions against employers if background checks are carried out unlawfully and what is the mechanism for enforcement?

If background checks are conducted unlawfully, apart from the applicant's right to claim damages, the employer (depending on the rules violated) may be subject to the following sanctions: an administrative fine of up to MOP200,000; imprisonment for up to one year; or a monetary fine of up to 120 days (a day's fine is defined under Macau law as an amount ranging between MOP50 and MOP10,000, to be determined by the Court based on the offender's financial status and capability).

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