

# INTERNATIONAL BACKGROUND CHECKS

By Les Rosen, Employment Screening Resources, ESRcheck.com



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## INTRODUCTION TO THE SERIES (1 of 14)

This series of *Global HR Learning Bites* © (volume 1, number 2, 2019) focuses on international background checks. Generally speaking, an international background check means obtaining or sourcing information outside of the employer's 'home' country. This series is presented by Les Rosen, attorney and CEO at Employment Screening Resources (ESR). He is the author of many publications including, "*The Safe Hiring Manual – The Complete Guide to Employment Screening Background Checks for Employers, Recruiters, and Jobseekers*" (3<sup>rd</sup> edition, 2017). Use the following *Global HR Learning Bites* in this series of posts related to international background checks to expand your knowledge on this HR practice.

- **International Background Checks**
- **International Screening Tools**
- **Glocalization**
- **International Employment Screening vs International Investigation**
- **Police Certificates**
- **Adverse Media**
- **False Positives vs False Negatives**
- **Ban the Box**
- **Spent Record**
- **Foreign Characters**
- **Documents and Identifiers**
- **Notice and Privacy**
- **Vulnerable Sector Check**

## GLOBAL HR LEARNING BITES

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## INTERNATIONAL BACKGROUND CHECKS (2 of 14)

Generally speaking, international background checks means obtaining or sourcing information about a job candidate outside of the employer's 'home' country.

For an employer in the United States, an international background check can mean getting information relevant to a person that is obtained from another country. For example, if a U.S. employer needs information from Poland about a job applicant, that would be considered an 'international' background check by the U.S. employer.

On the other hand, if a Polish company needed information on an applicant that lived for a time in the U.S. from the point of view of the Polish company, a background check done in the U.S. constitutes an 'international' background check.

However, it may also depend on where the job is to be performed and where the decision is to be made. If the same U.S. firm is opening an office in Poland, it may well turn to a Polish company that does internal Polish checks which would apply the same processes and rules any other Polish company would use. However, a U.S. firm opening that office may be making its decisions in their U.S. headquarters and would consider that to be an international check.

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## INTERNATIONAL SCREENING TOOLS (3 of 14)

With international screening tools, each country is an adventure when it comes to doing background checks! Employers have various tools available for international background checks depending on risk factors associated with the position and availability of the information in a particular country. There are 245 political entities in the world, and they all differ in some way regarding background checks.

Screening tools can include:

- Criminal records or criminality checks from courts, police or governmental agencies where available.
- Past employment, education, or credentials.
- Driving records.
- Media search.
- Global Sanctions, Terrorist List, and Watch List Searches.
- ID checks and others.

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## GLOCALIZATION (4 of 14)

‘Glocalization’ means combining globalization and localization. Global organizations seeking to develop standardized processes in their HR practices for the sake of uniformity and economies of scale and scope are limited by the need to comply with local laws and practices.

Local issues related to background checks can include:

- Information such as criminal records and databases are not always available, are limited in scope, and have special access or use issues.
- Challenges due to language, customs, and time zones.
- Need for special forms and procedures to obtain the information.
- Higher costs and longer turnaround times than for domestic U.S. screenings.
- Widely different privacy and data protection laws.

With 245 political entities in the world all with their own local requirements, conducting international background checks requires both global and local expertise.

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## SCREENING VS INVESTIGATION (5 of 14)

There are also two types of international due diligence checks employers may utilize – a screening or an investigation.

For most U.S. employers, ‘*international employment screening*’ involves verifications of supplied information by an applicant who has given express written consent to the screening or checking available public information such as criminal records.

An ‘*international investigation*’ typically involves a trained and experienced investigator going into much greater depth and typically working in the country where the investigation is being conducted. If an employer is filling a highly sensitive position or is conducting a due diligence investigation of a potential business partner, then the services of a qualified investigative firm may be needed.

A simple way to understand the difference is that screening involves verifying what was provided. The focus is not on uncovering new information, although that may sometimes occur in the process. An investigation is a much deeper review of the individual and more often can uncover new information. Screening produces a simple report confirming or denying the information. Investigations tend to result in a lengthy report.

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## POLICE CERTIFICATES (6 of 14)

In some countries, the source of a criminal record may be a Police Certificate or Good Conduct Certificate (occasionally described as a Criminal Certificate or Certificate of No Criminal Record). These documents are a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the individual. Certificates may come from a number of sources depending on the country, such as local, regional or national police, a local or nationwide law enforcement agency or justice agency.

Employers need to understand that the reliability of Police Certificates vary by country. In terms of reliability, timelines, accuracy, completeness (e.g., it may only go back a certain time period) and coverage (e.g., cover only certain types of offenses, not cover local offenses, or not cover the entire country). Often times a police certificate is needed for obtaining a visa to enter a country. However, given the differences between countries and the potential deficiencies with a police certificate, an employer cannot always assume a police certificate, even if part of a visa application process, is sufficient due diligence in background checking. Keep in mind: many countries require permission of the subject (applicant) in order to obtain access to the police certificate.

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## ADVERSE MEDIA (7 of 14)

In certain countries criminal record checks are not permissible or readily available from police, courts, prosecutors or governmental agencies. In lieu, a screening firm may provide an ‘Adverse Media’ or ‘Reputational’ search of online sources, including news stories and social media rather than a criminal record check. An adverse media check is most often focused on possible criminal behavior, although other information may be discovered.

When used for criminality searches in jurisdictions that limit criminal records, adverse media is not a true criminal records check, since most media mentions do not have full details available and there is no guarantee it is complete. Employers should understand the limitations of this search and not confuse it with a search of actual criminal records.

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## FALSE POSITIVES VS FALSE NEGATIVES (8 of 14)

So-called 'national' criminal databases can be a source of potential mistakes such as false positives and false negatives. False positives occur when people are found to have a criminal record when they do not have one. False negatives occur when people are found to have no criminal record when they do have one. False negatives pose a danger as they can cause employers to have a false sense of security and mistakenly hire a person who could cause harm. False negatives are especially dangerous in jobs involving access to vulnerable persons. Even though false positives may appear to be less dangerous, they still cost the employer valuable time and money. It may cause them to lose a very good employee and the individual may also be harmed reputationally or in other ways.

Employers can reduce false negatives and mitigate the effects of coverage issues by checking references and relying on international background screening experts. Employers also reduce false positives by determining the level of screening and data required before a records search is conducted, using multiple sources of information in the search, informing an applicant if any appeal process is available, ensuring the applicant has reviewed the information, and allowing the applicant to explain the result if it's not clear what kind of crime was committed.

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## BAN THE BOX (9 of 14)

‘Ban the Box’ and ‘Fair Chance’ hiring laws are a growing nationwide movement in the United States that seeks to advance job opportunities for people with prior criminal convictions by eliminating any inquiry into the criminal history of candidates on job applications, specifically the checkbox that requires candidates to disclose their criminal history. As of October 2019, more than 150 cities and counties, as well as 35 states, have passed ‘Ban the Box’ laws.

Former offenders can be a good source of labor for certain employers. There is a great deal of evidence that former offenders are typically hardworking and loyal, and employment is the primary means to combat recidivism and the associated costs of incarceration of large numbers of people.

When hiring in the United States, these laws would apply to international criminal records as well.

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## SPENT RECORD (10 of 14)

Some countries treat certain criminal history as being ‘spent.’ For a conviction to be spent, the person must have successfully completed their sentence and they have not recidivated within a specified period of time. A spent record may still be retained in the criminal record systems and will be available to entities such as law enforcement. But spent records are not available for general viewing, such as for employment purposes. In some countries, spent records may be available for consideration if the person is working in specific positions, such as those caring for people considered vulnerable. In many countries, a spent record does not need to be disclosed to a prospective employer, unless there are specific requirements such as working in the vulnerable sector.

For many countries, spent records are the equivalent of the U.S. ‘Ban the Box’ and ‘Fair Chance’ hiring laws.

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## FOREIGN CHARACTERS (11 of 14)

Language differences can complicate international background checks. Documents, such as consent forms or criminal records, may be in a foreign language. Calls to foreign schools and employers can encounter language difficulties.

Some languages are based on different alphabets (such as the Roman, Cyrillic, Greek, Hebrew and Arabic) and logograms (e.g., Chinese hanzi, Japanese kanji characters, etc.). When it comes to expressing names that utilize foreign characters in a different alphabet, there is room for error and confusion. There is no easy way to translate Chinese, Korean, Arabic, or Japanese names into English.

The two techniques used to render names in foreign alphabets into English are transliteration and phonetic transcription. Transliteration into English is based upon using a representation of the characters in the original language with English characters so that certain characters in one language always translate into English by use of agreed upon letters. It is analogous to using a codebook. Transliteration means mapping a name from one language into another. An example is Iraq, where the Q is pronounced as English CK.

Phonetic transcription – or transcribing – is based on taking the sounds of a foreign name and attempting to associate the same sounds to the sounds of the English alphabet. With either method, there can be any number of variations. These name variations create room for error and confusion. Examples include places such as ‘Bombay’ versus ‘Mumbai’, ‘Peking’ versus ‘Beijing’, ‘Bruges’ versus ‘Brugge’, and names such as ‘Usama’ versus ‘Osama’.

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## DOCUMENTS AND IDENTIFIERS (12 of 14)

Identifiers are critical to ensure that information verified or obtained pertains to the applicant in question. Identifiers can be biometric or non-biometric (e.g. age of birth). The most common international background check documents include the full birth certificate, the machine-readable passport and the national identity card.

A **full birth certificate** is a record that documents the birth of a child. Birth certificate can refer to the original document certifying the birth or to a certified copy of the ensuing registration of that birth. A record of birth may contain verification of the event by such as a midwife or doctor in some jurisdictions. Remember in some countries, the date of birth is day/month/year as opposed to month/day/year.

A **Machine-Readable Passport (MRP)** is a Machine-Readable Travel Document (MRTD) with the data on the identity page encoded in optical character recognition format. Most travel passports worldwide are MRPs and have a special Machine-Readable Zone (MRZ) that is usually at the bottom of the identity page at the beginning of a passport.

A **national identity card** is a transportable document –usually a plasticized card with digitally-embedded information– that citizens of some countries are required or encouraged to carry as a means of confirming their identity. An identity card is a document which may be used to prove a person's identity issued in a small credit card size form and is usually called an identity card or passport card. Naming conventions can also differ around the world. For example, in Central and South America, a name may include both the father and mother's names.

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## NOTICE AND PRIVACY (13 of 14)

Notice (as in notice and consent) is a crucial issue in international background checks. Many countries have strict data privacy regulations that require detailed notice to the individual about the purposes of the data collected, information about who will see the personal information, and restrictions on the use of the data. These laws give applicants far greater control over their data such as the right to be informed, right to access, right of rectification (corrections), right of erasure (to be forgotten), right to restriction of processing, right to data portability, and right to object.

The EU now operates under the **General Data Protection Regulation (GDPR)**. A key element in legally obtaining data is providing the applicant with information about the processing of their data (called a Notice) and obtaining the applicant's written consent. In the context of employment screening, the assumption is made that the applicant has not only consented but wants to assist the employer in obtaining records in order to facilitate the employment decision. Note that in some countries, the ability to process personal information on the basis of consent, in the employment context, is not considered valid.

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## VULNERABLE SECTOR CHECK (14 of 14)

The ‘Vulnerable Sector Check’ screens individuals who intend to work or volunteer with vulnerable people and is required for positions that can include teachers, social workers, taxi drivers, daycare workers, and sport coaches. An employer has a greater duty of due diligence where the risk is greater.

Example of greater risk include positions that deal with:

- Children.
- The elderly.
- The infirmed.
- The challenged (either physical or mental challenges).
- Work performed inside a home or other environments where there is increased risk.
- Fiduciary obligations or access to cash, assets or Personally Identifiable Information (PII).

