

## ASIA: HIRING – BACKGROUND CHECKS, MEDICAL CHECKS AND USE OF AI

New technologies and an increase in regulation in the data privacy space have made hiring more complex than ever before. This update considers restrictions in background checks, medical checks and the use of AI in recruitments.

Questions	Singapore	Hong Kong	PRC	Indonesia
Are there restrictions on background checks?	<p>There are no restrictions on background checks, subject to compliance with data privacy and anti-discrimination considerations.</p> <p>It is good practice to obtain the applicant's written consent prior to conducting the background check.</p> <p>See our previous article on general data privacy considerations.</p> <p>There is no specific anti-discrimination legislation in Singapore. However, employers are expected to comply with the Tripartite Guidelines on Fair Employment Practices (<b>Tripartite Guidelines</b>).</p> <p>The Tripartite Guidelines encourage employers to recruit based on merit and regardless of age, race, gender, religion, marital status and family responsibilities, or disability.</p>	<p>There are no restrictions on background checks, subject to compliance with data privacy and discrimination laws.</p> <p>It is good practice to obtain the applicant's written consent prior to conducting the background check.</p> <p>See our previous article on general data privacy considerations.</p>	<p>There is no restriction on background checks, subject to compliance with data privacy and discrimination laws.</p> <p>It is good practice to obtain the applicant's written consent prior to conducting the background check.</p> <p>See our previous article on general data privacy considerations.</p> <p>Prohibition against discrimination on the grounds of ethnic group, race, sex, physical disability or religious belief is generally provided in the PRC Constitutional Law, the PRC Labour Law and the PRC on the Promotion of Employment.</p>	<p>There are no restrictions on background checks, subject to compliance with data privacy and discrimination laws.</p> <p>It is good practice to obtain the applicant's written consent prior to conducting the background check.</p> <p>See our previous article on general data privacy considerations.</p> <p>Prohibition against discrimination is generally provided under Law No 13 of 2003 on Manpower as amended by Law No 11 of 2020 on Job Creation which states that all individuals are entitled to equal opportunity to obtain employment. The elucidation of the relevant provision explains that every individual has the same right and opportunity to get a job regardless of gender, ethnicity, race, religion, and political parties in accordance with their respective interest and</p>

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				ability, including for persons with disabilities.
Are there restrictions on medical examinations or health-related tests?	<p>There are no restrictions on an employer requesting job applicants to undertake medical examinations or health-related tests, subject to compliance with data privacy and anti-discrimination considerations.</p> <p>Generally speaking, the testing should be carried out after a conditional offer is made to the job applicants (where the employment is conditional upon the fulfilment of the medical examination), and the information collected must directly relate to the inherent requirements of the job.</p> <p>Employers may refuse to hire job applicants who fail to submit to such examinations or tests.</p> <p>Certain categories of employees are required to attend medical examinations. For instance, the Workplace Safety and Health (Medical Examinations) Regulations 2011 (<b>Regulations</b>) requires employees engaged in hazardous occupations described in Regulation 3(f) to</p>	<p>There are no restrictions on an employer requesting job applicants to undertake medical examinations or health-related tests, subject to compliance with data privacy and discrimination laws.</p> <p>Generally speaking, the testing should be carried out after a conditional offer is made to the job applicants (where the employment is conditional upon the fulfilment of the medical examination), and the information collected must directly relate to the inherent requirements of the job.</p> <p>Employers may refuse to hire job applicants who fail to submit to such examinations or tests.</p>	<p>There are no restrictions on an employer requesting job applicants to undertake medical examinations or health-related tests, subject to compliance with data privacy and discrimination laws.</p> <p>Generally speaking, the testing should be carried out after a conditional offer is made to the job applicants (where the employment is conditional upon the fulfilment of the medical examination), and the information collected must directly relate to the inherent requirements of the job.</p> <p>Employers may refuse to hire job applicants who fail to submit to such examinations or tests.</p> <p>Certain categories of candidates and employees are required to attend medical examinations. For example, according to the PRC Prevention and Control of Occupational Diseases Law, employees engaged in hazardous occupations (such as those which involve exposure to dust and fume) need to be</p>	<p>There are no restrictions on an employer requesting job applicants to undertake medical examinations or health-related tests, subject to compliance with data privacy and discrimination laws.</p> <p>Generally speaking, the testing should be carried out after a conditional offer is made to the job applicants (where the employment is conditional upon the fulfilment of the medical examination), and the information collected must directly relate to the inherent requirements of the job.</p> <p>Employers may refuse to hire job applicants who fail to submit to such examinations or tests.</p> <p>Employers may be required to require their candidates and/or employees to undertake medical examinations and/or health-related tests depending on the nature of the workplace. These issues are governed under the Law No 1 of 1970 on Work Safety, Ministry of Manpower and Transmigration Regulation</p>

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	be periodically examined by a designated workplace doctor.		periodically examined by designated doctors. The cost of the diagnosis and assessment must be borne by the employer.	No. PER.02/MEN/1980 of 1980 on Employee Health Check-Up in Occupational Safety Implementation and MOMT Regulation No. PER.03/MEN/1982 of 1982 on Employee Health Service.
Are there restrictions on the use of AI or big data in recruitments?	<p>There are no restrictions on the use of AI or big data in recruitments, subject to compliance with data privacy and anti-discrimination considerations.</p> <p>However, there are non-binding guidelines on the use of AI. The Infocomm Media Development Authority and the Personal Data Protection Commission issued the Model Artificial Intelligence Governance Framework (2<sup>nd</sup> Ed) (<b>Model Framework</b>) on 21 January 2020 which provides guidance to private sector organisations in deploying AI responsibly. However, the Model Framework does not discuss legal liabilities associated with AI and societal impacts of AI including on employment-related matters.</p> <p>The Model Framework is based on two high-level guiding</p>	<p>There are no restrictions on the use of AI or big data in recruitments, subject to compliance with data privacy and discrimination laws.</p> <p>However, there are non-binding guidelines on the use of AI. The Privacy Commissioner for Personal Data published its “Guidance on the Ethical Development and Use of Artificial Intelligence” (<b>the Guidance</b>) on 18 August 2021, which provides guidance to private sector organisations to comply with data privacy laws when developing or deploying AI. However, the Guidance does not specifically discuss legal liabilities associated with AI in respect of employment-related matters.</p> <p>The Guidance recommends that organisations adopt three fundamental Data Stewardship</p>	<p>There are no restrictions on the use of AI or big data in recruitments, subject to compliance with data privacy and discrimination laws.</p>	<p>There are no restrictions on the use of AI or big data in recruitments, subject to compliance with data privacy and discrimination laws.</p> <p>Agency for the Assessment and Application of Technology (<i>Badan Pengkajian dan Penerapan Teknologi</i> or <b>BPPT</b>) issued a document titled National Strategy of Artificial Intelligence Indonesia Year 2020-2045 (<b>AI National Strategy</b>). AI National Strategy is silent on the use of AI for employment-related matters but it provides that to be reliable, AI must: (a) be supervised by a human being; (b) be robust and technically safe; (c) have data and privacy governance; (d) be transparent; (e) be socially and environmentally responsible; and (f) ensure diversity, non-discrimination and justice.</p>



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	<p>principles, namely (a) organisations that use AI in decision making should ensure that the decision-making process is explainable, transparent and fair; and (b) AI solutions should be human-centric (ie they should protect people's interests including their safety and wellbeing).</p> <p>The Model Framework provides guidance in 4 areas, namely (a) internal governance structures and measures; (b) human involvement in AI-augmented decision-making; (c) operations management in developing, selecting and maintaining AI models; and (d) stakeholder interaction and communication.</p>	<p>Values, namely being respectful, beneficial and fair to stakeholders. It also sets out seven ethical principles in line with international standards, namely (a) accountability, (b) human oversight, (c) transparency and interpretability, (d) data privacy, (e) fairness, (f) beneficial AI, and (g) reliability, robustness and security.</p>		<p>Lastly, it is worth noting that the draft bill on personal data protection touches the issue of profiling. One of the provisions in the draft gives personal data owners the right to object against a decision-making which is based solely on automatic processing of an individual's profile. The elucidation to the relevant provision clarifies that an "individual's profile" includes but not limited to employment history, economic circumstances, health, personal preferences, interests, beliefs, behaviour, location, or electronic movement of the personal data owner. The draft bill is still being discussed in the House of Representatives.</p>