



Background screening is becoming increasingly commonplace throughout Australia. However, there are diverse legal and cultural considerations that companies should be aware of before implementing a background screening program in this particular country. This whitepaper will highlight the legal landscape and outline checks available.

Legal Landscape

A rise in resume or CV fraud in South Africa has contributed to background screening's growth in popularity. In particular, applicants have claimed they possess degrees they never earned or have inflated their job history and experience. The Southern Africa Fraud Prevention Service routinely links to news articles with countless examples of resume fraud.

Additionally, as outlined in the PricewaterhouseCoopers 2016 Global Economic Crime Survey, more than 69% of organizations in South Africa reported being the victim of economic crime. According to the survey, South Africa outpaced Russia, the United Kingdom, France and Kenya (among other countries). Further, many respondents reported human resources fraud with 68% being victimized by false qualifications – higher than the global average of 44%. This issue also isn't isolated to the public sector – 88% of the respondents were from private companies. The survey recommended screening all employees – including contract and temporary workers – as a way to help combat the pervasive and serious problem of resume fraud. ¹

Capital	Pretoria; Cape Town; Bloemfontein
Currency	South African Rand
Population	54,956,900
Area	1,221,037 km ²
Language	English
Time Zone	UTC +2
Calling Code	+27

Data Privacy

The right to privacy in South Africa is guaranteed by the Constitution. In 2013, the Protection of Personal Information Act (POPI) was passed representing a comprehensive data privacy law. In April 2014, portions of the legislation were formally proclaimed as taking effect; however, there currently is no commencement date for the remainder of POPI.

POPI was modeled after the European Union Data Protection Directive 95/EC/46. Under the Act, the definition of personal information is quite broad and includes (but is not limited to): race, gender, sex, pregnancy, marital status, address information and medical, financial, criminal, education or employment history. The Act also outlines several principles: Accountability, Processing Limitation, Purpose Specification, Further Processing Limitation, Information Quality, Openness, Security Safeguards and Data Subject Participation. Data subjects also have numerous rights under POPI including the right to object to processing, to access personal information and to request the correction, destruction or deletion of personal information.

¹ Pricewaterhouse Coopers, "Economic Crime: A South African pandemic". Published March 2016. Last accessed Nov. 11, 2016.



Consent is required before processing personal information, thus for background screening purposes, consent should always be collected from the applicant.

Equal Treatment

The Employment Equity Act 55 of 1998 (EEA) is another important piece of legislation. The EEA's purpose is to promote fair and equal treatment in employment, and prevent discrimination on the grounds of race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, color, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

Background Screening – Available Checks

Bankruptcy Records

Civil Records

Credit Check

Criminal

Directorship

Education

Employment

Global Search

Motor Vehicle Records

Passport Check

Professional License Verification

References

In general, the most commonly conducted checks in South Africa include reviewing an individual's past education and employment history, and conducting a criminal records search.

Education

In South Africa it is common to verify the highest degree obtained by a candidate. Educational institutions will be contacted to verify dates of attendance, graduation date and degree information.

Employment

It is common to verify the last seven years of employment for candidates. Employers will be contacted to verify the individual's title, dates of employment and if the candidate is eligible for rehire. Current employers will only be contacted with express consent from the applicant.

Criminal

Criminal records checks in South Africa are available, and the search is conducted at the local level based on the applicant's address history.



Credit Check

According to the National Credit Act 34 of 2005, credit information should only be used in employment decisions if the position requires trust and honesty, and is responsible for handling cash and finances.

Miscellaneous

Other searches in South Africa include: Bankruptcy Records, Civil Records, Directorship Search, Motor Vehicle Records (validation of the individual's driver's license), Passport Check, Global Search (sanctions and watch lists), Professional License Verification and Professional References.

*The preceding is offered as general educational information and is not intended to constitute legal advice.
Given the intricacies of the pertinent laws and regulations, consultation with qualified legal counsel is recommended.*