



Background screening is becoming increasingly commonplace throughout Brazil. 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

Employers need to understand the different laws that may impact background screening. In particular, analyzing the data protection landscape in conjunction with the Brazilian Constitution serves as a great starting place.

Data Privacy & the Brazilian Constitution

There is no comprehensive data privacy law in Brazil however; there are many laws that have privacy components in them. In particular, the Brazilian Constitution outlines that the privacy, private life, honor and image of persons are inviolable. Further, the Constitution guarantees habeas data which guarantees an individual the right to access and correct information held in public records. The Constitution also prohibits discrimination in the hiring process and/or during the employment relationship based on gender, color, marital status, origin, family status or age.

Capital	São Paulo
Currency	Real (R\$)
Population	206,440,850
Area	8,515,767 km ²
Language	Portuguese
Time Zone	UTC-2 to -5
Calling Code	+55

Since 2010, Brazil has actively considered a personal data protection law. The most recent version of the Draft Bill for the Protection of Personal Data was published in October 2015. If enacted, businesses would face new rules and requirements around the collection, processing and use of personal data and sensitive personal data. The Bill as drafted would also require unambiguous and free consent which is akin to the European privacy model. As the original draft was modeled after the EU Data Protection Directive 95/46/EC, it is unclear whether additional amendments will occur to the draft legislation following the passage of the EU's General Data Protection Regulation.

Background Screening - Available Checks

Bankruptcy Records

Civil Records

Credit Check

Criminal

Education

Employment

Global Search

Motor Vehicle Records

Passport Check

Professional License Verification



References

In general, the most commonly conducted checks in Brazil include reviewing an individual's past education and employment history, checking professional references and, in some instances, conducting a criminal records check. Other checks, such as reviewing an individual's credit history and motor vehicle records, are available; however, they tend to be used only when directly relevant to the position being filled and may not be suitable for every position in every industry.

Delays in turnaround times may occur during the popular summer vacation time (December-February), as well as during the days leading up to Ash Wednesday known as Carnival. Education and employment verifications in particular may see delays during that time.

Education

In Brazil it is common to verify only 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 in Brazil. Employers will be contacted to verify the individual's title, dates of employment and if the candidate is eligible for rehire.

Criminal

The nationwide criminal search is the most comprehensive search in Brazil, including both federal and state level search of 26 state criminal repositories for all convictions for which a pardon has not been received. There is no time limit on how far back records can be found; however, after 5 years an individual may be eligible to receive a pardon depending on the particular crime. When a pardon is granted criminal history details are no longer available. Generally the criminal search in Brazil will only return more serious crimes. In order to conduct this search, additional information from an individual is needed including the Cadastro de Pessoas Físicas (CPF - tax ID), a form of identification and mother's maiden name.

Currently no legislation exists that prohibits criminal records checks; however, some past case law has pointed to a determination that such a check may violate an individual's right to privacy and/or be discriminatory. Prior to requesting a criminal check, employers should analyze why it is necessary and ensure there is a rational relationship between the position being filled and a potential criminal history.



Motor Vehicle Records

The motor vehicle records search will confirm if the individual possesses a driver's license. Details of the driving record may be provided if available.

Miscellaneous

Other searches in Brazil include: Bankruptcy Records, Credit Check, Civil Records, Passport Check, Global Search (sanctions and watch lists), Professional License Verification and Professional References.

Drug Testing

Drug testing is not commonly performed outside of the United States. In Brazil, drug and alcohol testing may be seen as discriminatory and individuals may refuse to submit to testing. Given the potential privacy and discrimination implications, clients should consult with qualified legal counsel before implementing a drug testing program.

It is important to note that the following 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.