



Thailand



Contributed by: **Tilleke & Gibbins**

OVERVIEW

1. Is it standard practice for employers to carry out background checks on applicants?

The practice of carrying out background checks in Thailand varies widely among employers and may depend on the area of business or the particular position.

2. What types of background checks do employers typically carry out on applicants?

The types of background checks vary but may include verification of educational credentials and professional licenses, criminal records checks (of one or more jurisdictions), and a medical examination. Drug screening and other checks may also be carried out, depending on the circumstances.



HOME



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ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS



Thailand

BACKGROUND CHECKS ON APPLICANTS

- Education and past employment records
- Criminal records
- Credit/financial checks
- Health checks/medical screening
- Social media/internet search
- Fingerprinting
- Handwriting
- Union membership
- Political views
- Drug and alcohol testing

3. Which of the above background checks are employers permitted to carry out on applicants?

The law does not explicitly authorize, or prohibit, background checks. However, employers often require health checks/medical screening, where it is necessary for the position, for insurance purposes, and/or for work permit purposes. For some employers, it is standard practice to carry out checks of educational credentials and qualifications, as well as to check past employment references provided by applicants. There are also some categories of employment where drug and alcohol testing is often carried out. In relation to social media/internet searches, it is likely that some employers carry these out informally.

Criminal records checks can be undertaken but they can take some time to complete (particularly if they involve multiple jurisdictions). Employers therefore often dispense with such checks, unless an employer has particular concerns which are specific to the position (e.g., if the position involves handling money or working with children).

4. Which of the above background checks are employers not permitted to carry out on applicants?

The law does not explicitly authorize, or prohibit, background checks.

Nevertheless, there are specific points to note in relation to particular checks:

Credit/financial checks

The Credit Information Business Act restricts the purposes for which members and service users can use credit information disclosed by the National Credit Bureau; consideration of employment is not among the permissible purposes. Nevertheless, if credit information is available (e.g., from a credit bureau overseas, which might be relevant when hiring a foreign national), an employer would not be prohibited by Thai law from checking such information. It would also be possible for an employer to ask an applicant to request a credit report and to submit it to the employer. Similarly, an employer could ask an applicant to disclose information on his or her bank accounts and/or securities holdings.

Union membership

Pursuant to the Labour Relations Act, employers cannot discriminate, or take negative action, against their employees who are union members or otherwise involved in organized labour. However, this would not prevent an employer from carrying out a check of whether its employees are union members, as the issue is, instead, what the employer does with that information. Moreover, the Labour Relations Act does not address pre-employment consideration of whether to hire an applicant (i.e., one who is not yet an employee).



HOME



JURISDICTIONS



DIRECTORY

ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS



Thailand

Political views

At present, the interim Constitution does not address discrimination on the basis of political views. However, this was addressed in the 2007 Constitution, among various other attributes on which discrimination is not permissible. As a similar provision has appeared in a draft of the new Constitution, it is likely to again be addressed in the new Constitution, once approved. This would not necessarily mean that an employer could not carry out a check of an individual's political views. Rather, if this provision reappears in the next Constitution, the issue would be what the employer does with such information. Deliberations on the new Constitution are ongoing.

5. Which of the above background checks are employers permitted to carry out on applicants but only if certain conditions are satisfied (e.g., the applicant's consent needs to be obtained or other restrictions/limitations apply)?

The law does not explicitly impose conditions on employers carrying out background checks. However, some legal provisions may apply indirectly. For example, any disclosure of personal health information would require the consent of the data subject. The medical facility possessing such information would therefore require the data subject's consent before releasing it to the employer. Similarly, the Royal Thai Police require consent of the data subject to process a criminal records check.

6. If certain conditions need to be satisfied for any of the background checks, what are these conditions and to which background checks do they apply?

The applicant's consent would be required to lawfully submit a request for a Thai criminal records check and, as noted in question 5, the applicant's consent may be required in relation to health/medical information, including the results of drug testing.

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 law does not impose explicit limitations on the use of information arising from background checks prior to hiring an employee. However, general provisions of law would be applicable. For example, having gathered the information, if the employer discloses it in a way that causes damage, the employer may be liable to the data subject in tort (e.g., civil liability). Depending on the circumstances, criminal charges may also arise (e.g., criminal defamation).

OTHER BACKGROUND CHECKS

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

No other types of employment background checks are explicitly permitted. Some employers also carry out personality testing.

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?

The law does not draw a distinction between background checks carried out before or after a decision is made to offer employment. Rather, a key distinction would be whether or not an individual is in an employment relationship with the employer. Accordingly, a key point would be the making of an offer of employment that could be accepted by the applicant, thus initiating the employment relationship. Please see response to question 11.



HOME



JURISDICTIONS



DIRECTORY



ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS



Thailand

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)?

In principle, employers are not prohibited from conducting background checks, whether prior to or during employment. Whether a background check is carried out before or after employment has commenced, if the resulting information is used in determining, for example, an employee's bonus, promotion, or salary increase, this may, nevertheless, present risks for the employer. For example, the applicable terms of employment—whether existing in an individual employment agreement, the employer's work rules and regulations, a collective bargaining agreement, or employer policies—might restrict the criteria on which an employer can make these types of employment decisions. Similarly, an employer is prohibited from discriminating against its employees who are union members, employee committee members, or otherwise involved in collective bargaining activities. It is also important to keep in mind that if an employee were to refuse to consent to, or cooperate with, particular background checks, this would not justify termination for cause.

That said, it should be noted that some categories of employer often carry out certain types of background checks during employment. For example, capital markets employees are often asked to disclose their personal securities holdings and/or trades, so that their employers can meet their SEC regulatory obligations to prevent insider trading. Also, industrial employers frequently require their employees to undergo drug testing, typically annually as part of the annual medical check, but random checks are sometimes also carried out. Even more broadly, a wide range of employers conduct annual medical checks, and foreign employees are required to undergo periodic medical examinations, for work permit purposes.

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 law does not set out specific steps for an employer to take to ascertain whether an applicant or employee is legally entitled to work. However, the employer can be criminally liable for employing people illegally, under a variety of different laws. For example, the Alien Employment Act B.E. 2551 and the Immigration Act B.E. 2522 (as amended) prohibit the employment of foreign nationals who are not authorized to work.

Another example is the Labour Protection Act B.E. 2541 (as amended), which prohibits the employment of children under a certain age and in carrying out certain types of work. There are also sector-specific laws, such as the Securities and Exchange Act B.E. 2535 (as amended), that require the holding of particular licenses to carry out particular jobs.

Employers therefore need to carry out such checks as would be necessary to make sure that employees can lawfully be employed for the type of work envisaged. Age and Thai nationality can be determined from a valid Thai national ID card. In relation to employing foreign nationals, as work permits are employer sponsored, an employer would know whether the employee had been granted a work permit.

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.



HOME



JURISDICTIONS



DIRECTORY



ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS



Thailand

SECTORS

14. Do background checks differ in different sectors?

The law does not explicitly authorize background checks. However, in some sectors, businesses are subject to additional compliance requirements. For example, securities companies are required to prevent insider trading. In order to comply with such a requirement, employers commonly require their employees to disclose their securities holdings and/or trades, in order to identify insider trading.

OUTSOURCING BACKGROUND CHECKS

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

Some businesses specialize in carrying out investigations, and in principle, an employer could hire such a company to prepare a report on an applicant, subject to the other restrictions outlined herein.

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?

No.

DATA PROCESSING

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

The law does not impose specific limitations on the processing of information arising from background checks prior to hiring an employee. However, general provisions of law would be applicable. For example, if the employer discloses information in a way that causes damage, the employer may be liable to the data subject in tort (e.g., civil liability). Criminal charges may also arise, depending on the circumstances (e.g., criminal defamation). It is therefore advisable to obtain the consent of the data subject to the collection, processing, use, transfer, and disclosure of such information, both overseas and domestically.

SANCTIONS/ENFORCEMENT

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

Although the law in Thailand does not address employment background checks specifically, general provisions of law would nonetheless be relevant, including provisions of the following legislation:

- The Civil and Commercial Code
- The Penal Code
- Credit Information Business Act B.E. 2545 (as amended)
- Labour Protection Act B.E. 2541 (as amended)
- Labour Relations Act B.E. 2518 (as amended)
- National Health Act B.E. 2550 (as amended)



HOME



JURISDICTIONS



DIRECTORY



ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS



Thailand

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

As noted above, if an employer discloses information in a way that causes damage, the employer may be liable to the data subject in tort (e.g., civil liability), and criminal charges may also arise, depending on the circumstances (e.g., a disclosure could amount to criminal defamation). In addition, if an employer made a negative employment decision based on an employee's union/collective bargaining involvement, this would be a criminal offense. If an employer disclosed employee health/medical information without the employee's consent, this would also constitute a criminal offense. Other breaches may also arise, depending on the circumstances.

In the case of a criminal offense, the potential penalties would depend on the provision of law breached. Typical penalties include fines and/or imprisonment. These can be imposed on the employer, as well as individuals who have the authority to act on behalf of the employer, such as directors and management personnel.

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ASIA
BACKGROUND CHECKS
TRAFFIC LIGHTS