International Background Checks: Global Due Diligence & Legal Compliance

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- Everyone will be muted throughout the entire presentation
- You are welcome to ask questions at any time using the chat and/or Q&A feature
- We will have a brief Q&A session at the end of the presentation to make sure that we answer your questions
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• Mission: Our mission is to foster our individual member’s learning through the sharing of knowledge, best practices, experiences, lessons learned and by engaging with industry experts and thought leaders.

• Purpose: Our goals are to enhance the professional capabilities and skills of our individual members and to bring value to the overall contingent workforce management industry.

• Who we are: CW Professionals is a Professional Association of contingent workforce and strategic sourcing professionals working in multiple industries.
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Our Speaker Today

Les is an Attorney at Law and CEO of Employment Screening Resources® (ESR), a nationwide background check firm accredited by the National Association of Professional Background Screeners (NAPBS®). He is a Thought Leader in the CWP space and has specialties such as background screening, human resources, hiring, employee law, safe hiring, recruiting, etc. Les is also a frequent speaker on due diligence and background screening issues as well as the proud author of "The Safe Hiring Manual," the first comprehensive book on background screening and hiring. Les has qualified and testified as an expert in court cases and has testified before the California Legislature.

Lester S. Rosen
Attorney at Law
Founder & CEO of Employment Screening Resources® (ESR)
Globalized Workforce

With mobility of workers across international borders, more employers need to consider international background checks. According to recent U.S. government statistics:

• 12.5 percent of the current population consists of immigrants.
• In 2009, there were over 10 million unauthorized immigrants in the U.S.
• In 2009, more than 1.1 million persons became Legal Permanent Residents (LPRs) of the U.S.
• Large number of workers are from other countries OR in U.S. on work visas.
• Large number of U.S. citizens have spent time abroad.
• Many U.S. companies have offices/facilities abroad.
International Screening

For U.S. employers, international background checks commonly occur when:

- A company is hiring in the U.S. and the applicant has spent a relevant time period outside of the U.S. (“U.S. Screening”)
- A company is hiring workers in another country to work in that country. (“Non-U.S. Screening”)
- For a firm located outside of the U.S., a screening in the U.S. would be an international background check.
Top 20 Requested Countries for Screening

• In Alphabetical Order:
  – Australia, Brazil, Canada, Chile, China, France, Germany, India, Ireland, Israel, Japan, Malaysia, Mexico, Nigeria, Pakistan, Philippines, Russia, Singapore, South Africa, and United Kingdom (U.K.).

• There are 192 members of the United Nations (UN).

• Some 249 “Country-like” political entities listed on the ISO list.

• Cannot give detail for each country but reviewing general concepts. mobility of workers across international borders, more employers need to consider international background checks.
Due Diligence for International Applicants

• All employers have legal duty to exercise due diligence in hiring.

• An employer can be sued for negligence if it hires someone who it knew, or in the exercise of reasonable care should have known, was dangerous, unfit, or unqualified for the particular job and it was foreseeable that someone could be harmed.

• The same standard of care applies to employers who hire individuals who have spent time abroad.

• Education and employment fraud for international applicants runs at least 25% per one industry study.

• That means that 1 in 4 applicants you screen as finalists may have false credentials.
From the Headlines!

- Using one country as an example:
  - “1 On 5 IT CV’s are Fake” (Times of India, 8/8/12)
  - “Liar for hire? Fake CVs flood Indian job market” (Fake past employer) Philippine Daily Inquirer (1/12/14)
  - “Thousand advertisements blatantly promoting counterfeit degrees in India” The Hindu (3/3/14)

- Problem is worldwide including the U.S.
Do Not Assume Anything About Government Visa Screening

• For workers in the U.S. on a VISA, an employer cannot assume the U.S. government performed background check.

• Since 9/11, U.S. government has increased checks on foreign visitors and workers by checking names against government “watch lists,” aimed at keeping terrorists and international fugitives from entering the U.S.

• VISA checks are not necessarily aimed at lesser convictions that may be relevant to job performance, or verifications of credentials, such as past employment or education.

• Issues with Police Certificate:
  – Authenticity.
  – Differ worldwide re: reliability, availability for employment and completeness.
Good News: The Cost and Availability of International Checks are Improving

- International checks are more expensive and challenging than domestic US checks, ability to perform is improving

- Factors
  - Improved global information network
  - More vendors and resources available
  - Greater acceptance of background checks

- Although international searches come with their own unique challenges and obstacles, employers have a number of options when it comes to exercising due diligence.
The Bottom Line

- International background checks are an emerging due diligence standard.

- If a U. S. employer hires someone without verifying his/her international background and the employer is sued for negligent hiring when it turns out that an international check would have uncovered important facts, limited defense.

- Difficult to argue did not know how to conduct international background checks or that they are too costly.

- Multi-national employers must deal with challenges of standardized program across the globe.
Screening vs. Investigation

- **Screening:**
  - Employment screening involves verifications of supplied information by an applicant who has given express written consent.
  - A typical international screening means contacting the employers and schools that have been supplied and conducting a reasonable criminal check to the extent possible in that country.
  - If more information is needed, the applicant can be asked to supply it.

- **Investigation:**
  - International investigations may involve qualified personnel in the foreign country doing in-depth personal interviews or obtaining criminal and specialized records.
  - If filling a highly sensitive position or conducting a due diligence of a potential business partner outside the U.S., services of a qualified investigator on the ground in that country may be needed.
  - Investigation is typically more expensive than a screening.
Rest of the World is Different than U.S.

- Information, such as criminal records, credential verifications, and databases not as available.
- Special forms and procedures maybe needed.
- Cost and turnaround time can be much longer than domestic U.S. screenings.
- Although international searches come with their own unique challenges and obstacles, employers have a number of options when it comes to exercising due diligence.
International Screening Challenges

1. Language barriers
2. Name variations
3. Identifiers
4. Time and calendar differences
5. Means and costs of communications
6. Locating contact numbers and addresses
7. Costs
8. Political uncertainty
9. Legal implications (Privacy and data protection, Safe Harbor, Discrimination & FCRA)
10. Multi-national firms and standardized approaches
11. Fraud awareness
12. Introduction to past employment checks
13. Introduction to education checks
14. Introduction to international criminal record checks
15. Terrorist databases
1. Language Barriers

- Since past employment and education verifications are often done by verbal confirmation, language can become an issue in communicating with foreign schools and employers or in reviewing court documents for criminal record searches.

- Compare: IN the UK, past employment done by letter.

- If a person conducting an interview is not fluent in the language involved, the services of a translator may be necessary—firms specialize in that service.
2. Name Variations

• The issue of name variations is extremely complicated for two reasons:
  
  – Many cultures have naming conventions that are entirely different than the U.S., such as starting the name with the family or clan name, or mother’s name.

  – Expressing a foreign name in an English format can be problematic:
    • Expressing names that utilize a different alphabet, such as Arabic, Chinese, Russian, etc. creates room for error and confusion.
    • Techniques include transliteration (codebook approach) or Phonetic translation
    • For example, “bin Laden” can be represented as both “Laden” with an “e” or “Ladan” with an “a.” There are variations of the first name, such as “Usama” or “Osama.”
    • Peking vs. Beijing
3. Identifiers

- In order to identify the person, an employer will need to supply the proper type of identification needed for each country. Identifiers can include:
  - Full name and date of birth.
  - A national ID number, if a country provides one.
  - Mother’s maiden name.
  - Name in primary language of the country, such as an applicant’s name in Chinese character if doing a search in China.
  - Each state and/or city where a person has lived.

- Caution – difference between US and English date of birth convention: 01/23/1982 vs. 23/01/1982
4. Time & Calendar Differences

• Communicating with researchers, past employers or schools around the world can be delayed due to time differences.

• For employers that attempt to conduct international past employment verification themselves, an employee may have to wake-up in the middle of the night to accommodate various time zones.

• Since each country has its own holidays, sometimes communications are difficult or delayed because of a country’s calendar. See: www.earthcalendar.net.

• January 7 is what holiday in Egypt?
  – Christmas (according to the Coptic Calendar).
5. Means & Cost of Communications

- Can be delayed since not all countries have reliable or efficient phones, fax, e-mail or mail service.
- In some countries, only reliable means is to have a researcher show up in person.
- Overnight services can be expensive.
- HINT: International phone costs can be expensive unless arrange a cheaper international rate.
6. Locating Contact Numbers & Addresses

- Critical to have the applicant provide as much information as possible about past employers and schools.
- It can be challenging to call a foreign country and to locate a past employer, so the more information, the better.
- General rule for domestic and international screening: whenever possible, independently verify the existence and authenticity of the past employer.
- Case in Point: "Information please, Manila."
7. Cost

- International screening can be more expensive than screening in the United States.
- There can also be issues of international monetary transfers: (e.g. schools that require a fee to perform a verification).
8. Political Uncertainty

- Some parts of the world present unique difficulties due to war, political unrest, unreliable communications infrastructure, lack of standardized procedures, bureaucracy, corruption or ambivalence toward America and/or background checks.

- Known as “Red Zone” Countries.
9. Legal Implications

- **FCRA** – For any international screening in the US or where the applicant may perform the job in US, employer should consider a standardized policy of following all Fair Credit Reporting Act (FCRA) rules including disclosure, consent, permissible purpose and adverse action.

- **U.S. Discrimination laws** – cannot discriminate on the basis of nationality, ethnicity, race or religious preference.

- **Screening forms should be neutral:**
  - For example, consent forms should not refer to background checks in foreign counties or place of origin but rather “in all countries where an applicant has lived, worked or studied.”
Other Legal Implications

• Must be clear what practices are legal:
  – For example, paying money to a government official abroad to obtain criminal records, where that is illegal in the country, can create issues under the US Foreign Corrupt Practices Act FCPA, 15 U.S.C. Section 78dd-1 et. seq.

• General rule – “When in Rome, do like the Romans” (unless the local customs are at odds with the local laws or US laws or best US practices).
Privacy Considerations

- Privacy laws outside the U.S. can govern the manner in which information is obtained, transmitted and utilized.

- Numerous countries either have or are developing privacy rules concerning personal and identifiable information.

- See: [www.privacyinternational.org/index.shtml](http://www.privacyinternational.org/index.shtml)

- The European Union (E.U.) has strict data privacy regulations that restrict the processing of personally identifiable data. This includes restrictions on data transfers outside of the E.U.
E.U., FCRA & “Safe Harbor”

- Privacy in US for screening is governed by the FCRA, along with regulations and industry practices.
- FCRA requires consent and has other protections.
- EU approach is to rely on comprehensive legislation that requires creation of government data protection agencies.
- Each EU member has their own privacy laws as well.
- In general, EU and other countries with comprehensive privacy laws tend to view the US as not having strong privacy and data protection.
- E.U. privacy regulations generally prohibit the transfer of personally identifiable information to countries where the E. U. has not judged there to be adequate data protection.
- Case in Point: Difference between E.U. and U.S. on PNR.
To bridge the difference with the U.S., a “Safe Harbor” framework was developed.

A U.S. firm can become Safe Harbor certified through a self-certification process (Department of Commerce website at https://www.export.gov/safeharbor/).


Even if the data transfer is accomplished through Safe Harbor, the employer still must adhere to other privacy requirements, such as providing proper notice and obtaining proper consent.

Other compliance methods can be used for data transfer out of the E.U., such as model contracts.
10. Multi-National Firms

- Special challenges for U.S. firms with offices around the world.
- Trend is to attempt to **standardize** the basic screening package as much as possible, taking into account the differences between countries.
- What is the right balance between standardized global HR practices and a local approach? 80%/20% per one international expert.
- 'Glocalization' - combination of the words "globalization" and "localization" used to describe a process that is deployed globally, but also accommodates local rules and practices.
11. Fraud Awareness

- Can be more difficult to verify that a non-U.S. employer is legitimate due lack of local knowledge.

- In addition, just as the U.S. has a significant problem involving phony degree mills or fake degrees, there can be similar issues abroad.

- Well publicized incidents of past employment fraud worldwide

- Criminal record searches can be incorrect if applicant does not reveal truthful past address information or manipulates date of birth.

- Many countries do not have tools similar to the U.S. social trace to find past addresses related to an applicant.
12. Past Employment

• Employers have all of the same challenges faced in the U.S. when calling past employers PLUS the complications associated with checking internationally and the lack of third party databases.

• Key steps for international employment verifications:
  – Obtain as much information as possible from the applicant (but over collection if not justified can violate non-U.S. privacy laws).
  – Conduct verifications in the primary language for that country if needed.
  – NEVER accept the applicant's word for the legitimacy of the past claimed previous employer or phone—need to establish past employer is legitimate and contact data independently of any information from applicant.
    • In India, for example, may require physical inspection of past company
    • May need letter from past employer (although that can be forged)
  – Be aware of the potential for fraud.
  – Chose screening vendor carefully if using third party
    • Expertise?
    • NAPBS Accredited?
Verification of education is just as important internationally as it is for US applicants.

Per some observers, the world is literally flooded with fake degrees.

The verification process has 3 parts:
- Determine if the applicant in fact attended the school claimed and received the degree claimed.
- Determine if the school is accredited and authentic.
- If needed, determine the US equivalency of a foreign degree.

TIP: If applicant sends copy of “degree,” verify it with school registrar!
Educational Challenges

• Obtain as much information as possible from an applicant, such as the full name used in school, the exact spelling in the language utilized by the school, the dates the person attended the school, and in some countries, a copy of the degree and any student ID or seat number.

• There are sources of delay, such as:
  – School recess or holidays.
  – Sending fees if required.
  – Faxing release if required, special release forms.
  – Additional information required (such as a seat number or degree in India).
  – Unreliable phone systems.
Criminal Record Information

• Currently, no authoritative list of countries worldwide where criminal records are available or how and what is available.

• The U.S. State Department maintains a list of issues involved in obtaining international visa documents called “Visa Reciprocity and County Document Finder” including information on the availability of police certificates and court records.

• See: http://travel.state.gov/visa/fees/fees_3272.html

• The problem of how to obtain international criminal records today is similar to the situation employers and screening professionals faced in the U.S. in the 1980’s - screening was much more difficult and less common.

• There are firms currently involved in building resources around the word to locate criminal.
Sources for Criminal Records

- Criminal records may be available from different sources such as local police, national police, governmental agencies or Courts.
- Police records are typically broader but not available in all countries for employment purposes.
- Court records can be difficult to search in some countries and not necessarily complete.
- Not all police agencies or courts around the world are computerized.
- Employers should not assume there is a complete prohibition on obtaining criminal records because not available from a particular source.
- For example, in the U.S. private employers cannot go to the police or FBI, but can go to the Courthouse.
Other Issues with Criminal Records

- **Scope** — Some counties provide country wide records, while others may only supply local court or police records.
- **Costs** — Before ordering an international criminal record, an employer should carefully specify how many courts to search since the average price of an international criminal search can exceed $100 per search.
- **Turnaround time** — Varies worldwide. Cayman Islands is at two months.
- **Level** — Searches will typically return major offenses – some courts do provide what in the U.S. may be a misdemeanor offense.
- **Audit Trail** — Similar to US, most courts around the world will not provide a “no record” found certification (i.e. they will typically not verify a negative).
- **Translation** — If there is a “hit,” need professional translation.
- **Meaning of crime** — May need to research criminal code of country to determine what a “hit” means.
Examples of Counties with Specific Forms

- Australia Nationwide (Federal Police)
- Belgium Nationwide (Police)
- Bermuda Nationwide (Magistrate Court)
- Canada - National Criminal Record Check - CPIC
- China Nationwide (Citizen)
- Cyprus Nationwide (Police) Mexico Nationwide
- Mexico Regional (new forms due to new privacy laws)
- Netherlands Nationwide (Police)
- New Zealand Nationwide
- Norway Nationwide (Police) Philippines Nationwide
- Poland Nationwide (Police) - National or non-national
- Spain Nationwide (Police)
- Sweden Nationwide (Police)
- Switzerland Local
- Switzerland Nationwide (Police)
- United Kingdom

NOTE: Numerous other countries have special requirements, such as national number or scan of documents.
Two types of Criminal searches: National (CPIC) and "local" (Provincial):

- **CPC:**
  - + Covers the entire country with one search
  - + Accepted as method for employment checks
  - - Current delays in records being uploaded to system (in some cases 2+ years)
  - - "Hit" requires fingerprints and lengthy delays for conviction details
  - - Does not include Summary level offenses

- **Provincial:**
  - + Easier to order
  - + Provides conviction details with "hit"
  - + Includes Summary level convictions
  - - Controversial in some Provinces
  - - Covers only the Province or local address
Effective January 1, 2004, federal privacy law called the **Personal Information Protection and Electronic Documents Act (PIPEDA)** went into effect in Canada and has broad applicability. Also Provincial laws:

- Accountability.
- Identifying purposes.
- Consent.
- Limiting collection.
- Limiting use, disclosure, and retention.
- Accuracy.
- Safeguards.
- Openness.
- Individual access.
- Challenging compliance.

More information about PIPEDA is at [http://www.priv.gc.ca/leg_c/leg_c_p_e.cfm](http://www.priv.gc.ca/leg_c/leg_c_p_e.cfm).
There are a number of terrorist databases maintained by various offices of the US government, as well as foreign governments and international organizations.

Private research firms DO NOT have access to secret government watch lists, intelligence or data.

However, there are databases that research firms can utilize on behalf of private employers.

The key is to access all of the major lists. This is typically done through third party services that regularly scan and update these lists into a searchable database.
Sample US Government Lists


- OFAC Sanctioned Countries [http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)

- Department of State Trade Control (DTC) Debarred Parties List [http://www.pmddtc.state.gov/compliance/debar.html](http://www.pmddtc.state.gov/compliance/debar.html)


- BIS Denied Entity List [http://www.bis.doc.gov/entities/default.htm](http://www.bis.doc.gov/entities/default.htm)


- FBI Ten Most Wanted [http://www.fbi.gov/wanted/topten](http://www.fbi.gov/wanted/topten)
Samples of Other Lists

- INTERPOL Most Wanted List http://www.interpol.int/Public/Wanted/Search/Recent.asp
Terrorist Lists: The Good, Bad, & Ugly

• The Good: Source of protection that is readily available, inexpensive, and demonstrates due diligence.

• The Bad:
  – In reality, only a small number of names.
  – Subject to all of the problems with databases such as completeness, timeliness, accuracy.
  – Name variations or names using a non-English alphabet make identification difficult.
  – Is NOT a criminal record search.

• The Ugly: If there is a hit, it can be very difficult to determine if your applicant:
  – OFAC has a number to call for assistance on the FAQ’s.
  – Cannot discriminate on the basis of a name match only.
Summary Best Practices

- Although difficult employers can take steps to demonstrate due diligence
  - 1. Recognize the importance of due diligence and the potential for fraud
  - 2. Understand world is different than U.S.
  - 3. Identify best resources to mitigate the risk to the greatest extent possible within reasonable cost
  - 4. Exercise due diligence in choosing third party providers
  - 5. Understand the need for legal compliance/data and privacy protection
Conclusion

• As the world gets smaller, the need for international due diligence in hiring becomes more critical.

• Although there are substantial issues, it is critical to understand the tools that are available and their uses and limitations.

• For more information from Employment Screening Resources® (ESR), visit www.ESRcheck.com or email presenter Lester Rosen at lsr@esrcheck.com.

• For a complimentary white paper from ESR about International Background Screening, visit http://www.esrcheck.com/Stay-Updated/Download/.
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