



Anti-social Forces Screening in Japan

By Grant Newsham, Special Contributor to Blackpeak

In Japan, screening for Anti-social Forces issues requires careful, thorough review in each case.¹

The National Police Agency List

Careful and professional Anti-social Forces (ASF) screening cannot be achieved with a simple compliance database review, or by just checking the Japan's National Police Agency's ASF list.

The NPA list is made available to the Japan Securities Dealers' Association and, as of 4 January 2018, to members of the Japan Bankers' Association. There is an erroneous yet widespread belief that it includes all Yakuza members.

The key issues to note are:

1. The NPA list is not comprehensive: in fact, it is actually difficult for a Yakuza member to get onto it. Certainly, many "elite" or "regular" Japanese who collude with the Yakuza do not appear on the NPA list.
2. Everyone understands that Yakuza members are not the only people in Japan involved in illegal or improper activity, however most people don't realize that the Yakuza are a distinct *minority* in this regard.

On the rare occasions that checking the NPA list does produce a name match, banks can request further information from the prefectural police to compare identity details. In most cases the list provides no name match, but it certainly does not follow that that individual is therefore safe to conduct business with.

In my experience, reviewing the NPA list typically provides a lower than 1% degree of certainty about a target's suitability from a criminal, probity and reputational (CPR) perspective. In more than 20 years of work in the field and more than 16,000 inquiries covering all Japanese sectors, I have seen very few people feature on the NPA list, including many we know to have been involved in significant criminal activity.

Traditionally, Yakuza are involved in illegal businesses and in lawful (but somewhat gray) industries such as pachinko and now gaming. That said, in my experience, it is unlikely that a foreigner will knowingly come across an actual Yakuza, even when investing in gaming and pachinko. This is not to say Yakuza are not involved in these industries, but that they will seldom be easily detectable.

The Yakuza list is not publicly available except as noted above.

There are no publicly available lists of *boryokudan*, *kigyo shatei*, *kyoseisha* or *jikenya*.²

The National Police Agency, Tokyo Metropolitan Police Department, Financial Services Agency, Securities and Exchange Surveillance Commission, National Tax Agency and local police in Japan of course all maintain their own internal records with respect to ASFs - just as the FBI, CIA and Department of the Treasury in the United States have their own internal files.

Open Source Reviews – The “Regulated Entity” Illusion

Open source media reviews can be helpful – and in fact are a must. However, most wrongdoers never get caught, or caught up, in publicly reported scandals, so a media review is, by definition, limited. Media reviews (and official records) are of course retrospective and only identify people who have been in trouble in the past. This is the equivalent of driving while looking into the rear-view mirror – and most wrongdoers operate for many years before getting into trouble: Bernie Madoff passed every database, internet, and open-source screening right up until the day he was arrested. Indeed, he was widely respected and properly licensed to carry out his business.

The key point is that the apparent absence of evidence of wrongdoing based on database and open-source screening only covers historical issues that have been publicly revealed, and other research needs to be conducted.

Similarly, the fact that a person is licensed by a regulatory authority, or that a company is listed and regulated should not be taken as validation of their integrity, until adequate research is carried out to confirm or disprove the point.

Moreover, the fact that a person or entity is “regulated” should not lead to an assumption that Japanese authorities have thoroughly investigated and cleared the person or entity. In my experience, being regulated, licensed, or listed alone means very little in the absence of further inquiries and confirmation.

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The Best Approach to ASF Screening

As part of ASF screening, of course one must review and be interested in everything that is publicly available. If there is information about “troubles” the subject has been involved in, that is helpful. More often than not, however, there is nothing in the public record.

Thus, it’s important to take a broader look at the subject through a proprietary ASF intelligence-gathering

network with a particular focus on the person’s personal background, work history, and the companies, businesses, and organizations with which they are, or have been, associated.

The more information researchers are able to access, the better. Also, experience matters. As an example, after more than 20 years of experience in this field, I have developed a good understanding of the Japanese underworld and how it is connected to Japan’s “clean” economy. This experience often helps to recognize suspect companies and individuals and other “patterns” that indicate underworld involvement and other improper behavior and associations.

Ultimately, the objective is to determine whether a target is or is not acceptable from a CPR (and ASF) perspective. Sometimes it is possible to reach a determination without making extensive inquiries leveraging one’s experience and existing knowledge.

However, reaching an accurate, professional determination often necessitates inquiries with established information networks on both sides of the “divide.”

In all cases, and particularly when there are a large number of subjects to review, I recommend the following approach:

1. A preliminary review of the person or entity, using one’s experience and existing information databases, employing limited resources to seek to make an early determination of suitability
2. Conduct more in-depth research using a broader range of resources (particularly human) to reach a conclusion regarding suitability. Fees are to be determined on a case by case basis – just as a lawyer needs to understand the amount and type of work involved in a given case before quoting a fee.

In the risk assessment field clients sometimes undervalue CPR research, even though it requires the same level of professional expertise and experience as legal and financial due diligence. CPR risks are often overlooked or subject to lighter reviews, often based on the erroneous assumption that they are not so important and can be done with a cursory database review. Sometimes it is also assumed that “the lawyers must have covered it.”

In certain respects, CPR research is actually harder than financial and legal due diligence, as it entails seeking information someone wants hidden. Even after the assessment is complete, one is often making a judgment without all of the pieces of the puzzle.

If CPR reviews are addressed haphazardly or incompetently the risks are considerable. I often refer to it as the “third-rail” risk – given that it can prove extremely damaging to a deal or a company if not addressed properly in the review stage.

Lehman Brothers Japan, Inc.

Around 2008, Lehman Brothers Japan, Inc. lost **USD 350 million** to the Yamaguchi-gumi (Japan’s largest organized crime group) in an investment deal involving funding refurbishments of senior citizens’ homes and hospitals, and financing medical equipment leases. There were “pedigreed” characters on the other side – including a distant relative of Japan’s royal family – and the deal passed legal and financial review. Lehman also claimed to have done “massive due diligence” – and they did hire a well-known investigative firm that “cleared” the deal from an “anti-social forces” perspective.

It would have taken no more than ten minutes to identify telltale signs of deep Yakuza involvement – if one had the and background to do so. And the so-called “Yakuza list” would have been of no help in this case.

There are many other such cases where superficial reviews intended to put a “check” in the “due diligence box” and to save a little money led to hundreds of millions in losses by major Western financial companies. These companies face significant reputational damage with regulators and the public, large fines, and loss of business licenses. Such failures can also attract further Yakuza and other ASF attention owing to a perception that the company is incapable of detecting organized crime.

Conversely, I can cite examples of extremely profitable deals – and improved reputations – we have worked on with clients after helping them navigate the dangers and make informed risk decisions.

In many cases with respect to due diligence around ASF in Japan, one encounters what is best termed a desire only for “defensive due diligence”: undertaking just enough research to satisfy regulators and minimum legal requirements. A person or entity is either “acceptable” from a CPR standpoint or they are not.

Cutting corners on requisite due diligence is akin to driving without your seatbelt on, or a lawyer purposely doing just enough to avoid disbarment.

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Context and a Recommendation

For a research firm such as Blackpeak, the objective is to provide information that allows clients to face shareholders (or regulators) and confidently explain why they did or did not do business with a given person or entity.

To this end, it is essential to provide clients with the context they need to understand and interpret the information. This requires the background and experience to properly assess CPR (and ASF) information in the context of Japanese society, industry, regulatory environment and certainly the actual risk from organized crime.

Similarly, it is equally important to have enough confidence in one’s work to provide clients with a clear recommendation about whether or not to proceed with a transaction, as well as providing additional advice as needed.

¹ “Anti-social Forces” is a euphemism in Japan for Japanese organized crime – most often referred to as “Yakuza” or “Boryokudan.” However, organized crime membership or associations are only one of a number of reasons to disqualify a potential counterparty. Thus, proper screening and assessment takes a broader perspective and considers a subject in terms of “criminal/probity/reputation” (“CPR”) risk – an expression I coined years ago.

² Boryokudan, literally “violence groups,” are the formal name the Japanese police use to refer to yakuza groups. Shitei boryokudan refer to legally designated yakuza groups. Associated individuals or groups that are not formal members of boryokudan include kigyo shatei (corporate blood brother), kyoseisha (cooperative entity) and jikenya (fraudster).

Special Contributor to this article

Grant Newsham is a former executive director of Morgan Stanley Japan. From 2000 to 2012, Grant oversaw criminal/probity/reputational risk assessments for the firm's business operations in all sectors. These efforts were recognized as uniquely effective in industry circles as well by local regulators and US financial and law enforcement authorities.

Besides his work with Morgan Stanley, Grant was a US Foreign Service Officer and a Colonel in the US Marines, serving as the first USMC liaison officer to the Japanese military and reserve head of intelligence for Asia/Pacific. He is also a lawyer experienced in public and private international law. Grant is currently a senior research fellow with the Japan Forum for Strategic Studies, writes extensively on Asia-Pacific geopolitical and military affairs, and continues to consult on business risk and organized crime matters.

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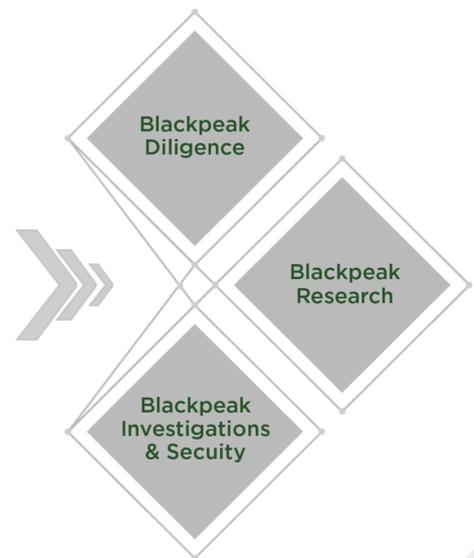
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