



## HR Electronic Records – India

### Natively Electronic Documents

#### What is the legal value of native electronic documents (that do not require signature by the parties)?

The majority of legislation generally recognizes the validity and probative value of documents that are natively electronic (i.e., created as electronic originals), subject to compliance requirements. In India, the burden of proof for electronic records is quite high, and courts often prefer paper originals. It may be good practice for employers to retain archives of paper originals in the event such originals would be requested by a specific investigator, auditor, judge or authority.



Under India's Information Technology Act (2000), any information required by law (to be in written, printed, typewritten form) can be made available in electronic form as long as it meets the

requirements under the Indian Evidence Act (1872) and is available for subsequent reference.

Under the Evidence Act (Section 65B), electronic records can be admitted as evidence, subject to:

- the output being produced by a computer regularly used to store/process information by the person who has lawful control over the computer;
- during the period the record was created, data similar to the information contained in the electronic record being regularly entered into the computer (i.e. the record in evidence was managed in the same way other records were managed);
- the computer being operating properly through the material part of such period (if it was not working, the accuracy of the record and its contents should not have been impacted); and,
- the electronic record containing or being derived from information entered into the computer in the ordinary course of activities.

To be admitted as evidence, electronic records must be accompanied by a certificate which:

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- shows the conditions above were met;
- identifies the electronic record containing the statement;
- describes the manner in which the record was produced;
- provides the details of the device involved in the production of the electronic record to show the record was produced by a computer; and,
- is signed by an individual in a responsible official position relating to the operation of the device or the management of the relevant activities.

While there are no statutes which regulate electronic archiving of HR documents, certain statutory records/forms under labor law statutes must be retained in physical formats on the premises of the company. Inspectors can demand that companies produce hard copies of statutorily mandated forms during inspections. Most states have now relaxed this requirement and allow labor law registers and forms to be retained in an electronic format.

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