

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. There is no restriction preventing HR teams from distributing and storing records electronically in China. The validity of a natively electronic record is dependent upon the extent the original record can be proven to be authentic and unchanged since the record's creation.



The Supreme People's Court issued the Decision on the Amendment of the Several Provisions on Evidence in Civil Proceedings on December 25, 2019 ("Decision"), Article 93, which stipulates the standard to determine the probative value of electronic documents and data. Under the Decision, the court considers the following when determining the authenticity of electronic evidence:

- whether the computer system's hardware and software, which is being used to generate,

store and transmit the electronic data, is complete and reliable;

- whether the computer system's hardware and software, which is being used to generate, store and transmit the electronic data, is generated, stored and transmitted in a normal state, or whether it has an effect on the generation, storage or transmission of electronic data when it is not in the normal state;
- whether the computer system's hardware and software, has an effective means to monitor and verify errors;
- whether electronic data is kept, transmitted and extracted in its entirety, and whether the manner in which the data is saved, transmitted and extracted are reliable;
- whether electronic data is formed and stored in the in the normal process of transactions;
- whether the electronic data is properly stored, transmitted or extracted by a proper legal subject; and,
- any other factors which affect the integrity and reliability of electronic data.

If the people's court deems it necessary, the court may examine and judge the authenticity of the electronic record via means of identification or inquest.

Article 94 of the Decision also provides five circumstances in which the court can confirm the authenticity of electronic data evidence:

- the electronic data submitted/held by the parties is to their own disadvantage;

- the electronic data is provided or confirmed by a neutral third-party platform that records and stores the data;
- the electronic record is formed in the course of normal business activities;
- the electronic data is kept in the form of archives management;
- the electronic data is saved, transmitted or extracted in the manner agreed by the parties.

Article 94 also stipulates that "if the contents of electronic data are notarized by a notary public, the people's court shall confirm its authenticity, except where there is sufficient evidence to prove the opposite."

Under the Electronic Signature Law (Art. 8) natively electronic records must meet the following standards in order to be considered as originals:

- The record's content must be able to be effectively presented and available for use at any time; and,

- content must remain intact and unchanged since creation.

An electronic record's authenticity will be assessed based on three main factors, along with other relevant factors. These include the reliability of the measures used to:

- generate, store and transmit data;
- ensure the continued integrity of the record's content; and,
- identify the method the sender is using.



HR Best Practices: Native electronic documents may be admitted by a court as long as they meet the requirements above.

Companies should take appropriate measures to ensure that proper procedures for generating, processing, storing and transferring the electronic documents have been followed.

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