

ELECTRONIC ARCHIVING OF PAPER ORIGINALS

Legal Framework for Electronic Archiving

Although some countries require certain types of documents to be kept and archived in their original paper form, for most



categories of documents, including HR-related records, there is no such requirement, and it is generally acceptable to use electronic versions of paper records (i.e., scanned copies of paper originals) during most government agencies' inspections and audits or in court proceedings.

The evidential or probative value of electronic versions of paper records may be more easily challenged before a court than it would be for the originals. This is mainly because the original records could be tampered with or changed before being scanned, and, unless proper technology has been used (e.g., encryption and timestamping), it may not be easy to detect such changes from a scanned copy. In specific situations, 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.

Are electronic scanned copies of paper originals legally valid?

In China, an electronic scanned copy of a paper original is legally valid and can be used as documentary evidence in court (Civil Procedure of Law of the People's Republic of China). That said, the probative value is much lower than the original paper record. An electronically scanned copy cannot be the sole evidence to determine the facts in a court case unless it can be examined against the original record (Evidence Rule of Supreme Court, Art. 90).

In practice, when an electronic scanned copy is provided, unless the counter party admits to the authenticity of this scanned copy, courts will require that the party submitting the record provide other evidence to prove the authenticity and reliability of the scanned copy (usually examined against the original). Otherwise the scanned record will not be able to serve as sole evidence in the courts. Employers in China generally have the burden of proving facts in court cases as they are the primary holder of employment records. Therefore, if the original record cannot be produced, there is an increased risk of losing a case where an electronic copy that has not been verified against the original is used as the sole evidence.

Note that a scanned copy which is certified and notarized by a notary public as an authentic and true copy has the same legal effect as the original document. However, due to the cost of notarization in China, this is not a common practice. At this time, it makes sense to retain paper originals in addition to electronically scanned copies. As a best practice, some employers in China keep paper originals for a minimum of two years after the employee leaves the company.



Are there any legal requirements for electronic archiving systems (EAS)?

PRC law does not have any specific legal requirements relating to electronic archiving systems. That said, 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.

In addition, Article 94 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."



HR Best Practices: The full electronic archiving era is approaching, but for now it is not possible to guarantee that all paper documents can be

destroyed. For Chinese employers, it's good practice to keep the paper original in addition to the electronic copy in case the record is questioned in court.

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