

A closer look: Electronic records in the digital world

**Electronic records under the Electronic
Transactions Act and Evidence Act**

In today's digitised world, there is an increased preference among organisations to keep softcopy documents over hardcopy documents, and to replace manual records with electronic records. Many faced challenges in determining the best approach in electronic records management that comply with the relevant laws and regulations.

We take the opportunity to clarify the difference between the roles of the Electronic Transactions Act and the Evidence Act with respect to electronic records, and whether electronic records are legally recognised and admissible in the Singapore courts.

In this A closer look, we highlight a few relevant sections from the two Singapore statutes to provide a view on their respective roles.

Electronic Transactions Act (Chapter 88 of Singapore)

The Electronic Transactions Act is a legislation that provides for the security and use of electronic transactions in Singapore. Section 2(1) of the Electronic Transactions Act sets out a definition for "electronic record" as follows:

"electronic record" means a record generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another;

Section 6 of the Electronic Transactions Act gives legal recognition to electronic records by declaring as follows:

"For the avoidance of doubt, it is declared that information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Section 17(1) of the Electronic Transactions Act then states that an electronic record that has been properly verified by certain types of security procedures will be treated as a "secure electronic record" – further details are set out below:

17.—(1) If a specified security procedure, or a commercially reasonable security procedure agreed to by the parties involved, has been properly applied to an electronic record to verify that the electronic record has not been altered since a specific point in time, such record shall be treated as a secure electronic record from such specific point in time to the time of verification.

In practice, we recommend that appropriate IT general controls and digital signatures be applied to verify electronic records for the purposes of section 17(1) above. For more information on the types of security procedures which may be used, please refer to the "specified security procedures" listed in the Second Schedule and the definition of "commercially reasonable security procedures" in section 17(2) of the Electronic Transactions Act.

Under section 19(1) of the Electronic Transactions Act, there is a legal presumption that a secure electronic record shall be presumed, unless evidence to the contrary is adduced, that it has not been altered since the specific point in time to which the secure status relates:

19.—(1) In any proceedings involving a secure electronic record, it shall be presumed, unless evidence to the contrary is adduced, that the secure electronic record has not been altered since the specific point in time to which the secure status relates.

Evidence Act (Chapter 97 of Singapore)

The Evidence Act is a legislation relating to the law of evidence in Singapore and the section relevant to the use of electronic records as evidence is in section 116A, which sets out several legal presumptions in relation to electronic records.

In particular, section 116A(1) of the Evidence Act sets out the following legal presumption with respect to electronic records:

116A.—(1) Unless evidence sufficient to raise doubt about the presumption is adduced, where a device or process is one that, or is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record.

Taking the aforementioned into consideration, you might wish to take a closer look at the following areas highlighted below.

1. Have you incorporated security controls over your electronic transactions?
2. Have you applied any mechanism to detect tampering of your electronic records?
3. Do you have proper IT general controls over your electronic repository system?

Do you have proper processes to produce your electronic records? From our perspective, the Electronic Transactions Act recognises the legal validity of electronic records (except for the few exceptions included in the First Schedule of the Electronic Transactions Act) and presumes the secure status of electronic records which have been properly verified by certain types of security procedures. The Evidence Act contains several legal presumptions in relation to electronic records which a party seeking to use electronic records as evidence in the Singapore courts may rely on when seeking to demonstrate the authenticity of electronic records. We can conclude that:

- a. Electronic records (with a few exceptions) are generally legally recognised in Singapore; and
- b. Electronic records may be admissible as evidence in the Singapore courts.

For a deeper discussion

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