

Securing electronic records for the Evidence Act

When is Evidence Act certification required?

An ongoing series

For 20 years, PwC has been a Certifying Authority authorised to certify document imaging systems as an “approved process” for the purposes of Section 116A(6) of the Evidence Act. This is a series of articles to share its experience in this very niche sector of document digitisation.

To view our other A Closer Look pieces on Evidence Act, please visit <http://www.pwc.com/sg/evidence-act>

Highlights

- When is EA certification necessary?
- How can you rely on the “presumption” in Section 116A(6) of the Evidence Act and why is it important?

In Singapore, the admissibility of evidence in the Singapore courts is governed by the Evidence Act (Cap. 97) (the “Act”). Specifically in relation to electronic evidence, Section 116A of the Act contains certain presumptions which a party seeking to use electronic records and documents as evidence in the Singapore courts may rely on. Section 116A(5) of the Act provides that a document imaging system may be certified as an “approved process” by a Certifying Authority appointed by the Ministry of Law (commonly known as Evidence Act certification). Section 116A(6) of the Act further states that electronic records of a document produced pursuant to an approved process (i.e. a certified document imaging system) will be presumed by the Singapore courts to accurately reproduce that document, unless evidence to the contrary is shown.

So when do we need to obtain Evidence Act certification?

One of the most common questions is whether all forms of document imaging systems have to be certified. For example, if an organisation requires its staff to submit a scanned receipt for e-claims, would it be necessary to certify the scanning process as an “approved process”? What if the organisation wishes to convert old customer hardcopy records to electronic forms – would the electronic conversion process need to be certified as an “approved process” too?

When faced with these questions, ask yourself the following questions:

- ☐ Is the nature of the business susceptible to litigations?
- ☐ If there is a litigation, how likely is the document in question needed to support the litigation?
- ☐ If the document is needed to support the litigation, is the authenticity of the document likely to be challenged?
- ☐ If the authenticity of the document is challenged, is it difficult to prove the authenticity of the document?

If all boxes are checked, there may be a business case for your organisation to ensure that its electronic records are produced using document imaging systems that are certified as an “approved process”.

Why is the “presumption” in Section 116A(6) of the Evidence Act important?

Generally, given the nature of electronic records, it would likely be challenging to prove the authenticity of electronic records without relying on the presumptions in Section 116A of the Evidence Act. The nature of computer systems is such that it is easy for one to change or replace documents, and audit trails of such edits or deletions may not be available. So for example, you have a PDF image of a hardcopy document. How do you prove that this PDF image is an accurate reproduction of the original hardcopy document (assuming that the hardcopy is no longer available) and has not been altered or falsified by the party seeking to rely on it as evidence in court? In reality, most of us would find this difficult to prove.

However, if it can be shown that the PDF image has been prepared using an approved process, the Singapore courts will presume that the PDF image is accurate unless there is other evidence to prove otherwise. That's the beauty of the Section 116A(6) presumption. It effectively requires the party seeking to challenge the admissibility of an electronic record to prove that it is inaccurate. Our experience is that organisations that face increased risks of litigation generally prefer their electronic records to be

produced pursuant to an approved process to enable them to rely on the presumption in Section 116(A) of the Act during litigation.

Contact information

For a deeper discussion please contact

Chia Peiru

peiru.chia@sg.pwc.com

If your document has been prepared using an approved process, this means that the court would presume that the document is correct, and if the other party wants to contest it, it becomes the other party's responsibility to prove that the document is incorrect.
