

## 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.

Electronic records are permitted under South Africa's Electronic Communications and Transactions Act, 25 of 2002 (Art. 12). In cases where there is a law requiring a document or record to be in writing, an electronic record will meet the "written" requirement as long as the record can be accessed in a usable format for future reference.

Therefore, HR-related documents (e.g. employment contracts, letters of intent, etc.) can generally be created directly in electronic form, without need for a paper original.



Note that under South Africa's Compensation for Occupational Injuries and Diseases Act, "record of earnings" and "other prescribed particulars of all employees" must be kept on the premises, or on "microfilm or other microfilm reproduction" (Sec. 81). At this time, there is no clarity whether an electronic record, accessible at the place of work would satisfy these requirements. Employers taking a conservative approach may wish to retain records required under the Act in a paper or microfilm format, in addition to any electronically stored copies.

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