



METRO NYC CHAPTER



Long Island Chapter



Educational Event *Spring 2015*

10 Things to Know About International Record Retention

William Saffady



#1 Who Needs to Know About This?

These organizations:

- Multinationals—headquarters in one country with branches or subsidiaries in other countries
- Transnationals—autonomous operations in multiple countries

Examples include corporations, partnerships, universities, scientific and medical research organizations, foundations, scholarly and professional associations, cultural institutions, philanthropic and charitable organizations, religious groups



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#1 Who Needs to Know About This?

These stakeholders:

- Records managers
- Information governance specialists
- Compliance officers
- Legal counsel
- Risk managers
- Data protection, privacy, and security officers
- Auditors
- Business units as record custodians



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#2 Governmental Structures that Impact Retention

Unitary States – Central government issues laws and regulations, subnational jurisdictions have administrative responsibilities

- European examples: Albania, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Sweden, Ukraine
- Asian examples: Bangladesh, Brunei, Cambodia, China, Hong Kong, Indonesia, Japan, Macau, Mongolia, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, Vietnam



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#2 Governmental Structures that Impact Retention

Federated States – National government shares legislative authority with subnational jurisdictions, which must be researched individually

- European examples: Austria, Belgium, Bosnia and Herzegovina, Germany, Russian Federation, Spain, Switzerland, United Kingdom
- Asian examples: India, Malaysia, Nepal, Pakistan
- Other examples: Argentina, Australia, Brazil, Canada, Ethiopia, Mexico, Nigeria, South Africa, United Arab Emirates, USA, Venezuela



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#3 Impact of Supranational Entities

Member states delegate some legislative powers to a multinational political entity

- Purpose: Legal harmonization (including laws that specify record retention periods) but member states must transpose legislation and directives into national laws
- Examples: European Union (EU), Commonwealth of Independent States (CIS), Organization for Harmonization of Business Laws in Africa (OHADA), Association of Southeast Asian Nations (ASEAN)



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#4 Sources for Retention Research

Online availability of legal information has increased significantly in recent years

- Sources: national databases of laws and regulations, web sites of government ministries, web sites of local law firms, fee-based commercial services
- Background research is necessary to identify relevant sources for a given country but much incorrect information is available
- More than one source must usually be consulted to adequately research legal retention for a given country
- Many laws and regulations must be examined to identify the few that are relevant
- Laws may be amended or rescinded, but consolidated versions are not always available



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#5 Vernacular Versions vs. English Translations

Vernacular versions are the only authoritative resources

- English is an official language de jure or de facto for laws and regulations in at least 77 countries (about 40 percent of the global total) even where it is not the primary language
- In other countries, laws and regulations are available in unofficial English translations from government agencies or other sources
- Translations must be used with caution because they may not be based on the most recent version of a law or regulation
- Translation tools are useful where laws are only available in vernacular versions but background research about the language is advisable
- Develop a list of vernacular terms to be searched within the text of a law or regulation



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#6 Legal Status of Electronic Records

Many countries have electronic transaction or electronic signature laws

- Based on model law developed by the United Nations Commission on International Trade Law (UNCITRAL)
- Laws may describe electronic records as electronic documents or data messages
- Electronic records are acceptable as official copies for retention subject to certain conditions
- Most common requirement: electronic records must remain readable throughout their retention periods and printed copies must be created when requested by government officials
- Computer equipment must be available to support retrieval, display and printing



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#7 Accounting Records and Statutes of Limitations

Minimum retention periods are specified for accounting records

- Source may be a accounting act, bookkeeping regulations, companies law, commercial code, or civil code
- Typical retention range is 3 to 12 years from end of the fiscal or calendar year, depending on the country
- Tax laws may specify longer retention requirements for accounting records in some situations
- Civil codes specify statutes of limitations that may impact retention decisions for records related to contracts, agreements, payments, product liability, personal injury, employment relationships
- Limitations range from 1 year to more than 10 years, depending on the circumstances



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#8 Special Situations

Certain records are subject to special retention requirements

- Surveillance recordings—some countries mandate destruction after a short period of time
- Records of dissolved entities—a custodian must be designated to maintain records for a specified minimum period
- Email—Retention is not covered specifically, but laws that require retention of correspondence related to accounting, taxes, or other business matters presumably apply. Statute of limitations may also impact retention decisions.



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#9 Data Protection and Record Retention

Data protection laws impact retention of personally-identifiable information

- Records containing personally-identifiable information must be destroyed when no longer needed for original purpose
- Applies to employment records, payroll records, workplace health and safety records, shareholder records, customer records, patient records, correspondence
- Requires interpretation about original purpose
- In some countries, data subject can demand destruction of records
- Some countries may specify exceptions or allow personal data to be retained anonymously for scientific or statistical research



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#10 Transborder Record Retention

Laws may restrict the locations where records can be retained

- Will impact centralization of retention in designated repositories or use of cloud-based services
- Some laws require in-country retention for accounting, tax, personnel, or other records
- Data protection laws prohibit transfer of personally-identifiable information to countries that lack an adequate level of protection
- Some countries have a “white list” of acceptable locations
- For transfer to USA, compliance with Safe Harbor framework may be acceptable



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Thank You

William Saffady

wsaffady@aol.com

(718) 246-4696



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