



FAQ SERIES #4

INTERNATIONAL RECORD RETENTION

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INTRODUCTION

The world has more than 190 independent countries. (There is no agreement about the exact number because there is no universally accepted definition of an independent country.) All independent countries have laws and regulations that specify record retention requirements, which vary from country to country. Organizations must comply with applicable laws and regulations in all countries where they maintain records. Over 60,000 companies have business operations in more than one country. Many charities, philanthropic organizations, religious groups, universities, scientific and medical research organizations, foundations, scholarly and professional associations, cultural institutions, and other not-for-profit entities operate in more than one country.

This report answers frequently asked questions about the development of legally-compliant retention practices in organizations that maintain records in multiple countries. It is intended for records managers, information governance specialists, compliance officers, attorneys, risk managers and other stakeholders in multinational and transnational organizations. A multinational organization is headquartered in one country but has branches or subsidiaries in other countries. A transnational organization has distinct, autonomous operations in multiple countries.

1. How can multi-country retention schedules be prepared?

Multinational and transnational organizations have several options for preparing retention schedules for records maintained in multiple countries:

- In the country-specific approach, a retention schedule is developed for each country where an organization does business. An organization that maintains records in five countries will have five country-specific schedules. Each schedule is limited to records that are maintained in the country. In many cases, this is a subset of records that the organization maintains globally. Country-specific schedules are individually prepared with retention guidance that is tailored to local legal and operational requirements without regard to retention periods in other countries where the organization operates. This approach is best suited to organizations that do business in a small number of countries or to organizations where the information governance function and record retention authority are decentralized at the country level.
- As an alternative to country-specific retention schedules, a global schedule specifies uniform retention periods for an organization's records, regardless of the country in which the records are maintained. The global schedule is, in effect, a master list of the organization's records. Any given country will maintain a subset of the listed records. This approach is well suited to organizations where information governance and retention authority are centralized. A unified global schedule can

simplify the development and updating of retention guidance in organizations that maintain records in dozens of countries, but retention periods for specific types of records must be based on the longest legal or operational requirement in any country where the records are maintained. Inevitably, business operations in some countries will be forced to retain records longer than necessary to satisfy local requirements.

- In a hybrid approach, a global schedule establishes baseline retention requirements for specific types of records. The baseline may be based on legal and operational requirements in the country where the organization is headquartered, the country where the organization has its most important business operations, or the country where the organization has the largest, most varied accumulation of records. Business operations countries must conform to the baseline retention period unless legal or operational requirements warrant a local exception to the global schedule. Generally, country-specific exceptions are limited to records for which local laws or regulations mandate a longer retention period. The global retention period prevails where local laws specify shorter retention requirements unless the local law mandates destruction of records when the retention period elapses, which is rarely the case.

2. How do governmental structures impact record retention?

A given country may have a unitary governmental system or a federated governmental system:

- Most countries have a unitary system in which a central government issues laws and regulations. In these countries, subnational jurisdictions, where they exist at all, have administrative responsibilities that rarely impact record retention.
- In countries with a federated governmental system, a central government shares legislative authority with subnational jurisdictions. Examples of countries with a federated governmental system include the United States, Canada, Mexico, Brazil, the Russian Federation, Germany, the United Kingdom, Switzerland, and Australia. Subnational jurisdictions may have laws or regulations that specify record retention requirements.

Legal research to identify recordkeeping laws and regulations is less complicated and requires less effort for unitary countries than for federated countries. In unitary countries, research is limited to national laws and regulations. In federated countries, by contrast, legal research must encompass national and subnational laws and regulations. In the United States, for example, federal laws and regulations specify retention requirements for many types of records, but certain business sectors—such as insurance, banking, and healthcare—are regulated wholly or partially at the state level. Laws and regulations for each state must be individually researched to identify retention requirements for records

associated with those business sectors. Similarly, statutes of limitations, which have implications for retention of records that may be relevant for legal proceedings, vary from state to state.

3. Do supranational entities have an impact on record retention?

A supranational entity is a political union of sovereign nations. A supra-national entity is typically formed to promote the cooperation of member countries in relation to specific matters, such as trade or defense. The largest and best-known supranational political union is the United Nations, which has a global scope and a broad mission, but its activities and actions do not affect the record retention practices of member countries. Other supranational political unions have been formed to promote interaction and cooperation among member states. Examples include the the European Union (EU), the Commonwealth of Independent States (CIS), the Organization for Harmonization of Business Law in Africa (OHADA), the Association of Southeast Asian Nations (ASEAN), the Caribbean Community (CARICOM), the Central American Integration System (SICA), and the Community of Portuguese-Speaking Countries (CPLP).

The activities of most supranational entities has no impact on record retention, but the exceptions are significant. For purposes of legal harmonization, some supranational entities have legislative authority over member countries. Member countries agree to transpose the supranational entity's legislation and directives into their own national laws. In the case of the EU and OHADA, some legislation and directives include recordkeeping requirements. EU directives, for example, specify retention periods for records related to specific matters, such as customs, workplace health and safety, and intellectual property. Similarly, OHADA has adopted a uniform law that specifies a 10-year retention period for accounting ledgers, journals, and supporting documentation in West and Central African nations.

4. What legal information is available online to support record retention research?

Online availability of legal information has increased significantly in recent years. Ten years ago, legal research for record retention required costly online subscriptions to specialized information services combined with access to some printed legal reference sources. Even then, some recordkeeping requirements could not be identified, and the full text of all applicable laws and regulations could not be easily located. Today, most countries have the full text of at least some laws and regulations online, and many countries have virtually complete coverage, most or all of it available at no charge. Examples of available resources include:

- National web sites, which provide online access to databases of laws, regulations, directives, ordinances, and other legal instruments.

- The web sites of government ministries, which often include the full text of laws, regulations, and directives that come within the scope of their authority.
- Web sites of local law firms, which sometimes provide online access to laws, regulations, and legal commentary related to their practice areas.
- Fee-based commercial services, which are most important in countries that do not provide free access to comprehensive national legal databases.

Even though legal resources are available online, the time and effort required to identify relevant laws and regulations should not be underestimated. More than one source must often be consulted to adequately research legal retention requirements for a given country. Many laws and regulations must be examined to identify the few that contain record retention requirements. Once a potentially applicable law is identified, it can be difficult to locate the passages that specify retention periods.

5. How much legal research information is available in English?

English is an official or primary language for laws and regulations in about 40 percent of the world's countries. Elsewhere, laws and regulations are often available in unofficial English translations from government agencies or other sources. As a cautionary note, these unofficial translations may not be based on the most recent version of a law or regulation. Nonetheless, they do provide some useful information about the purpose and scope of a law or regulation, and they can help a researcher identify passages to be consulted in the vernacular version.

Translation software and web-based tools are useful where laws and regulations are only available in vernacular versions. These translation resources have improved tremendously in recent years, but supplementary manual translation—using a language dictionary or a paid translation service—may be required to obtain a coherent English rendering of a given law or regulation. Machine translation is most effective for laws and regulations in languages that use the Latin alphabet and, to a lesser extent, Cyrillic script. It can be problematic for legal resources in Asian and Middle Eastern languages, but English versions are often available for those laws and regulations. Some Asian countries—such as India, Pakistan, Singapore, Malaysia, and Hong Kong—were British colonies prior to becoming sovereign nations. Their laws and regulations are available in English.

To help identify passages that are relevant for record retention, a researcher should develop a list of words to be searched in the full text of the vernacular version of a law or regulation. Examples include “record,” “document,” “data,” “retain,” “keep,” “preserve,” “permanent,” and “archive.” Translation tools or a language dictionary can be used to identify the vernacular versions of these search terms. Passages that contain the search terms can be evaluated for relevance with the aid of a translation tool or manual translation.

It is also useful to search through a law or regulation for every occurrence of the word “year,” which is often included in passages that specify retention requirements. Unfortunately, that word occurs in many passages that have nothing to do with record retention. Each passage must be individually examined to identify the few that are relevant.

6. Do international laws address the legal status of electronic records?

In many countries, electronic transaction or electronic signature laws affirm the legal status of electronic records, which may be referred to as electronic documents or data messages. For the most part, these national laws draw upon model laws developed by the United Nations Commission on International Trade Law (UNCITRAL). They accept electronic records to satisfy retention requirements subject to certain conditions, the most common being that the electronic records must accurately preserve all content, that the records must remain readable throughout their retention periods, that the records must be accessible without unreasonable delay, and that printed copies must be created when requested by government officials. Computer equipment and software to support retrieval, display, and printing of electronic records must be available for as long as electronic records are retained.

More information about this topic is available in FAQ Series #2, Retention of Electronic Records as Official Copies.

7. Do some countries specify retention requirements for accounting records?

The United States does not have an omnibus legal requirement for retention of accounting records, but many other countries have laws and regulations that specify minimum retention periods for records that document an organization’s business transactions and disclose its financial position. Examples include accounting books and ledgers, charts of accounts, balance sheets, financial reports, auditors’ reports, records of goods purchased and sold, inventories, and supporting documentation, such as contracts, invoices, payment vouchers, receipts, and reconciliation documents.

These retention requirements may be specified in a commercial code, a corporation law, a civil code, an accounting act, bookkeeping regulations, and/or tax laws. Retention periods range from 3 years to 12 years, depending on the country and the types of records involved. The retention period may begin on the date when the records were created or, more commonly, the end of the calendar year, end of the fiscal year, or conclusion of the accounting transaction to which the records relate. In some countries, laws specify that certain records, such as financial statements, must be retained for the life of the organization.

8. What about country-specific retention requirements for tax records?

Depending on the country, retention requirements for tax-related records will be specified in one of the following ways:

- Tax codes and regulations specify retention requirements for income tax returns and supporting documentation.
- Tax codes and regulations refer to retention requirements specified in commercial codes, company laws, bookkeeping laws, and other accounting legislation.
- Tax laws and regulations merely state that records related to assessment and collection of income taxes must be retained as long as they are subject to review by tax officials—that is, as long as an organization is subject to tax assessment and until all collection issues are resolved.

Whether specified in legislation or derived from the statute of limitations on tax assessments, typical retention periods for income tax records range from 5 to 10 years following the end of the year to which the records pertain or the end of the year in which a tax return was filed. Longer retention requirements apply where a taxpayer files a late return or fraud or negligence is suspected.

Value-added tax laws and regulations specify retention periods ranging from 5 to 10 years for invoices, vouchers, credit notes, debit notes, receipts, customs clearance documents, and other VAT-related records. Longer retention period may be specified for records related to the purchase or renovation of immovable property.

In most of the countries, electronic records can satisfy tax-related retention requirements, subject to conditions specified by tax officials. Such conditions are similar to those specified above. The electronic records must accurately represent the information, they must be readable throughout their retention periods, they must be accessible without unreasonable delay, exact paper copies must be printed when requested by tax officials, and the integrity of the records must be guaranteed.

9. What is the impact of data protection laws on record retention?

Many countries have data protection laws that mandate destruction of personally identifiable information when it is no longer needed for its original purpose. These laws can affect retention practices for employment records, payroll records, workplace health and safety records, shareholder records, customer and client records, patient records, and other types of records. While data protection considerations are important, they do not take precedence over other laws and regulations that specify minimum retention periods for specific records.

More information about this topic is available in FAQ Series #1, Data Protection Laws and Record Retention.

10. Can records that originate in one country be transferred to a different country for retention?

Some laws and regulations restrict the geographic locations where records can be retained. Some countries, for example, require domestic retention of accounting and tax records. Employment and workplace safety and health records must generally be kept at a worker's place of employment. Data protection laws prohibit the transfer of records containing personally identifiable information to countries that lack an adequate level of protection.

For multinational and transnational companies, these restrictions limit or prohibit the centralization of recorded information on network servers located at a regional center or company headquarters. In-country storage requirements have an impact on enterprise-wide implementations of content management systems, records management application software, email archiving systems, and other systems that support consolidated storage of electronic records. They also affect the use of cloud-based information services.

ABOUT THE AUTHOR

William Saffady is a records and information management consultant and researcher based in New York City. He is the author of over three-dozen books and many articles on records management, record retention, information governance, document storage and retrieval technologies, and other information management topics. He recently completed the third edition of *Records and Information Management: Fundamentals of Professional Practice*, the most widely used textbook on records management. Other recent books include *Legal Requirements for Electronic Records Retention in Western Europe* and *Legal Requirements for Electronic Records Retention in Eastern Europe*, both published by ARMA International in 2014; *Legal Requirements for Electronic Records Retention in Asia*, which was published by ARMA International in 2015; *Email Retention and Archiving: Issues and Guidance for Compliance and Discovery*, which was published by ARMA International in 2013; and *Cost Analysis Concepts and Methods for Records Management Projects, Second Edition*, which was published by ARMA International in 2011.

Since 1976, Dr. Saffady has served as an information management consultant, providing analytical services and training, to companies, government agencies, not-for-profit entities, cultural institutions, and other organizations. These projects have involved the development of strategic plans and governance models for records management programs, needs assessments and gap analysis, the development of record retention policies and schedules, and the preparation of technical specifications for procurement of records management products and services.

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