

Section 65 B Indian Evidence Act (IEA) - Admissibility of electronic records:-

Among all the amendments that are incorporated to Indian Evidence Act, section 65 – B has special importance with regard to the investigation and collection of electronic evidence. While presenting documents to the Courts the Investigating Agencies will produce originals. With regard to the 'electronic records' that originals will be in the form of contents of hard disks, pen drives, mobile phones and other such storage devices. If such devices are recovered or seized and they are subjected for analysis and required analysis reports are obtained and finally presented for the appreciation of the Judiciary then it amounts to we are presenting the original electronic records to the appreciation of judiciary.

There will be certain occasions where the LAEs will not be in a position to recover such electronic items in the form of originals because they are in the servers or computers of banks in the form of transaction statement of the accounts, mobile service providers in the form of call data records (CDRs), CC Camera Footage etc. Then the option is to collect the output of such electronic record in the form of a computer print out or copying the electronic record on to a compact disc (CD). Here the point to be noted is once output is taken in the form of a copy then the evidentiary value of such electronic records will come down. So, to overcome this kind of limitation, provision 65- B in the Indian Evidence Act was incorporated in Indian Evidence Act with enactment of the Information Technology Act. As per this provision the LEAs shall get a certificate in the form of a signed original hard copy from the person who is giving a copy or output of such electronic record or from the person who in charge of such computer or server incorporating the following main conditions.

- That such data / information has been recorded on to the servers / computers in normal course of transactions

- That only authorised persons with their secure user names and passwords are only permitted to login on the servers / computers.
- That proper security measures are installed on the servers / computers to prevent, from any breach of data and damage from the viruses, worms etc.
- That such data / information after it was recorded on the servers / computer, it has in no way altered.
- That such data / information as is available on the servers / computers was presented in the form of computer output to the police on their request.

Thus the computer / server output is taken supported by the certificate under section 65 – B Indian Evidence Act then such an output will have an equal value with that of a original electronic record. Then the only option to prove the electronic record/evidence is by producing the original electronic media as Primary Evidence to Court or its copy supported by certificate under sections 65A/65B of Evidence Act.

Therefore the IOs shall take special care to secure certificates under section 65- B Indian Evidence Act while they are securing transaction statement of the accounts, call data records (CDRs), CC Camera Footage to establish a case. The same is also true with regard to the IPC cases. However, while working out clues and leads IOs may secure such information but for the entire certificate may not necessary. Once such information is taken before the Judiciary in the form of charge sheet to establish a case then production of 65-B certificate is very required.

ANNEXURE – I

FORMAT / PROFROMA

CERTIFICATE UNDER SECTION 65-B OF INDIAN EVIDENCE ACT, 1872

(Authenticity of Electronic Records)

I, (name)
state that I am employed in(Organisation) as
..... (designation).

2. I state that being employed in (organisation). I have personally supervised in preparation of the following electronic records as noted below, through computer terminals in my/our office, by me/our staff under my direct supervision.

- a. A DVD-R bearing No. containing true copy of all electronic records pertaining to Email account, original of which are available in our computers. The hash value of the contents of the DVD-R is
- b. A DVD-R bearing No. containing true copy of all electronic records pertaining to email accounts, original of which are available in my / our computers.
- c. A computer printout numbering from page to marked as containing true copy of electronic records pertaining to original of which are available in our computers.

(Please note that print out of an electronic records stored in a computer is also an electronic record)

(a b c is the list all the electronic documents which are being certified and sent under this certificate. It should be clearly identifiable and therefore the DVR-R or the printout should bear a seal/handwritten note/printed note/signature and which should be made note of in the certificate).

(Each page of print out should be carrying a seal of the office/officer sending it).

(Furnishing the hash value of the contents of the record furnished is not compulsory but desirable in the certificate)

3. I further state that all the electronic records contained in digital media/print outs as noted in para 2 above are true copies made of the original electronic records maintained in our computers in our establishment and the same have been produced using the computers in our establishment under my command identifiable as noted below:

- a. Computer Number/Computer Series/Server Number
- b. Printer
- c.

(Section 65 B (4b) requires that the certificate should give such particulars of any device involved in the production of the electronic record as may be appropriate for the purpose of showing that the electronic record was produced by the computer and also describing the manner in which the electronic records were produced).

4. In respect of the records provided above and the information contained therein, it is further certified that:

- a. The computer output containing the information was produced by our computers during the period over which computer was used regularly to store and / or process information for the purposes of any activities regularly carried on over that period by our authorised employees.
- b. During the said period, the information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities.
- c. Throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation for that part of the period, was not such as to affect the electronic record or the accuracy of its contents.
- d. The information contained in the electronic record reproduces or it derived from such information fed into computer in ordinary course of said activities.

5. This is stated to the best of my knowledge and belief.

Place:

Date:

Signature

Name and Designation

(with seal preferably)

(The text in italic is only for guidance in making the certificate)