

## The Notary at a Distance from the Parties<sup>1</sup>

### International Colloquium

Under the auspices of the International Union of Notaries (UINL)

and the Chamber of Notaries of Québec

April 23, 2021, 8:30 a.m. to 12:30 p.m. Eastern (Montréal time)

**Organizer:** La Chaire du notariat de l'Université de Montréal

**Coordinator:** Maître Jeffrey TALPIS, notaire, Montréal, full professeur at the law faculty of the University of Montréal, Faculté de droit, titulaire de la Chaire du notariat, Steering Committee Councillor of the UINL

**UINL Honorary President:** Maître Cristina ARMELLA, UINL President, full professor at the law faculty of the Buenos Aires University (UBA), Dean of the Argentinian Notarial University (UNA)

**Venue:** Webinar on Zoom with simultaneous translation: English, French and Spanish

**Words of welcome:** Maître Hélène POTVIN, President, Chambre des Notaires du Québec

**Opening address:** Maître Cristina ARMELLA, President, UINL

#### Context:

In the health crisis caused by the COVID-19 pandemic, all notariats in the world have had to deal with new requirements for social distancing, which have imposed new ways of carrying on notarial activities.

In some states, digital solutions have been implemented, allowing the receipt of the consent and signature of the parties to a notarial deed outside the physical presence of the notary, sometimes even when parties are located in a foreign jurisdiction.

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<sup>1</sup> Title borrowed from a "Journée d'étude, 2 October, 2020, organised by the Association Henri Capitant, <https://univ-droit.fr/actualites-de-la-recherche/manifestations/35417-le-notaire-a-distance-des-parties>.

These solutions depart from the characteristics traditionally considered essential of the notarial act, namely the reception of signatures by the notary in the physical presence of the parties or their representatives and the territorial jurisdiction of the notary.

**Objectives:**

1. To propose a reflection of a doctrinal nature on the principles in play;
2. Compare the state of law on these issues in different notariats; and
3. Advance a reflection on the subject through a discussion between the speakers followed by an attempt at synthesis

**I - DOCTRINAL REFLECTION REGARDING THE AUTHENTIC DEED RECEIVED BY A NOTARY AT A DISTANCE FROM THE PARTIES**

**Presenter:** Maître Jeffrey TALPIS

**Questions considered:**

- Is the physical appearance before a notary a sine qua non of authenticity?
- Are adaptations implied by the distance between the notary and the parties only technical?
- Should the virtual presence of the parties (or their representatives) be treated as a physical presence?
- What is behind the reluctance of certain jurists to the receipt of notarial acts outside the presence of the parties (e.g., weakening of legal certainty and of confidentiality, greater difficulty in exercising the duty to provide legal advice, devaluation of the notarial deed)?
- Does the authentic instrument received by a notary at a distance from the parties contravene the fundamental principles of the Latin notariat?
- Does the authorization of the signing of such a notarial deed by parties abroad violate the principle of international comity?

**Speakers:**

- Sophie GAUDEMET, Professor, University Panthéon-Assas (Paris 2), France
- Cyril NOURISSAT, Associate Professor, Faculties of Law of the University Jean Moulin, Lyon 3, France

## **II - STATE OF POSITIVE LAW IN THE DIFFERENT NOTARIATS DURING AND AFTER THE PANDEMIC (OR FUTURE PANDEMICS)**

**Presenter:** Maître Jeffrey TALPIS

### **Key questions:**

- In the case of temporary or permanent authorization to establish authentic acts remotely from the parties by videoconference, does the authorization apply to all notarial acts? Is remote signing allowed for parties abroad?
- Would a foreign authentic act received by a notary at a distance from the parties, in accordance with the applicable foreign law, be recognized in your jurisdiction if it is not valid under your domestic law?

### **Speakers:**

- Belgian law: Luc WEYTS, emeritus notary and professor at the Université Catholique de Louvain
- Italian law: Franco SALERNO-CARDILLO, notary, Palermo, president of the Commission European Affairs of the UINL
- Québec law: Raphael AMABILI-RIVET, notary and Stéphane BRUNELLE, notary, Montréal
- Spanish Law: José Carmelo LLOPIS BENLLOCH, notary, Ayora, member of the UINL New technologies working group
- German law: Professor Dr. Jens BORMANN, LL.M.(Harvard), notary, Berlin, President of the German Federal Chamber of Notaries (Bundesnotarkammer)
- Peter ZABLUD, Notary Public, Professor, Melbourne, Australia

## **III. THE DRAFT OF:DECALOGUE ON REMOTE AUTHENTIC INSTRUMENTS ELABORATED BY THE WORKING GROUP OF NEW TECHNOLOGIES OF THE UINL**

### **Speaker:**

- Carlo Alberto MARCOZ, notary, Turin, Italy, president of the UINL New technologies working group

## **IV – DISCUSSION AND ATTEMPT AT A SYNTHESIS**

### **A. Discussion with previous speakers on legal, societal and strategic issues**

**Moderator:** Maître Jeffrey TALPIS

#### **Legal issues:**

- Does the authentic instrument received by a notary at a distance from the parties constitute a legitimate extension of the traditional characteristics of the Latin-type notarial act?
- Does the authentic instrument received by a notary at a distance from the parties risk compromising the international circulation of notarial acts?

#### **Societal issues:**

- Is the role of the notary as effective from a distance?

#### **Strategic issues:**

- Does the reception of an authentic instrument at a distance from the parties represent a good solution to modernize the notarial profession and its image?
- Is there a need for uniformity of approaches among notariats regarding the authentic instrument received at a distance from the parties?
- Is the authorization by a State of the signing of such a notarial deed by parties located in another State, whether or not a member of UINL, desirable?

### **B. Attempt at a synthesis**

#### **Speaker:**

- Michel GRIMALDI, Emeritus Professor, Panthéon-Assas University (Paris 2), France