

ACTS WITH ONLINE APPEARANCE

RECOMMENDATIONS

of the INTERNATIONAL UNION OF NOTARIES

***On the possibilities of regulating the drafting of authentic instruments
with online appearance of the parties***

**(Recommendations drawn up following the Symposium
held in Brasilia on 9th November 2023 on digitisation)**

In many UINL member countries, new technologies have been part of notarial activity for many years, especially in the context of actions prior to and following the drafting of authentic instruments, communication with public bodies and record-keeping.

During the health crisis caused by the Covid-19 pandemic, the need for social distancing forced many notaries to find new ways of organising their work: some digital solutions were put in place, making it possible to receive the consent and signatures of the parties without them being physically present at the notary's office.

During this period, UINL drew up this "Guidance on notarial authentication with online appearance", adopted by the General Meeting of Member Notariats on 3rd December 2021.

In addition, certain legislations now enshrine the principle of the right to perform certain legal acts online (for example, in Europe, EU Directive 2019/1151, which, as part of the "Company Law Package", obliges national legislators to provide for the drafting of an authentic instrument "with online appearance" for the incorporation of companies in countries requiring a notarial act for this).

UINL has always stressed the need to make the use of new technologies compatible with the principles of trust and legal certainty that characterise the notarial public function, which guarantees citizens and States a high degree of verification, whilst reducing the risk of litigation.

Therefore,

Considering the possibility for States to introduce rules for the execution of authentic acts "on-line";

Considering the role of notaries and the importance of the notarial function for States and citizens, and in particular their mission of preventive justice and social peace;

Recognising that the use of digital tools or means should not undermine the importance of legal certainty and the mission of notaries, public officials of the State, in verifying the legality and probative force of notarised acts;

Working to continually adapt the exercise of the notary's activity to the opportunities offered by technological developments;

The International Union of Notaries makes the following observations and recommendations to the Presidents of its Member Notariats.

1. Appearance of the parties remotely from the notary.

Digital identification and video-conferencing systems must be at the notary's service to enable him to exercise his direct and personal judgement, which alone can assure the security that the parties and the State expect from a notarial act; under no circumstances can these systems replace the checks and verifications which the notary carries out under his full personal responsibility.

The notary must always have the power to decide to refuse to sign a document remotely if he has doubts about the true identity or free expression of the will of the appearing party, and to request the physical presence of the parties in order to identify them adequately.

2. Online appearance tools.

The digital platform used for online appearances must guarantee secure, safe and clear visual and audio interaction and ensure the confidentiality of information.

It must be provided or approved by the State or by the national notarial institutions; in order to assure verification of the expression of the will of the parties and the protection of sensitive data, the platform must be managed and/or controlled directly by the national notariat.

3. Compatibility with the territorial competence of notaries.

The introduction of acts “involving online appearance” may have a significant impact on the rules establishing the territorial competence of notaries in countries where such rules apply.

Consideration must therefore be given, where appropriate, to the possibility of introducing new connecting factors, taking account of the concept of an “augmented” notarial office. The central element in assessing these connecting factors should be the place and time when the notary actually signs the act. Furthermore, the place where the act is signed must be considered as the place of the notarial office, fixed within the territorial limits defined by law, independently of the factual geolocation of the parties.

4. Cross-border competence.

The law must also lay down rules for parties who are physically located abroad, so as to facilitate access by these citizens to notarial services, particularly from countries where there is no notary.

These rules may distinguish between acts that are by nature intended for cross-border circulation (such as powers of attorney) and acts for which only the national notary's competence may be reserved (for example, in the following areas: real estate law, mortgages, company law, succession law, etc.).

5. Signature of acts.

The system for signing acts executed by means of “remote” or “online appearance” must be reliable, but also easy to use; this system has to incorporate the highest possible level of technological security, both when it is set up and as it evolves in order to ensure this high level of security.

Different solutions are possible for online appearance: electronic signature of a digital act, signature by the notary alone who certifies the consent declared by the parties. It is also possible to consider the possibility of an act in which the parties are in two different places, but are each present at a notarial office who receives their declaration.

6. Possibility of limiting the system to certain types of acts.

The national legislator may consider the possibility of limiting online appearance to some types of acts such as, for example, those in which there is no conflict of interests: powers of attorney, instruments incorporating companies or amending the same.

7. Storage of acts.

Specific rules should be laid down for the storage of digital acts: the introduction of a single, centralised storage system is essential to ensure that electronic acts are stored securely and that they can be retrieved and remain legible over time, without requiring notaries or the parties to take any action to update the digital files.

Brasilia, 10th November 2023