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Executing contracts in France

by Practical Law Corporate France and Antoine Tézenas du Montcel, Paul Jourdan-Nayrac, Etienne Chesneau and Abel Colomb at Gide Loyrette Nouel

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An overview of the law and practice relating to the form execution of contracts under French law. The note includes a summary of the different forms that contracts can take and when a private deed or a notarial deed may be necessary. It also covers virtual closings and the use of electronic signatures.

Scope of this note

If the parties to a transaction or other arrangement are required by law, or otherwise agree, to record their agreement in a written contract, the applicable execution formalities will depend on the contractual form adopted. French law makes a distinction between contracts executed privately between the parties (*actes sous seing privé*) and authentic instruments (*actes authentiques*). In the case of the latter, additional formalities apply, including, in some cases, the requirement for authentication by a notary (*notaire*).

This note provides a general overview of the law and practice relating to the execution of contracts. It considers:

- When a written contract is required (see When is a written contract required?).
- The differences between a private deed (*acte sous seing privé*) and a notarial deed (*acte notarié*), which are the main forms a written contract may take (see Types of written contract).
- When a notarial deed, and therefore a notary, is required (see When is a notary required?).
- The formalities for documents requiring a notary (see Formalities for notarisation).
- The use of an attorney's deed (*acte d'avocat*), which is a private deed that is countersigned by one or more French attorneys (see Use of an attorney's deed for enforceability purposes).
- How companies, including overseas companies, validly execute contracts (see How do companies validly execute contracts?).
- The procedures for conducting virtual closings and for applying electronic signatures to documents (see Virtual signings and closings and Electronic signatures).

When is a written contract required?

The basic position in French law is that contractual parties have freedom of contract (*article 1102,* Civil Code *(Code civil)*). They are free to agree the content and form of their contract, within the limits set by law (*article 1102, Civil Code*). French law also provides for a mutual consent principle, whereby a contract is legally binding whether concluded orally or in writing, unless the law requires a particular form (*article 1172, Civil Code*). Therefore, it is possible to conclude some agreements verbally or by an exchange of correspondence (see Counterparts).

In some cases, the party's intent at the time of the contract can be determined by the courts by reference to the parties' subsequent behaviour (French Supreme Court (Cour de Cassation), Civil Chamber 1, 13 December 1988, 86-19.068, published in the Bulletin). However, this will not apply if the terms of the contract are clear and precise (*article 1192, Civil Code*).

In certain cases, the Civil Code requires a contract, and other legal documents, to be in writing to make them valid (see Contracts required to be in writing to be valid). Some contracts also require a specific type of written document, an authentic instrument (*acte authentique*), as a condition of validity (see Authentic instrument).

In addition, written form may be necessary to prove the existence and contents of a contract, or questions arising as to its performance, in court. See Contracts that must be proved in writing.

Even if written form is not legally required, it is generally advisable to put a contract in writing for evidentiary reasons.

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Contracts required to be in writing to be valid

Contracts that must be in writing to be valid include:

- Contracts transferring partnership interests (*actes de cession des parts sociales*) in a private limited company (*société à responsabilité limitée*) or in a general partnership (*société en nom collectif*) (*articles L.221-14 and L.223-17,* Commercial Code *(Code de commerce)*, respectively).
- The assignment of contracts (*article 1216, Civil Code*).
- The assignment of receivables (*article 1322, Civil Code*).
- Retention of title clauses (*article L.624-16, Commercial Code*).
- Fixed-term employment contracts (*article L.1251-42,* Labour Code *(Code du travail)*).
- Land transfers (*articles 1589-2, Civil Code and L.526-9, Commercial Code*).
- Guarantees (*cautionnements*). An individual who enters into a private agreement as a guarantor with a professional creditor has to include a specific handwritten statement (*mention*) as a requirement for the validity of the guarantee (*article L.331-1,* Consumer Code *(Code de la consommation)*).
- The articles of association (*statuts*) of a company (*article 1835, Civil Code*).
- Pledges (*nantissements*) (*article L.142-3, Commercial Code*).

Included in this list are contracts that are specifically required to be made in the form of a private or notarial deed (see Private deed and Notarial deed: a type of authentic instrument).

Contracts that must be proved in writing

Even if written form is not required for legal validity, if a dispute arises as to the existence, contents or performance of an agreement, a written contract may be necessary for evidentiary purposes (for example, to adduce it as evidence of a contract in court or for tax purposes) (*article 1364, Civil Code*).

A contract relating to a sum or value exceeding EUR1,500 must generally be proved in writing in the form of a private or notarial deed (*article 1359, Civil Code*). This general rule is subject to the following exceptions:

- Commercial acts involving traders may be proved by any means, unless otherwise provided by law (*article L.110-3, Commercial Code*). The requirement for written agreement is relaxed for commercial transactions, in recognition of the fact that traders generally require less contractual protection than, for example, consumers and they need the flexibility to conclude agreements expediently.
- A written contract is not required for the purposes of proof:
  - if there is material or moral impossibility of obtaining proof in writing;
  - if it is customary not to have a written contract; or
  - for cases where the written contract has been lost following a force majeure.

  (*Article 1360, Civil Code*.)

  Article 1360 gives discretion to a judge to allow a contract to be proved by other means. For example, there may be moral impossibility of obtaining written proof in the case of an agreement made between family members.
- A written contract may be replaced for the purposes of proof by a judicial confession (*aveu judiciaire*), a decisive oath (*serment décisoire*) or a commencement of proof in writing corroborated by another means of proof (*article 1361, Civil Code*).

Any written evidence constitutes a "beginning of proof in writing" (*commencement de preuve par écrit*), if it originates from the person who is challenging the act, or a person they represent, and renders the allegation likely to be true (*articles 1361 and 1362, Civil Code*). This exception gives a judge a wide discretion to allow a document to be adduced in court as evidence, if it makes it plausible that a contract was entered into by a party who disputes this fact. A reference to a notarial deed or private deed on a public register is deemed as the beginning of proof in writing.

Why use a written contract in commercial matters?

Despite the exception for commercial acts in article L.110-3 of the Commercial Code, most corporate and commercial contracts are documented in writing for probative and enforceability purposes. Accordingly, a contract will be entered into in writing either because the law requires it or because the parties have agreed to it for probative and enforceability purposes.

Types of written contract

Written contracts typically take one of the following legal forms, which may be prescribed by law:

- A private deed. See Private deed.
- An authentic instrument. See Authentic instrument.

In addition, the parties may choose to execute an attorney's deed (*acte d'avocat*), which is a type of

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private deed. Adopting this form can assist in the enforceability of a contract. See Use of an attorney's deed for enforceability purposes.

Private deed

A private deed is a signed contract (or other legal act) that is drawn up and agreed privately between its parties. A private deed is binding on its parties (and their heirs and successors in title), if one of the following conditions is met:

- The signatories in question recognise the private deed, including their signature.
- The private deed is legally considered as recognised. This would include where the private deed has been countersigned by the attorneys (*avocats*) of each party or a by an attorney acting on behalf of both parties (see Use of an attorney's deed for enforceability purposes).

(*Articles 1372 and 1374, Civil Code*.)

A party, or their heirs or successors in title, may contest the authenticity of a private deed, if they do not recognise its contents or their signature. If they do so, the judge must follow a signature verification procedure to ascertain whether the document has been drafted and signed by the person to whom it is attributed (*article 1373, Civil Code*).

Authentic instrument

An authentic instrument is a legal document that has been drawn up and executed with the required formalities by a public official, who has the requisite competence and capacity to act (*article 1369, Civil Code*). Most commonly, agreements entered in authentic form are drawn up by notaries who are public officers (see Notarial deed: a type of authentic instrument), provided that such agreements are made in France and subject to French law.

Other public officials, such judges and official keepers of public registries, are also able to issue authentic instruments, such as judgments and certificates of vital record (for example, birth certificates). In addition, bailiff deeds (*actes d'huissier*) that are executed under a delegation of the law (for example, a court summons) are classified as authentic instruments. However, these types of documents are beyond the scope of this note, which focuses on the main forms for executing a contract, namely private and notarial deeds.

Notarial deed: a type of authentic instrument

A notarial deed is document that is classified under French law as a type of authentic instrument. Notaries are public officials who can authenticate contracts and other documents, certify the date of execution, preserve deposited deeds, and deliver official or certified copies (*article 1,* Ordinance No 45-2590 *of 2 November 1945 (on the status of the notary)*).

A notarial deed is deemed to be authentic and its validity can only be challenged by a plea of forgery (*inscription de faux*) (*article 1371, Civil Code*).

If any of the required formalities for a public deed are not observed (or the notary was not competent or capable of acting), but the document has been signed by the parties, the document takes effect as a private deed (*article 1370, Civil Code*).

When is a notary required?

For certain types of contract and other legal acts, French law requires the use of a notarial deed, or an authentic instrument in general. For corporate law matters, the use of notarial deeds is less common and most transactions may be executed by private deed. However, a notary is required, and benefits from a monopoly under French law, if real estate assets are transferred as part of a deal (although this may not be the case for the purposes of a deal relating to shares of a company owning a real estate property).

Notarial deeds have executory force (*force exécutoire*). This means they can be enforced directly by a bailiff (*huissier de justice*) without the need to obtain a court judgment (*article 19,* Notaries Act 1803 *(Loi contenant organisation du notariat (loi 25 ventôse an XI))* and article 3, Law No 91-650 *of 9 July 1991 (reforming the civil procedure of execution)*).

Notarial deeds (or authentic instruments in general) are prescribed for the following types of contract:

- Certain types of donation, notably those relating to real estate (*article 931, Civil Code*).
- Conventional mortgages (*hypothèques conventionnelles*) (*article 2416, Civil Code*).
- Transfers of land that must be registered and the creation or registration of limited rights in land in general (*article 4,* Decree no 55-22 *of 4 January 1955 (Land register reforms)*).
- Certain types of *fiducie*, relating to jointly owned property, rights or security interests (*article 2012, Civil Code*). A *fiducie* is a French legal concept that has similar characteristics to a common law trust.
- Marriage contracts and wills, if their authors want these documents to be made as authentic instruments with a certain date and to be kept and registered by the notary. In the case of inheritances, if at least one real estate asset is included in the legacy, a meeting before a notary will also be necessary to handle the property transfer.

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Formalities for notarisation

A notarial deed is a legally binding document, such as a contract, that is drafted by a notary. The parties (or their authorised representatives) must sign the notarial deed in the presence of the notary, who also signs it (*article 10,* Decree No 71-941 *of 26 November 1971 (Notarial Deeds*). The notary must, in principle, authenticate the instrument in person and read the deed to the parties to ensure they understand its content, or else the authentic instrument is invalid. However, if these formalities have not been complied with, the document may still qualify as a private deed, if it has been dated and executed by all parties. In such a case, specific rules may apply to prevent one party from avoiding its obligations purely on the basis of the formal invalidity of the concerned instrument.

For some types of notarial deed (for example, a revocation of a will), the presence and signature of more than one notary or witnesses is also required, to provide certainty over its date of execution (*article 9, Notaries Act*).

Before executing the deed, the notary checks and records the identity, nationality, capacity and domicile of each party (*article 5, Decree No 71-941*). In exceptional cases, information about the parties may be attested to by two witnesses. See also Capacity and authority.

The notary advises the parties as to the scope and effect of the deed, as well as other relevant information.

In terms of its contents, a notarial deed must:

- State the name and place of establishment of the notary, the name and domicile of the witnesses, the place where the deed is made and the date on which each signature is affixed. The notaries' national regulation (*règlement national du notariat*) expressly limits the locations where a notarial deed can be executed (that is, in the notary's offices, in the offices of another notary, at the residence of one of the parties to the notarial deed, in administrative premises, in a court of law or in a hospital).
- Contain the names, surnames and domiciles of the parties and of all the signatories of the deed.
- State that the deed has been read by the parties or that it has been read to them.
- Have its appendices signed by the notary, for such appendices to be part of the notarial deed.

(*Article 6, Decree on Notarial Deeds No 71-941.*)

There are also requirements as to the format of the deed. For example, numbers must be stated in letters the first time they are cited (unless they are the result of a calculation), as must the date of execution. Abbreviations must be cited in full at least once in the document (*article 8, Decree on Notarial Deeds No 71-941*). The document must be legible and not contain unnecessary blank spaces, other than those that have been identified and recorded by the notary at the end of the deed (*article 9, Decree on Notarial Deeds No 71-941*). There are also compulsory statements, which are not a condition of validity of the notarial deed, but which are required to file such deed with the land registry (*service de la publicité foncière*) and to ensure its enforceability against third parties.

In addition to signing the execution block at the end of the deed, the parties and the notary must in principle initial each page. This is because any pages that have not been initialled do not form part of the notarial deed (*article 14 al.4, Decree on Notarial Deeds No 71-941*). However, in practice, a patented binding system (for example, "Assemblact") is often used, which avoids the need for the parties and the notary to initial each page. Instead, only a few pages must be signed for the deed to be validly executed.

Once the notarial deed has been executed, the notary must keep the original document, referred to as the "*minute*", in their office. If the parties require a copy, the notary can issue authenticated copies of the *minute*. The notary must also keep a record of the deeds they hold. If a notarial deed is required to be filed with a public registry (such as the land registry or companies and commercial register), this will be carried out by the notary (*article 26, Decree No 71-941 on Notarial Deeds*).

As public officials, notaries are also in charge of collecting taxes, duties, rates and charges triggered by the operation resulting from the notarial deed (for instance, any transfer capital gains tax in case of disposal of a real estate property, if applicable) and to transfer them to the public treasury.

Use of an attorney's deed for enforceability purposes

The concept of an attorney's deed (*acte d'avocat*) was introduced in 2010 under Law no 2011-331 of 28 March 2011 on the modernisation of the judicial or legal, and certain regulated professions. Although it is never required by law, an attorney's deed can be used to increase the enforceability of a contract (unless a notarial deed is prescribed by law, in which case this form must be used).

An attorney's deed is a private deed that has been countersigned by the attorneys of each of the parties or by one attorney acting on behalf of all of the parties. By countersigning the deed, the attorney(s) certifies that:

- They have fully informed the party or parties they are advising of the legal consequences of the deed (*article 66-3-1,* Law no 71-1130 *of 31 December 1971*).

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- The deed is authentic and also constitutes full proof of the parties' signatures, subject to a successful plea of forgery (*article 1374, Civil Code*).

Therefore, it is very difficult to challenge the authenticity of an attorney's deed.

Similar to the execution of a notarial deed, the attorney must verify the identity of the parties and check their capacity and authority to sign the document (see also Capacity and authority). In accordance with professional conduct rules, the attorney must keep an original copy of the deed (in physical or electronic form).

Capacity and authority

In addition to considering the form of execution (whether by private, attorney's or notarial deed), it is important to establish that:

- The counterparty has legal capacity to enter into the contract.
- The person signing on behalf of the counterparty (for example, a company or partnership) has the legal authority to act in the name, and on behalf, of it and to bind it to the contract.

Capacity

To have a valid contract, the parties to it must have legal capacity to contract (*article 1128, Civil Code*). At a high level, this means that physical persons must not be deemed to lack capacity under the law (for example, unemancipated minors do not have the capacity to contract). For that reason, in a contract where a person under the age of 18 is involved, their legal representative must sign in their name. Also, legal persons (for example, companies) must act within the rules applicable to them, including their constitutional documents (*article 1145, Civil Code*).

Authority

Those who sign a contract on behalf of a party must have authority to represent that party, and they must only act within the limits of that authority (*article 1153, Civil Code*).

A company's legal representatives are the managing director (*directeur général*) and any deputy managing director(s) (*directeur général délégué*) of a public limited company (*société anonyme*), the chairperson (*président*) of a simplified company limited by shares (*société par actions simplifiée*) and the manager of a private limited company (*société à responsabilité limitée*), respectively.

A legal representative of the company (a delegator) may also delegate authority to another authorised representative (a delegate). Usually, authority to act will be granted through a specific power of attorney (*procuration*), which relates to a specific transaction. In this case, the delegate represents the delegator and not the company itself.

Authority to act can also be granted more generally to an area of the company's business through a delegation of power (*délégation de pouvoir*), under which the delegator grants the delegate with the authority to perform certain duties for and on behalf of the company.

If more than one natural persons contract with each other, they cannot delegate authority to the same representative to sign on their behalf if they have conflicting interests. Similarly, the authorised representative of a natural person cannot be party to the agreement themselves. If a representative signs on behalf of both parties or on their own account as principal, the contract will be void, unless it is authorised by law or authorised or ratified by the principal they represent (*article 1161, Civil Code*). In practice, standard wording in powers of attorneys provide such authorisation.

How do companies validly execute contracts?

Companies in general

In general, French law does not require companies to execute contracts in a prescribed form. Unlike in some other jurisdictions, for example in England and Wales, there is no statutory requirement for more than one director to sign certain commercial contracts or to have their signature witnessed. However, if a document requires notarisation, the usual formalities relating to executing a notarial deed will apply.

For private deeds, a signature block in the following form may be used:

[COMPANY NAME]	[COMPANY NAME]
Seller	Buyer
.....	.....
By:	By:
Duly authorised representative	Duly authorised representative

As stated above, the parties must have capacity to execute the contract (see Capacity) and their legal representatives must have authority to act (see Authority). If these conditions are not met, the contract will not be valid (*article 1128, Civil Code*). Therefore, if a transaction is to be executed by notarised deed, the notary will request proof of the parties' capacity and their representatives' authority to sign (that is,

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the company's articles of association, an excerpt from the Companies and Commercial Register, a board resolution, or a power of attorney, as applicable), as well as proof of the signatories' identities.

An attorney executing an attorney's deed will ask for similar proof of identity and capacity and authority to execute the contract. Likewise, for transactions of a significant value, a counterparty is likely to request such documents, even if the contract is executed as a private deed without an attorney's countersignature.

Overseas companies

No additional rules relating to the form of execution apply to non-French companies. However, a document executed by an overseas company will also need to consider the requirements of the law of its country of incorporation.

If foreign documents (private or notarial deeds or other authentic instruments) need to be used or produced in a French transaction (for example, foreign powers of attorney), then, depending on the provisions of the applicable international treaty, they may have undergo one or both of the following processes:

- Translation by a certified translator.
- Legalisation or apostilisation (as relevant).

All authentic instruments, and therefore all notarial deeds, must be issued in French (*article 111,* Ordinance on the act of justice *(known as the Villers Cotterêts Ordinance) of 25 August 1539 and article 2, Decree of 2 Thermidor, Year II (20 July 1794)*) and *article 5,* Law no 94-665 *of 4 August 1994 on the use of the French language*).

Counterparts and number of originals

Counterparts

With the exception of the requirements for the formalisation of certain private deeds (see Contracts that must be proved in writing), French law does not provide for anything specific that would prevent the signing of a private deed in counterpart (that is, where each party exchanges a copy of the contract with only their signature added). However, for evidentiary reasons relating to the exchange of consent, its validity is questionable and therefore signing in counterpart does not occur in practice. An alternative solution is generally used which consists of an exchange of scanned copies of the signature pages between the parties' attorneys, followed by the circulation of hard copy documents for signature (see Virtual signings and closings).

Number of originals

Notarial deed

If the contract is executed as a notarial deed, the notarial deed is drawn up by, and executed in the presence of, a notary, who must authenticate both parties' signatures. Therefore, execution in counterpart is not relevant. The original copy of the notarial deed must be kept in the office of said notary and must not be moved out of this office for at least seventy-five years.

Private deed

A private deed must be made in at least as many originals as there are parties with a distinct interest, unless the parties have agreed to deliver the sole original document to a third party (*article 1375 al.1, Civil Code*). If a private deed has to be registered for tax purposes, an additional original is required for submission to the tax authority. Each original must mention the total number of originals (*article 1375 al.2, Civil Code*). However, even if these requirements have not been complied with, any signatory to the contract who has performed it, even in part, cannot raise this as an objection (*article 1375 al.3, Civil Code*).

Contracts executed electronically

For contracts executed electronically, the requirement as to the number of originals is deemed to be satisfied, if :

- The parties can be duly identified, and the document is drawn up and kept in conditions such as to guarantee its integrity, in accordance with article 1366 of the Civil Code.
- The electronic signature involves the use of a reliable identification process that guarantees its link with the deed to which it is attached, in accordance with article 1367 of the Civil Code.
- The method of storage allows each party to obtain a hard copy or have access to it.

(*Articles 1174 and 1375 al.4, Civil Code*.)

Virtual signings and closings

A contract is a "meeting of minds" (*accord de volonté*) between two or more people that is intended to create, modify, transmit or extinguish obligations (*article 1101, Civil Code*). In general, this "meeting of minds" may take place physically or virtually (that is, with the parties executing the contract in different physical locations).

Virtual exchange of private deeds

A private deed may be executed and exchanged remotely by the parties without their simultaneous

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physical presence. For example, this may be achieved by exchanging hard copy documents by registered post or courier. Alternatively, the parties may exchange scanned copies of the contract electronically. After the exchange of scanned copies, the relevant hard copy documents are circulated between the parties by registered post or courier for execution. Then, original executed contracts are delivered to the parties.

Although, in the case of a private deed, it is possible to exchange signature pages only. It is considered best practice to initial each page of the agreement for evidentiary reasons (to avoid any page substitution).

Physical exchange of private deeds

Even if there is no legal requirement to have a physical closing, parties often prefer this over a virtual closing. This is particularly the case for high-value or otherwise significant or complex transactions. Having the parties sign the contract in front of each other, and in the presence of their lawyers, can provide reassurance that the same version of the contract (and any ancillary agreements) has been executed properly by both parties.

French corporate lawyers usually use what is called "an ASSEMBLACT®" to avoid the parties having to initial each page of an agreement, and especially schedules, which can be quite voluminous. This is a secure binding system that allows the parties to sign only one page of the contract (usually the last page). The following notice is stamped on the contract:

En accord entre les parties, les présentes reliées par le procédé ASSEMBLACT R.C. empêchant toute substitution ou addition et sont seulement signées à la dernière page).

(By agreement between the parties, these [pages] are bound by the ASSEMBLACT R.C. process preventing any substitution or addition and are only signed on the last page.)

Electronic form of contract

If written form is required for the validity of a contract, in most cases, a private deed can be drawn up as an electronic document, exchanged by email, and stored in electronic form, provided the following conditions are satisfied:

- The party can be duly identified and the contract is drawn up and kept in conditions such as to guarantee its integrity.
- The electronic signature uses a reliable identification process (see Electronic signatures).

(*Article 1174, Civil Code*.)

In the case of a notarial deed (and authentic instruments in general), additional provisions as to how it can be drawn up and stored (see Virtual exchange of notarial deeds).

If the conditions above are met, the electronic contract may be admitted as proof that the contract was executed (see Contracts that must be proved in writing). Therefore, hardcopy originals will not be required. One should not execute the contract again in hardcopy after an exchange of duly executed electronic documents, especially at a later date. To do so is likely to create confusion as to the applicable execution date.

If the identity of the sender of an electronic contract cannot be determined, or the electronic signature does not use a sufficiently reliable identification process, the document may still constitute "beginning of proof in writing".

There are some exceptions to the general rule that a contract may be executed in electronic form. For example, private deeds relating to family and inheritance law must usually be executed in physical form. Exceptions also apply to personal or real securities of a civil or commercial nature, except if they are entered into by a person for the purposes of their profession (*article 1175, Civil Code*).

Virtual exchange of notarial deeds

It is also possible for the parties to sign notarial deeds electronically, provided certain conditions are met. An electronic notarial deed must be securely signed and bear the image of the notary's seal (*article 37, Decree no 71-941 on Notarial Deeds*). The same article also provides that transmission of an electronic notarial deed and authentic copies must guarantee the integrity of the document, the confidentiality of the transmission, the identity of the sender and that of the recipient.

However, the requirement for a notary to be physically present at the signing still applies (*article 10, Decree No 71-941 on Notarial Deeds*). Therefore, this presents a challenge to a virtual exchange of a notarial deed.

It is possible to overcome this hurdle by engaging two notaries (or more, but only rarely), so that each party can sign the document electronically in separate locations in the physical presence of a local notary (*article 20, Decree no 71-941 on Notarial Deeds*). This process uses a qualified signature process (see Electronic signatures) and the exchange of information must be conducted through a secure video conference system, through which the identification of the parties, the integrity and confidentiality of the content can be guaranteed.

Although this process has not been broadly used until recently, there is now an increasing use of it, with most

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parties preferring to sign in the presence of their own notary. If this process is adopted, the deed will specify that each of the two notaries shall exceptionally sign the deed.

If one or more signatories cannot physically attend closing, a common approach is to authorise someone else to sign in their name and on their behalf, using an appropriate proxy, which must be certified by a notary (using their seal) or by a civil registrar (for instance, a mayor).

As a result of the 2019 novel coronavirus disease (COVID-19) outbreak, on 3 April 2020 the French government adopted emergency legislation in the form of Decree no 2020-395 (authorising the notarial deed remotely during the health emergency period). Under this decree, any notary was allowed to draw up a notarial deed in electronic format, even if one or all of the parties or any other person contributing to the deed are neither present nor represented. This decree expired on 10 August 2020.

Decree no 2020-1422 20 November 2020 now authorises signature by proxy. It is therefore possible to grant an appropriate proxy by means of a secure video conference system or a qualified electronic signature process (see Electronic signatures) through which the identification of the relevant party and the integrity and confidentiality of the contents of the deed can be guaranteed.

In this case, there is no need for such proxy to be further certified by a notary or by a civil registrar. The agent appointed by the proxy (who is normally a relative, the notary themself or a clerk of their office), must attend and sign physically at closing in the presence of the notary.

Electronic signatures

EU-level regulation

The Electronic Identification and Trust Services Regulation (EU/910/2014) (eIDAS Regulation) entered into force on 17 September 2014 and has applied directly to the EU member states since 1 July 2016 (subject to transitional provisions). The eIDAS Regulation introduced a new EU-wide legal framework for the recognition of electronic signatures, and a range of other trust services, including electronic seals and timestamps.

The eIDAS Regulation defines three different categories of electronic signature:

- (Simple) Electronic signature.
- Advanced electronic signature.
- Qualified electronic signature.

Electronic signature

This is defined in Article 3(10) as "any data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign." This broad definition allows an electronic signature to take a wide variety of forms, such as:

- Typing the signatory's name at the bottom of an email.
- A scanned manuscript signature.
- Clicking an icon on a website to confirm an order.

Advanced electronic signature

This is a more sophisticated and secure form of electronic signature which meets the following requirements:

- It is uniquely linked to the signatory.
- It is capable of identifying the signatory.
- It is created using electronic signature creation data that the signatory can, with a high level of confidence, use under their sole control.
- It is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

(*Articles 3(11) and 26, eIDAS Regulation.)*

The advanced electronic signature is the most widely used electronic signature in practice, as there is currently no qualified electronic signature procedure that is effective remotely. In complex M&A transactions, the use of the advanced electronic signature remains limited due to the time stamping of each electronic signature, which makes the signature process difficult to coordinate. Its use has nevertheless increased and has become more common in the context of COVID-19.

Qualified electronic signature

This is defined as an advanced electronic signature that is created by using a "qualified" trust service provider to verify the signature and issue a qualified certificate of electronic signature implemented via a "qualified" electronic signature creation device (*Articles 3(12) and 32, eIDAS Regulation*). This type of electronic signature provides the highest level of admissibility in the EU courts and is automatically granted the equivalent legal effect of a handwritten signature (that is, there is a legal presumption of authenticity) (*Article 25(2), eIDAS Regulation*).

Article 25(1) of the *eIDAS Regulation* preserves the legal admissibility of all three categories of electronic signature, stating that an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form, or that it does not meet the requirements for qualified electronic signatures.

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Validity of electronic signatures

Although the eIDAS Regulation deals with the legal status and recognition of electronic signatures, it does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are formal requirements laid down by national or EU law (*Recital 21 and Article 2(1), eIDAS Regulation*). Nor does it address the legal effect of electronic signatures (*Recital 49*). Such matters continue to be governed by the domestic laws of each member state.

France recognises the electronic signature under article 1367 of the Civil Code. This provision states that an electronic signature carries the same evidentiary weight as a handwritten signature, if it uses a reliable process of identification, ensuring that it is linked with the electronic document, and guaranteeing the integrity of the document. At present, only qualified electronic signatures meet this standard, and give rise to a presumption of reliability (*article 1, Decree no 2017-1416 of 28 September 2017 relating to electronic signatures*).

However, advanced electronic signatures (or qualified electronic signatures) can be used for certain corporate documents, such as, minutes of shareholder resolutions (*Article R.221-3 al.3, Commercial Code*) and digital company registers, following amendments to the Commercial Code introduced under Decree no 2019-1118 of 31 October 2019, which came into force on 4 November 2019.

For the electronic signature to be valid, it must meet the advanced electronic signature condition under the eIDAS Regulation (see Advanced electronic signature).

The dematerialised documents must also be electronically dated by a means offering guarantee of proof (*Article R.223-26, al.3, Commercial Code*).

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