COVID-19 Alert

27 March 2020
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**Background**

Under normal circumstances, executing corporate documents for purposes of implementing international corporate transactions is not an overly complicated process. Some documents only need a simple signature, while other documents need to be notarized, apostilled and/or legalized by an embassy. However, due to the many “shelter-in-place” policies being put in place by various federal, state and local governments around the world to prevent the spread of the coronavirus 2019 (COVID-19), the process of executing corporate documents has changed. This article provides a summary of recent changes to the notarization, apostille and legalization by embassy processes in the United States and is subject to further updating as the COVID-19 situation remains in flux. While aimed at cross-border deals, the “notarization” sections of this article equally apply to “getting your real estate deal” or “loan transaction” done, to the extent they require notarization.

**Changes to the Notarization Process**
When a corporate document needs to be notarized, the general rule is that the signatory must personally appear in front of a notary, who acknowledges that the signatory personally appeared in front of him or her and executed such corporate document. There are various ways to accomplish this, including, but not limited to, having an in-house corporate paralegal who is also a notary, or locating a mobile notary to visit the signatory (see www.signingagent.com). The issue with COVID-19 is that most signatories to corporate documents, such as directors and officers, are now working from home and may not want to be within six feet of another person. To solve this problem, there are online services that can connect a signatory with notaries who can notarize documents online (see www.notarize.com). These so-called “Remote Online Notarizations” (“RON”), however, are not yet permitted in all U.S. States. More than 20 states have passed laws allowing remote online notarizations and due to the outbreak of COVID-19 several states that had not enacted RON laws prior to the outbreak have now passed executive or emergency orders allowing remote online notarizations on a temporary basis or have fast-tracked their implementation. Also, on the federal level, a bill was introduced on March 19, 2020, aiming at allowing remote online notarizations nationwide (see below). Here is a snapshot of the current status in select states:

California

In the State of California, Assembly Bill 199 (AB 199), which would have authorized remote online notarization by permitting an online notary to conduct a notarial act using secure, two-way interactive audio and video communication, was approved by the Assembly Committee on Business and Professions on April 9, 2019. However, AB 199 ultimately did not become law in California as it “died” in January 2020. As of today, remote online notarizations are, therefore, not yet permitted in California, but this could change soon, assuming that the federal SECURE Notarization Act passes (see below).

New York

In the State of New York, Governor Andrew Cuomo issued an executive order on March 19, 2020, that allows the temporary virtual notarization of documents that would normally have to be notarized in person. This executive order will allow business transactions to move forward with notarizations that can be performed using audio-video technology under certain conditions. The following are the conditions that must be met for virtual notarization:

- The person seeking the notary’s services, if not personally known to the notary, must present valid photo ID to the notary during the video conference, not merely transmit it prior to or after;
- The video conference must allow for direct interaction between the person and the notary (e.g., no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the State of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the notary on the same date it was signed;

The notary may notarize the transmitted copy of the document and transmit the same back to the person; and the notary may repeat the notarization of the original signed document as of the date of execution, provided the notary receives such original signed document together with the electronically notarized copy within 30 days after the date of execution.

Select other states

- March 22, 2020: Iowa Gov. Reynolds issued an Executive Order to temporarily suspend the personal appearance requirement for notarizations and witnessing.
- March 18, 2020: Wisconsin issued emergency guidance to enable RON immediately (Wisconsin’s Governor had signed AB 293 on March 2, 2020, but it would have gone into effect on June 1, 2020 only).

Federal Level

On the federal level, Senators Mark R. Warner (D-VA) and Kevin Cramer (R-ND) introduced S. 3533, the Securing and...
Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020, on March 19, 2020 (“SECURE Notarization Act”). This bipartisan legislation permits immediate nationwide use of remote online notarizations, a type of electronic notarization where the notary and signatory are in different physical locations. The SECURE Notarization Act authorizes every notary in the US to perform RONs, provided that the notary uses tamper-evident technology in electronic notarizations and multifactor authentication to prevent fraud.

Changes to the Apostille Process

An apostille is the simplified certification of public documents (including notarized documents), for their international use in all nations that have joined the apostille section of the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the Hague Convention). Signatory countries have agreed under the apostille section of the Hague Convention to recognize public documents certified by the apostille. (See the following link for the official list of signatory countries: https://www.hcch.net/en/instruments/conventions/status-table/?cid=41).

This certification ensures that public documents are valid within the country where the document was originally issued or notarized. The main function of the apostille is to certify the authenticity of the signature on the document.

The apostille also certifies the capacity in which the official signing the document acted and the identity of any stamp or seal affixed to the document. The apostille must be issued in the state where the document was issued or notarized. The apostille is typically a one-page document embossed with the great seal of a state and includes the facsimile signature of the individual issuing the certificate. The apostille is applied only to public documents, including notarized documents and official certificates (e.g., certificates of good standing issued by a Secretary of States).

State-issued documents for use in countries that are members of the Hague Convention must be authenticated by the competent authority in the state where the document was executed, such as the Secretary of State. A state-issued document with an apostille does not require additional certification by the US Department of State or legalization by a US embassy or consulate overseas to be recognized in a participating country. The US Department of State will not issue an apostille for state-issued documents. And state-issued documents for use in countries that are not members of the Hague Convention may be authenticated with an authentication certificate from the US Department of State.

In practice, the usual process of obtaining an apostille for a corporate document is, as follows: (i) a corporate document is signed by a director or officer in front of a notary; (ii) the original signed and notarized corporate document is sent to a filing agent via mail; (iii) the filing agent sends a courier in-person to the Secretary of State of the state where the signatory signed the corporate document to obtain the apostille (either on the same day or the next day); and (iv) the filing agent sends the original signed, notarized and apostilled corporate document to the foreign counsel that is requesting such corporate document to implement a corporate transaction. If the corporate document is a Certificate of Good Standing (CGS), then the Secretary of State of the state where a legal entity is organized issues the CGS and the apostille at the same time.

In the State of California, public counters at the Sacramento office of the Secretary of State are closed as of March 20, 2020, due to COVID-19, but drop-off boxes are available in the first floor rotunda. This means that the filing agents must send a courier to drop off original signed and notarized corporate documents for purposes of obtaining an apostille. The Los Angeles public counter will remain open, but with limited staff and services. In addition, the process of obtaining a CGS will now take five to seven business days.

In the State of New York, the following Licensing Services offices will be closed through March 30, 2020, due to COVID-19:

- Hauppauge
- Manhattan
- Utica
- Binghamton
- Buffalo

Customers seeking Apostille and Certificate of Authentication services are to mail their requests to the following address:
These COVID-19-related policies will cause delays in obtaining an apostille, which can in turn delay the implementation of international corporate transactions.

**Changes to the Legalization by Embassy Process**

An embassy legalization process is required when a corporate document is to be used in countries that are not members of the Hague Convention. The process is either a two or three-step process, which includes: (i) state certification; (ii) US Department of State certification (if required); and (iii) embassy or consulate legalization. Depending on the foreign jurisdiction, either the embassy or consulate will legalize the corporate document.

The COVID-19-related policies mentioned above may cause delays in obtaining an embassy legalization because the first step (state certification) and possibly also steps (ii) and/or (iii) above will likely be delayed.

**International**

In international, public notaries in most countries are still operating, and commercial registers are still open (e.g., Germany, Switzerland), albeit at reduced workforce. Therefore, at this time and generally speaking, it is still feasible to get documents notarized and/or filed in connection with local mergers and share transfers or other corporate transactions outside of the US.

As the COVID-19 situation is dynamic, the above guidelines are subject to change. Please contact your DLA Piper relationship partner with any questions or for more information.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

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