

Conflict of Laws

In an ever closer connected world, notaries deal with international couples, foreign companies, cross-border transactions, and refugees of war. Often, they provide the first personalized legal advice for those who are newcomers to a country. In that context, they explain the laws of their country, but they also determine the applicable law in the first place. In fact, notaries are specialists in conflict of laws rules, also called private international law.¹⁵⁴ This body of law answers the question of which country's laws will govern a transaction. Notaries also have to be familiar with how procedural law plays out in international settings. Will one country's register accept notarial documents of another? In that sense, notaries also provide advice to the citizens of their home country who want to invest abroad.¹⁵⁵

When foreign law is applicable, notaries can acquire basic knowledge on that foreign law based on specialized literature, an international professional network of notaries, and professional thinktanks. However, to draft a transaction governed by foreign law in due form, the notary will, most of the time, have to refer her client to the colleague of that other country. This is one of the reasons why notarial organization on different levels is crucial. The Council of the Notaries of the European Union (CNUE) fulfills this task at the European level,¹⁵⁶ the International Union of Notaries (UINL) at the international level.¹⁵⁷

Key takeaways: Notaries are specialists in conflict of laws and provide advice to the international community. Thus, they facilitate international exchange in a globalized world.

Did you know?

Thibierge, a French notary, proposed to create a new corporate form by European legislation in 1959.¹⁵² In 2001, following his proposal, the European Union enacted a directive establishing the Societas Europaea (SE).¹⁵³