German Civil Law Notaries
and the Commercial Register

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# Overview

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01 | The German Civil Law Notary
The German Civil Law Notary

- German Notaries are highly qualified legal professionals
- They are independent holders of a public office
- They are appointed by the state and are subject to government supervision
- All of the approximately 8,000 notaries are organized in 21 regional chambers
- There are different types of notaries (single-profession notary v. advocate/notary) sharing the same professional code
The Federal Chamber of German Civil Law Notaries (Bundesnotarkammer)

- The Federal Chamber of German Civil Law Notaries is a statutory public entity. All 21 regional Chambers of Notaries are its members.
The Commercial Register in Germany
Commercial Registers in Germany

• Public register kept by local courts in the 16 states.
• Entry is obligatory for nearly all forms of companies under German law.
• The commercial register provides access to
  - relevant information concerning commercial enterprises (name, authorised representatives, share capital etc.)
  - documents submitted to the commercial register (applications for registration, shareholder lists, articles of association, agreements regarding the reorganisation of companies etc.).
• Legal force of registered information: Public trust, i.e. anyone can rely on the registered information, whether it is actually accurate or not (= positive public trust), and can also rely on the absence of facts that are not registered (= negative public trust)
Access to the Commercial Register

- Since the 1990s, the public registers (commercial registers, land registers, registers of associations) are maintained by the courts electronically.
- Anyone can access the registers electronically for a fixed fee.
- One gateway for all 16 states: www.handelsregister.de
Electronic Applications to the Commercial Register

- Applications for registration in the commercial register must be notarised (Sec. 12 Commercial Code).

- Since January 1st 2007, applications and documents to the commercial register have to be submitted electronically.

- Both digitized notarial deeds and machine-readable data (XML) are submitted.
The Role of the Notary in the Registration Process
Legal Precondition: Electronic Notarial Documents

- Sec. 39a Notarisation Act:

„Notarial certificates and other notarial attestations pursuant to Sec. 39 may be established electronically. For that purpose, a qualified electronic signature pursuant to the Electronic Signature Act must be attached to the electronic notarial document. The signature shall be based on a certificate that is permanently verifiable. A confirmation by the competent authority confirming that the issuer of the document is a notary must be attached to the notarial attestation. The notarial attestation shall indicate the place and date of issue.“
Electronic Notarial Document

Signature = Qualified electronic signature

Notarial seal = Attribute “notary” included in signature certificate
Structure of an Electronic Application to the Commercial Register

Certified electronic copies of application and other deeds and documents

Documents and XML data are wrapped into a secure transport layer and submitted as an electronic message to the commercial register

Essential content of the application as machine-readable data (XML)
The Role of the Federal Chamber of Civil Law Notaries – Providing Solutions for Notaries

• Preparation of electronic notarial documents (Sec. 12 Commercial Code, Sec. 39a Notarisation Act), using **SigNotar**

• Compilation of vital content of the application into a structured XML file, using **XNotar**

• This software package, developed as a reference system, is used in 90% of the German notaries’ offices.
The Role of the Federal Chamber of Civil Law Notaries – Providing Qualified Electronic Signatures

• Since 2001, the Federal Chamber of German Civil Law Notaries is one of the largest certification authorities (CA) in Germany, issuing signature cards for qualified electronic signatures on the highest quality level under German law.

• Currently, more than 17,000 cards for notaries, courts and attorneys are in use.
The 14th
EUROPEAN COMMERCE REGISTERS’ FORUM
in Bonn, Germany

04 | Summary
Efficient Collaboration (1): The Notary…

- collects
  - required information and documents, mostly also preparing them for the parties,

- evaluates
  - their content (completeness, legal accuracy, legal validity) and gives impartial and independent legal advice where required;

- prepares
  - by digitizing the documents
  - by certifying the accuracy of the electronic version and
  - by filtering and structuring information relevant for the entry (XML data).
Efficient Collaboration (2): The Commercial Register…

- on information already verified and documents prepared by highly qualified and trusted legal professionals,

- information and documents for completeness, accuracy, legal validity, ("second set of eyes"),

- electronic documents and structured data (XML) into the register in a process of few clicks, usually without having to make any changes to the data.
Conclusions

The German system of commercial law and its socio-economic benefits are based on transparency and public trust in the content of the commercial register. The principle of public trust is only viable if the information in the register can be relied on as legally and factually accurate, complete and current.

- The system of public trust in the commercial register has been maintained in compliance with the demands of modern procedures and EU regulation.
- Entry into the commercial register is no longer a major bureaucratic process, but a cost- and time-efficient and modern service rendered by notaries and courts.
Thank you for your attention!

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