Notaries in Germany

Christian R. Wolf

I. Legal status of the notary

A. Independent holder of public office

The German notary is an independent holder of public office responsible for recording legal transactions (Par. 1 of The National Rules and Regulations for German Notaries [Bundesnotarordnung (BNotO)]). As opposed to attorneys, notaries are not members of the free professions but rather the agents of state authority. On the other hand, notaries are not civil servants either, but are independent holders of public office not subject to any personal orders or subject-matter-related instructions.

The status of the notary as the holder of public office precludes the free right to set up practice. Instead, the German states appoint only as many notaries as are necessary to ensure the regulated administration of justice (Par. 4, Sentence 1 BNotO). Thus, even if candidates can prove professional qualification, they have no lawful claim to be endowed with the notary office.

B. Types of notary offices in Germany

In Germany, there are basically two different types of notary offices. In the federal states of Bavaria, Hamburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Saarland, and Thuringia and in parts of the federal states of Baden-Württemberg and North Rhine-Westphalia, only notaries who exercise their office full time are appointed as notaries („Nurnotare“, or, „notaries only“) In the federal states of Berlin, Bremen, Hessen, Lower Saxony, Schleswig-Holstein and in parts of the federal states of Baden-Württemberg and North Rine-Westphalia, lawyers are appointed to practice the profession of notary in addition to the profession of attorney (Anwaltsnotare, or, „attorney/notaries“). In the state of Baden-Württemberg there are still District Notaries (Bezirksnotare). In deviation from the usual system, these notaries are civil servants of the federal state.

C. The professional education and training of the notary

An eligible candidate for the office of notary is anyone who has completed his or her education as an attorney at law and achieved full qualification as such (Volljurist). The notary initially goes through the same training procedure as a German judge or attorney, but must upon completion of the undergraduate
curriculum, achieve further qualification through post-graduate studies. In order to ensure the retention of Germany’s extraordinarily high standard of notarial services, the appointment to the office of notary generally requires that the candidate have an outstanding academic record.

D. The chief professional responsibilities of the notary

1. Impartiality

The notary is not the legal representative of a single party but rather the impartial counselor of all the parties involved in a given matter (Par. 14, Sec. 2 BNotO). Notaries, as opposed to attorneys, do not fight for the rights of their clients but rather stand above the interests of the parties by helping them to find a just way of balancing out their opposing objectives. In doing so, they cannot impose a binding decision with judicial authority, but can only influence the outcome of the legal process by advising and informing the parties. The impartiality required of notary means that they cannot take sides with or against any of the parties by showing preference or prejudice. No bond to one of the parties, no favoritism, no biases, no concern with their own personal advantages or disadvantages may influence notaries in the performance of their professional duties.

2. The duty to refuse performance of illegal and unethical transactions

Notaries must deny performance of any official functions that are not reconcilable with their official duties, particularly when their active support is requested in the pursuit of objectives that are obviously illegal or unethical (Par. 14, Sec.2 BNotO). Furthermore, the German code of professional conduct (Standesrecht) prescribes that notaries avoid even the slightest appearance of infringement of the law.

3. Dignified behavior

Through their behavior both on and off the job, notaries are required to demonstrate that they are worthy of the respect and confidence that the public places in their profession (Par. 14, Sec. 3, Sentence 1 BNotO). Notaries thus have the duty to do honor to their profession at all times and in all places, regardless of whether their activities and behavior are job related or strictly private. For example, notaries are required to maintain order in their financial affairs. They may not live beyond their means, must pay their bills on time and are not permitted to demonstrate self-submission to boundless profit seeking by wagering in high-risk speculations. Furthermore, they are expected to display morally or conventionally conduct and respectable standards of living. Notaries are not even allowed to tolerate the involvement of a family member in unrespectable activity. (Par. 14 III, Sentence. 2 BNotO).