

Übersetzung durch Ute Reusch

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## **Federal Code for Notaries (Bundesnotarordnung – BNotO)**

Federal Code for Notaries in the consolidated version published in the Federal Law Gazette III, Index No. 303-1, as last amended by Article 4 of the Act of 30 October 2017 (Federal Law Gazette I, p. 3618)

The Code shall not apply to the district of Karlsruhe Higher Regional Court pursuant to section 115 sentence 1; section 115 was repealed by Article 1 of the Act of 15 July 2009 (Federal Law Gazette I, p. 1798)

Notwithstanding Annex I Chapter III Subject Area A Part 1 No. 8 of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 read in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette II, p. 885, 921), the Code entered into force in the five acceded *Länder* (Article 1 (1) of the Unification Treaty) with effect from 8 September 1998 pursuant to Article 13 (1) in accordance with the provisions of (2) to (11) of the Act of 31 August 1998 (Federal Law Gazette I, p. 2585) (Third Act to Amend the Federal Code for Notaries and Other Acts (*Drittes Gesetz zur Änderung der Bundesnotarordnung und anderer Gesetze*)); pursuant to Annex I Chapter III Subject Area A Part IV No. 1 Point b) of the Unification Treaty, it shall apply, with provisos, to the acceded part of the *Land* of Berlin.

### **Part 1**

#### **Office of notary**

#### **Division 1**

#### **Appointment as notary**

#### **Section 1**

#### **[Nature of profession of notary]**

Notaries are independent holders of a public office who are appointed in the *Länder* to record legal acts ('notarial recording') and to perform other tasks in the field of the preventive administration of justice.

#### **Section 2**

#### **[Applicable provisions; profession of notary]**

Unless otherwise provided, notaries shall be subject only to the provisions of this Code. They shall bear an official seal and use the official designation of '*Notarin*' or '*Notar*'. Their profession does not constitute a trade.

#### **Section 3**

#### **[Notarial office as main occupation; lawyers commissioned as notaries]**

- (1) Notaries shall be appointed for life to exercise their office as their main occupation.
- (2) In those judicial districts in which the office of notary was exercised exclusively as a secondary occupation on 1 April 1961 only lawyers will continue to be appointed as notaries for the duration of their membership of the bar association competent for that judicial district to exercise the office concurrently with the profession of lawyer (lawyer commissioned as notary; *Anwaltsnotar*).
- (3) (repealed)

#### **Section 4**

##### **[Requirement for appointment]**

As many notaries are to be appointed as are required to meet the needs of the proper administration of justice. In particular, consideration is to be given to ensuring that the consumers of legal services are adequately supplied with notarial services and that an orderly age structure is maintained within the notarial profession.

#### **Section 5**

##### **[Qualification to hold judicial office]**

Only those who are qualified to hold judicial office pursuant to the German Judiciary Act (*Deutsches Richtergesetz*) may be appointed as notary. The Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz*) shall not apply.

#### **Section 6**

##### **[Aptitude for office]**

- (1) Only those applicants are to be appointed as notaries who are suited, on the basis of their character and previous performance, to hold the office of notary. Applicants may not be appointed as notaries for the first time if, upon the expiry of the deadline for applications, they have reached the age of 60.
- (2) In the case referred to in section 3 (2), only those are to be appointed as notaries who can prove that, upon expiry of the deadline for applications, they have

1. worked as a lawyer on a not insignificant scale for various clients for at least five years,
2. pursued the activity referred to in no. 1 for at least three years without interruption in the prospective notarial jurisdiction,
3. passed the professional examination for notaries under section 7a and
4. each year taken part in at least 15 hours of notary-specific continuing training events run by the chambers of notaries or professional organisations as from that calendar year following the year in which they passed the professional examination for notaries.

Before being appointed as notary, applicants must in addition furnish proof that they are sufficiently familiar with professional notarial practice; such proof shall as a rule involve applicants, after passing the professional examination for notaries, undergoing 160 hours of practical training with a notary to be determined by the chamber of notaries competent for the prospective notarial jurisdiction. The practical training may be reduced to up to 80 hours if the applicant can furnish proof of comparable experience as a deputy notary or administrator for a notary or on the basis of successfully participating in practical courses run by the chambers of notaries or professional organisations. Details of sentences 2 and 3 shall be regulated by the chamber of notaries in training regulations which shall require approval by the *Land* department of justice. Upon application, the periods referred to in subsection (4) and any periods of a temporary waiver of admission to the legal profession on account of pregnancy or caring for a child or a family member in need of long-term nursing care of up to 12 months shall be credited to the activity referred to in sentence 1 no. 1. No account shall be taken of any interruptions of the activity referred to in sentence 1 no. 1 and no. 2 on the ground of the circumstances of everyday life. The periods referred to in sentence 5 shall not

be regarded as an interruption of the activity referred to in sentence 1 no. 2 if they do not exceed 12 months.

(3) When selecting from amongst several suitable applicants, the sequence in which they are selected shall be based on their personal and professional aptitude, taking into account the state examination completed following the end of legal training and their performance when preparing for the profession of notary. In the case referred to in section 3 (1), appropriate account is to be taken of the length of time which the applicant served as trainee notary. In the case referred to in section 3 (2), professional aptitude shall be assessed on the basis of a points system; the result of the professional examination for notaries accounts for 60 per cent, the result of the state examination taken following the end of legal training accounts for 40 per cent of the point score, unless, in the individual case and after having heard the chamber of notaries, consideration is, by way of exception, to be given to special circumstances in the case of an applicant who is or was a notary and these take precedence over the applicant's professional aptitude. Where examinees achieve the same point score, account is, as a rule, to be taken of the result of the professional examination for notaries.

(4) The *Land* governments shall be authorised to lay down provisions by way of a statutory instrument concerning those periods of military or civilian service, periods in which an applicant was prohibited from working under the provisions of the Act on the Protection of Working Mothers (*Mutterschutzgesetz*) and periods when an applicant was on a leave of absence on account of taking parental leave which are to be credited against time served as trainee notary pursuant to subsection (3) sentence 2, as well as, in the case of re-appointment, concerning those periods in which an applicant had temporarily resigned from office pursuant to section 48b which are to be credited against their previous official activities. The *Land* governments may delegate this authorisation by way of a statutory instrument to the *Land* departments of justice.

#### **Section 6a** **[Refusal]**

Appointment must be refused where applicants neither furnish proof of having taken out professional indemnity insurance (section 19a) nor supply a provisional cover note.

#### **Section 6b** **[Advertisement and application]**

(1) Applicants are to be identified by means of an advertisement; this shall not apply to re-appointment following temporary resignation from office pursuant to section 48c.

(2) Applications are to be submitted within the period stated in the advertisement or which has been generally made known by the *Land* department of justice.

(3) Where applicants are prevented, through no fault of their own, from meeting the deadline, they shall, upon request, be granted restoration of the status quo ante. Requests must be submitted within two weeks of removal of the obstacle. The facts supporting the request must be substantiated. The application must be filed subsequently within the deadline for submission of the request.

(4) When selecting from amongst several applicants in accordance with section 6 (3), consideration is only to be given to those circumstances which existed upon expiry of the deadline for applications. In the case referred to in section 7 (1), the *Land* department of justice may set a different deadline.

#### **Section 7** **[Service as trainee notary]**

(1) As a rule, only those who have served three years as a trainee notary (*Notarassessor*) in that *Land* in which they have filed their application shall be appointed to exercise the office of notary as their main occupation (section 3 (1)).

(2) Selection from amongst several suitable applicants to serve as trainee notary shall be based on personal and professional aptitude, taking particular account of the state examination completed following the end of legal training. Applicants are to be identified by

means of an advertisement; section 6b (2) to (4) shall apply accordingly. They may also be identified by means of the *Land* department of justice permitting applicants to enter their names in a constantly maintained list of applicants for a specific period. The fact that such lists are maintained is to be generally made known.

(3) Trainee notaries shall be appointed by the *Land* department of justice after it has heard the chamber of notaries. It is for the president of the chamber of notaries to assign trainee notaries to a notary. The president shall oblige the trainee notary by means of a handshake to conscientiously fulfil his or her duties.

(4) Trainee notaries are in a public-law employment relationship with the state whilst serving as trainee notaries. Excepting section 19a, they shall have the same general official duties and other duties as a notary. As from the time of their assignment and for the duration of their service as trainee notaries they shall receive remuneration from the chamber of notaries which is to be comparable to that of a judge on probation. The chamber of notaries shall enact guidelines in this regard and determine either generally or in the individual case whether and in what amount the notary to whom a trainee notary has been assigned shall be obliged to reimburse the remuneration.

(5) Trainee notaries are to be employed by the notary in a manner which corresponds to the purpose of the service as trainee notary. The *Land* government or the agency determined by it by way of a statutory instrument shall regulate, by way of a statutory instrument, further details concerning the training of trainee notaries.

(6) The service as trainee notary ends

1. upon the trainee notary being appointed as notary,
2. upon the trainee notary being discharged from service.

(7) Trainee notaries are to be discharged from service upon their request therefor. They may be discharged if they

1. prove unsuitable for appointment as notary,
2. do not commence the service as trainee notary without sufficient reason within a period to be determined by the *Land* department of justice, which should not exceed two months,
3. do not apply for a notarial office offered to them by the *Land* department of justice without sufficient reason after serving three years as trainee notary and that post was previously advertised and could not be filled on account of a lack of suitable applicants.

## **Section 7a**

### **[Professional examination for notaries]**

(1) Whoever has been admitted to the legal profession for three years and fulfils the conditions for appointment as notary under section 5 shall be admitted to the professional examination for notaries.

(2) The professional examination for notaries serves to provide proof that and to what degree a lawyer is professionally suited to exercise the office of notary in the capacity as lawyer commissioned as notary. The examination shall comprise a written and an oral part.

(3) The professional examination for notaries serves to identify the best amongst the examinees. The uniformity of examination requirements and performance assessment is to be guaranteed. The examination may be held at various locations.

(4) The topics of the written and of the oral examination shall cover the entire spectrum of official functions of a notary. The Federal Ministry of Justice and Consumer Protection shall regulate the areas covered in the examination by way of a statutory instrument requiring the approval of the Bundesrat.

(5) Sections 1 and 2 of the Ordinance on a Mark and Point Scale for the First and Second State Examination in Law (*Verordnung über eine Noten- und Punkteskala für die erste und zweite juristische Staatsprüfung*) of 3 December 1981 (Federal Law Gazette I, p. 1243) shall

apply accordingly to the marks to be awarded by the individual examiners and the composition of the final mark.

(6) The written examination accounts for 75 per cent, the oral examination for 25 per cent of the overall result of the professional examination for notaries. Whoever achieves an overall mark of at least 4.00 points shall be deemed to have passed the professional examination for notaries.

(7) Whoever does not pass the examination or has been deemed not to have passed the examination may repeat it once only. An examinee who has passed the examination may repeat the examination once only with the aim of achieving a better score at the earliest three years following notification of the result of the professional examination for notaries.

### **Section 7b**

#### **[Written examination]**

(1) The written examination comprises four five-hour invigilated examinations. It serves to determine whether the examinee has acquired the specialist knowledge needed to be able to work as a notary and whether he or she is able to provide, within a limited space of time, legally sound and practical solutions to tasks taken from notarial practice.

(2) Each invigilated examination is marked successively by two examiners. The names of the examinees may not be made known to the examiners before marking of the invigilated examinations has been completed. At least one lawyer commissioned as notary is, as a rule, to be involved in marking each individual task set. Where the marks awarded deviate by no more than three points, the average is to be taken. If the marks differ by a larger number of points and the examiners cannot reach agreement or approximate the marks so that they deviate only by up to three points, a third examiner shall decide; that examiner may decide to take the mark awarded by one of the examiners or to award a mark which lies between the two other marks.

(3) The marks awarded for the invigilated examinations are to be made known to examinees when they are invited to the oral examination. Where more than one invigilated examination is awarded less than 4.00 points or the overall average of all the invigilated examinations is less than 3.50 points, the examinee may not be invited to the oral examination and has not passed the professional examination for notaries.

### **Section 7c**

#### **[Oral examination]**

(1) The oral examination comprises a presentation on a problem specific to the office of notary and a group interview which is, as a rule, to cover different subject areas. The group interview is, as a rule, to last around one hour per examinee. No more than five examinees are, as a rule, to be examined at once. As well as evidence of their knowledge, examinees are in particular also to provide evidence in the oral examination that they are able to fulfil a notary's duty of examination and instruction in a manner appropriate to the subject matter and the situation.

(2) The oral examination is to be conducted by a board of examiners comprising three examiners. They must be in attendance throughout the entire examination. The board is to be chaired by an examiner appointed upon the proposal of the *Land* department of justice in whose jurisdiction lawyers commissioned as notaries are appointed. One of the examiners is, as a rule, to be a lawyer commissioned as notary.

(3) Representatives of the chambers of notaries, of the Federal Chamber of Notaries, of the Examination Office, of the Federal Ministry of Justice and Consumer Protection and of the *Land* departments of justice may be present during oral examinations. The Examination Office may admit persons who have been admitted to the professional examination for notaries to observe an examination. Only the members of the board of examiners may take part in the deliberations.

(4) Following the oral examination the examiners shall mark the presentation and the group interview in accordance with section 7a (5). If the marks awarded differ, the average is to be taken. The board of examiners shall then announce the marks to the examinee. A more

detailed explanation of the marks awarded may only be requested right away and is only to be given orally.

**Section 7d**  
**[Service of certificate, objection]**

- (1) Notification of the result of the professional examination for notaries is to be served on the examinee. A certificate shall be issued where the examinee passes the professional examination for notaries, indicating the overall mark plus a designation and a point score. Whoever repeats the professional examination for notaries shall be issued with a certificate only upon achieving a higher mark.
- (2) The head of the Examination Office shall decide on an objection.
- (3) (repealed)

**Section 7e**  
**[Failure to pass examination]**

- (1) If, after being admitted to the examination, an examinee withdraws without sufficient excuse, does not hand in an invigilated examination or does not do so on time, or does not appear for the oral examination or does not appear on time, he or she shall be deemed to have failed the examination.
- (2) Whoever proves that they were prevented, through no fault of their own, from taking one or more of the invigilated examinations or from handing them in on time may retake the invigilated examination in question; the already completed parts of the examination shall remain unaffected. Whoever proves that they missed the entire or part of the oral examination through no fault of their own may retake the oral examination.

**Section 7f**  
**[Use of means of deception; disqualification]**

- (1) Where an examinee attempts to influence the result of the professional examination for notaries by using aids which are not permitted, by drawing on the prohibited assistance of third parties or using other means of deception, that part of the examination shall be awarded zero points. In the event of a serious or repeat attempt at deception, he or she shall be deemed to have failed the professional examination for notaries as a whole.
- (2) Where a serious attempt at deceit becomes known after the overall mark has been announced, the examinee may be deemed to have failed the professional examination for notaries in question.
- (3) An examinee who commits a significant breach of the examination regulations may be barred from continuing to take the invigilated examination or the oral examination. Where an examinee is barred from continuing to take an invigilated examination, that examination shall be awarded zero points. In the event of an examinee repeatedly being barred from taking an invigilated examination or being barred from the oral examination, he or she shall be deemed to have failed the professional examination for notaries.

**Section 7g**  
**[Examination Office]**

- (1) The Examination Office for the Professional Examination for Notaries at the Federal Chamber of Notaries (Examination Office) shall be responsible for administering the examination.
- (2) The Examination Office shall decide on whether an examinee is to be admitted to the examination, shall nominate the examiners, including the additional examiner (section 7b (2) sentence 5) and the examination committees, set the examination dates, invite examinees, determine the examination result, issue the examination certificate, and take decisions on the consequences of a breach of the examination regulations and on objections pursuant to section 7d (2) sentence 1. The Federal Ministry of Justice and Consumer Protection shall regulate further details by way of a statutory instrument requiring the approval of the Bundesrat.



(3) The head of the Examination Office shall represent the Office in administrative proceedings and in court proceedings in connection with the professional examination for notaries. The head and his or her deputy must be qualified to hold judicial office. They shall be appointed for a five-year term of office in consultation with those *Land* departments of justice in whose jurisdiction lawyers commissioned as notaries are appointed, after the Federal Ministry of Justice and Consumer Protection has heard the Federal Chamber of Notaries. Re-appointment shall be possible.

(4) An Examination Committee shall be established at the Examination Office. It shall set the questions for the written examination, decide which aids are permitted in the examination and make proposals for questions to be set in the oral examination. The members of the Committee must hold one of the qualifications listed in subsection (6) sentence 1. They shall be appointed for a five-year term of office by the head of the Examination Office in consultation with the Administrative Board. Re-appointment shall be possible. The members of the Examination Committee shall receive appropriate remuneration for their work.

(5) An Administrative Board shall be established at the Examination Office. It shall be responsible for supervising the head of the Examination Office and the Examination Committee. The Administrative Board comprises one member nominated by the Federal Ministry of Justice and Consumer Protection, one member nominated by the Federal Chamber of Notaries and three members nominated by mutual agreement by those *Land* departments of justice in whose jurisdiction lawyers commissioned as notaries are appointed.

(6) The following may be appointed as examiners by the Examination Office for a five-year term of office:

1. judges and public officials qualified to hold judicial office, even if they have already reached retirement age, upon the proposal of the Federal Ministry of Justice and Consumer Protection and those *Land* departments of justice in whose jurisdiction lawyers commissioned as notaries are appointed,
2. notaries and retired notaries upon the proposal of the chambers of notaries and
3. other persons who have the same qualifications as those referred to in nos. 1 and 2, in consultation with the Federal Ministry of Justice and Consumer Protection and those *Land* departments of justice in whose jurisdiction lawyers commissioned as notaries are appointed.

Re-appointment shall be possible. The appointment may be revoked for important reasons. Examiners shall retire upon reaching the age of 70; their involvement in opposition proceedings shall remain unaffected thereby.

(7) Examiners shall be independent in taking decisions on examinations and shall not be bound by instructions. In all other respects, they shall be subject in their capacity as examiner to the supervision of the Examination Office. They shall receive appropriate remuneration for their work.

## **Section 7h** **[Fees]**

(1) Fees are to be paid to the Federal Chamber of Notaries for the examination and for unsuccessful opposition proceedings. An examinee will not be admitted to the examination until the Federal Chamber of Notaries has received the examination fees. If the applicant withdraws before commencing the examination, three quarters of the fee is to be reimbursed. If the applicant withdraws up to the end of the period for marking the last invigilated examination, half of the fee shall be reimbursed. No fees shall be reimbursed in the case referred to in section 7f.

(2) The Federal Chamber of Notaries shall determine, by way of by-laws which require approval by the Federal Ministry of Justice and Consumer Protection, the amount of the fees under subsection (1), details concerning the levying of the fees and the remuneration paid to

the head and employees of the Examination Office, the members of the Examination Committee and the examiners.

**Section 7i**  
**[Statutory instruments]**

The Federal Ministry of Justice and Consumer Protection shall regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning the organisation and the course of business of the Examination Office, the selection and appointment of the examiners, the examination procedure and the Administrative Board's decision-making procedure.

**Section 8**  
**[Prohibition of secondary employment, exceptions]**

(1) Notaries may not simultaneously hold a salaried office. In an individual case, after having heard the chamber of notaries, the *Land* department of justice may at any time permit revocable exceptions; in such cases the notary may not personally exercise the office of notary.

(2) Notaries may not exercise another profession; section 3 (2) shall remain unaffected. Lawyers commissioned as notaries may simultaneously exercise the profession of patent attorney, tax adviser (*Steuerberater*), auditor or certified accountant.

(3) Notaries shall require the authorisation of the supervisory authority to

1. take on paid secondary employment, in particular a commercial activity,
2. join the board, supervisory board, administrative board or other constituent body of a for-profit enterprise, co-operative or an economic enterprise operated in another legal form.

Such authorisation is to be refused if the activity referred to in sentence 1 is not compatible with the public office of notary or if it might diminish the confidence placed in the notary's independence or impartiality. The chamber of notaries is to be heard before taking a decision on granting the authorisation. The authorisation may be linked to conditions or time limited.

(4) No authorisation shall be required in order to take on the office of executor, insolvency administrator, arbitrator or guardian or a similar post by order of a public authority, as well as academic, artistic or lecturing activities.

**Section 9**  
**[Joint practice]**

(1) Notaries appointed to exercise their office as their main occupation may form joint practices or share business premises only with notaries appointed at the same location of office. The *Land* governments or agencies determined by them by way of a statutory instrument shall be authorised to determine the following by way of a statutory instrument in order to meet the requirements of the proper administration of justice, in particular as regards local needs and customs:

1. that a joint practice or the sharing of business premises in accordance with sentence 1 is permissible only with the authorisation of the supervisory authority, which may be linked to conditions or time limited, and after the chamber of notaries has been heard;
2. the preconditions for establishing joint practices or sharing business premises, in particular in regard to the maximum number of involved members of the profession and the requirements as to the establishment, conduct, continuation and termination of the joint practice or sharing of business premises.

(2) Lawyers commissioned as notaries may form joint practices or share business premises only with each other, with other members of a bar association, with patent attorneys, tax advisers, tax agents (*Steuerbevollmächtigte*), auditors or certified accountants.



(3) A joint practice and the sharing of business premises is permissible only to the extent that the personal and autonomous exercise of the office, independence and impartiality of the notary is not affected.

### **Section 10**

#### **[Location of office]**

(1) Notaries shall be assigned to a specific place as their location of office. In towns and cities with a population of more than 100,000, notaries may be assigned to a specific municipal district or local court district as their location of office. The location of office may be relocated with the consent of the notary after the chamber of notaries has been heard and consideration has been given to the interests of the proper administration of justice. The consent of the notary shall not be required when assigning another location of office on the ground of a judgment handed down by a disciplinary court.

(2) Notaries must maintain an office at their location of office. They are to choose their dwelling so that it does not affect the proper exercise of their official functions; the supervisory authority may instruct a notary to choose a dwelling at his or her location of office if this is necessary in the interests of the administration of justice. In the case of lawyers commissioned as notaries, their office and a law office as referred to in section 27 (1) or (2) of the Federal Code for Lawyers (*Bundesrechtsanwaltsordnung*) must be one and the same.

(3) Notaries shall as a rule keep their office open during normal business hours.

(4) Notaries may be required to maintain several offices; they shall not be authorised to do so without the permission of the supervisory authority. The same shall apply when it comes to holding office hours elsewhere. Permission may be linked to conditions and may be granted subject to revocation or time limited. The chamber of notaries is to be heard before issuing or revoking permission.

### **Section 10a**

#### **[Jurisdiction]**

(1) A notary's jurisdiction encompasses the district of that local court in which that notary has his or her location of office. Depending on the requirements of the proper administration of justice, the *Land* department of justice may determine the boundaries of notarial jurisdiction differently either in general or in an individual case when assigning the location of office and may amend such determinations, in particular in order to adapt them to changes made to judicial districts.

(2) Notaries shall as a rule perform their notarial acts (sections 20 to 22) only within their own jurisdiction, unless the specific justified interests of the consumers of legal services require the performance of such acts beyond the bounds of that jurisdiction.

(3) Notaries must notify the supervisory authority or the chamber of notaries of which they are members if the supervisory authority so determines, without delay and stating reasons, of any notarial acts performed beyond the bounds of their notarial jurisdiction.

### **Section 11**

#### **[Official district]**

(1) A notary's official district shall be the higher regional court district in which that notary has his or her location of office.

(2) A notary may perform notarial acts outside of his or her official district only where there is danger in delay or the supervisory authority has given permission therefor.

(3) A breach shall not affect the validity of the notarial act, even if the notary performs the notarial act outside of that *Land* in which he or she has been appointed as notary.

### **Section 11a**

#### **[Notaries appointed abroad]**

Notaries shall be authorised to assist a notary who has been appointed abroad with his or her official functions upon that notary's request and may go abroad for that purpose insofar

as this is not precluded under the legal provisions applicable in the state concerned. The German notary must comply with the duties incumbent upon him or her under German law. A notary who has been appointed abroad may provide collegial assistance in the area of application of this Code only upon the request of a German notary; sentence 1 shall apply accordingly. The foreign notary must comply with the duties incumbent upon a German notary.

**Section 12**  
**[Certificate of appointment]**

Notaries shall be appointed by the *Land* department of justice, after it has heard the chamber of notaries, upon delivery of a certificate of appointment. The certificate shall state the notary's official district and location of office and the duration of the appointment (section 3 (1) and (2)).

**Section 13**  
**[Official oath]**

(1) After delivery of the certificate of appointment the notary shall swear the following oath:  
'I do swear before God the Omnipotent and Omniscient that I will uphold the constitutional order and conscientiously and impartially perform the duties of a notary. So help me God.'

Where the oath is sworn by a female notary, the male form of the noun shall be replaced by the female form of the noun in German.

(2) Where members of a religious community are permitted by law to use a form of affirmation other than the words 'I do swear', a notary who is a member of that religious community may use that form of affirmation. The oath may also be taken without the religious affirmation.

(3) Notaries shall swear the oath before the president of the regional court in whose district they have their location of office. They shall not perform any official acts before taking the oath.

**Division 2**  
**Exercise of office**

**Section 14**  
**[Powers and duties]**

(1) Notaries shall execute their office true to their oath. They are not representatives of any party, but independent and impartial providers of a service to the parties involved.

(2) Notaries shall refuse to carry out their official functions if these are incompatible with their official duties, in particular if they are asked to participate in activities which recognisably pursue unlawful or dishonest purposes.

(3) Notaries shall show themselves worthy of the respect and confidence shown in the office of notary by means of their conduct both when exercising and when not exercising their office. They shall avoid any conduct which creates the appearance of being in breach of the duties incumbent upon them by law, in particular their appearance of independence or impartiality.

(4) Notwithstanding the agency activities assigned to them by law, notaries shall be prohibited from arranging loans and property transactions, from being involved in any manner in arranging notarial business or taking on a surety or another guarantee in connection with an official act. They shall ensure that those persons in their employ do not engage in such business.

(5) Notaries may not acquire any stake in a company which is incompatible with their office. In particular, they are prohibited from holding a stake in a company which engages in an activity within the meaning of section 34c (1) of the Trade Regulation Code (*Gewerbeordnung*), as well as in a tax consultancy or auditing company if they are to directly or indirectly exercise a controlling influence alone or together with other persons with whom

they have formed a joint practice pursuant to section 9 or with whom they share business premises.

(6) Notaries must undertake continuing training to the extent necessary in respect of their official functions.

### **Section 15**

#### **[Refusal to exercise office]**

(1) Notaries may not refuse to perform notarial acts without sufficient reason. They shall not be obliged to record documents written in a language other than in German.

(2) A complaint may be brought against a notary's refusal to perform notarial acts or other duties. It is for the civil chamber of the regional court in whose district the notary has his or her location of office to hear the complaint. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) shall apply to the proceedings.

(3) (repealed)

### **Section 16**

#### **[Ban on involvement, bias]**

(1) Section 3 of the Notarial Recording Act (*Beurkundungsgesetz*) shall apply accordingly in respect of those official functions of a notary which do not constitute notarial recording under that Act.

(2) Notaries may recuse themselves from performing their duties on the ground of bias.

### **Section 17**

#### **[Fees]**

(1) Notaries shall be obliged to charge the fees prescribed by law for their activities. Unless statutory provisions provide for the waiving or reduction of fees or for the non-collection of fees due to improper handling of a matter, it shall be permissible to waive and to reduce the fees only where this is necessary out of a moral duty or consideration for the sake of decency and the chamber of notaries has consented thereto in general or in an individual case. Within the areas of responsibility of the Notaries' Fund and of the Notaries' Fund for the Five Eastern Länder, these shall take the place of the chambers of notaries. The promising and granting of advantages in connection with an official function, as well as any sharing of the fees with third parties shall not be permissible.

(2) In the case of parties qualifying for legal aid under the provisions of the Code of Civil Procedure (*Zivilprozessordnung*), notaries shall, in analogous application of the provisions of the Code of Civil Procedure, provisionally perform their notarial acts free of charge or against payment of the fees in monthly instalments.

### **Section 18**

#### **[Obligation of confidentiality]**

(1) A notary shall be bound to maintain confidentiality. This obligation shall apply to everything which becomes known to a notary in the exercise of his or her office. It shall not apply to facts which are obvious or which, by dint of their importance, do not necessitate confidentiality.

(2) The obligation of confidentiality shall not apply where the parties involved grant an exemption thereto; upon the decease of a party or where no statement can be obtained from that party or obtaining the statement entails disproportionate difficulties, the supervisory authority may grant the exemption instead.

(3) Where, in an individual case, there are doubts as to whether the obligation of confidentiality shall apply, the notary may seek a decision from the supervisory authority. If the supervisory authority negates this obligation, no claims can be derived against a notary who has spoken about a matter.

(4) The obligation of confidentiality shall continue to apply even after the expiry of office.

**Section 19**  
**[Breach of official duty, liability]**

(1) Where a notary, through intent or negligence, breaches the official duty incumbent upon him or her vis-à-vis another person, that notary shall compensate that person for the damage arising therefrom. Where the notary acted out of negligence, that notary may be held liable only if the injured party is unable to secure compensation in another manner; that shall, however, not apply to official functions of the types referred to in sections 23 and 24 in the relationship between the notary and the client. In all other respects, the provisions of the Civil Code (*Bürgerliches Gesetzbuch*) concerning the liability to pay damages in the event of a breach of official duty by a public official shall apply accordingly. The state shall not be liable in lieu of the notary.

(2) Where a trainee notary commits a breach of duty in the course of independently performing one of the types of business referred to in sections 23 and 24, that trainee notary shall, applying subsection (1) accordingly, be liable. If the notary left the trainee notary to perform the business independently, the notary shall be liable alongside the trainee as joint debtor; in the relationship between the notary and the trainee notary the trainee alone shall be liable. The employment relationship between the trainee and the state (section 7 (3)) does not establish any liability on the part of the state. Where the trainee notary was acting as the notary's deputy, section 46 shall apply as regards liability.

(3) The regional courts alone are competent as regards claims for damages under subsections (1) and (2), regardless of the value in dispute.

**Section 19a**  
**[Professional indemnity insurance]**

(1) Notaries shall be obliged to maintain professional indemnity insurance to cover the liability risks for financial losses resulting from their professional activity as notary and for the activities of persons for whom they are liable. The insurance must be taken out with an insurance company which is authorised to do business in Germany at the general conditions of insurance submitted in accordance with the provisions of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*). The insurance must cover all the risks of liability to be insured pursuant to sentence 1 and each individual breach of duty which may give rise to liability claims against the notary.

(2) The insurance cover may exclude liability for

1. claims for compensation on the ground of an intentional breach of duty,
2. claims for compensation resulting from activities pursued in connection with the provision of advice about non-European law, unless the breach of official duty consists in the possibility of applicability of that law not having been recognised,
3. claims for compensation based on misappropriation by members of the notary's staff, unless the notary is liable on account of a negligent breach of his or her official duty to supervise staff.

Where, following a breach of official duties, the only contentious issue is whether the ground for the exclusion under no. 1 exists, and where the professional indemnity insurer therefore refuses to regulate the matter, the insurer must nevertheless pay the minimum insurance cover up to the amount applicable to the insurer covering the damages for intentional acts. If the professional indemnity insurer satisfies the party entitled to compensation, the entitled party's claim against the notary, the chamber of notaries, the insurer pursuant to section 67 (3) no. 3 or another party entitled to compensation shall pass to it. The professional indemnity insurer may also demand compensation for its expenses from persons for whose obligations it is liable pursuant to sentence 2 in the same way as from a client.

(3) The minimum insurance cover shall be 500,000 euros for each insured event. The benefits paid by the insurer for all losses incurred in one insurance year may be limited to double the amount of the minimum insurance cover. The insurance contract must oblige the

insured party to notify the *Land* department of justice and the chamber of notaries without delay of the start and the end or termination of the insurance contract, as well as of any change to the insurance contract which affects the prescribed insurance cover. It may be agreed in the insurance contract that all breaches of duty in the performance of a single item of official business based either on the conduct of the notary or of an assistant whom that notary enlists may be regarded as one insured event.

(4) It shall be permissible to agree an excess of no more than 1 per cent of the minimum insurance cover.

(5) The competent agency within the meaning of section 117 (2) of the Insurance Contract Act (*Versicherungsvertragsgesetz*) shall be the *Land* department of justice.

(6) Upon the application of third parties and in order that they may assert claims for compensation, the *Land* department of justice or the chamber of notaries of which the notary is a member shall supply the name and address of the notary's professional indemnity insurance as well as the insurance number, unless the notary has an overriding interest worth protecting in the information not being supplied; this shall also apply where the office of notary has expired.

(7) (repealed)

### **Division 3 Official functions**

#### **Section 20**

##### **[Notarial recording and advisory services]**

(1) Notaries shall be responsible for the notarial recording of all manner of documents, as well as for certifying signatures, manual signs and copies. Their tasks include, in particular, the recording of assembly decisions, the conduct of lotteries and draws, the making of inventories of property, estate inventories and schedules of estate assets, mediating in disputes regarding an estate and common property, including the issuing of certificates pursuant to sections 36 and 37 of the Land Registry Code (*Grundbuchordnung*), the creation and approval of official seals, the recording of protests, the service of statements and the recording of facts witnessed in the course of their official duties.

(2) Notaries shall also be responsible for taking receipt of conveyances of property, as well as for drawing up partial mortgage and partial land charge certificates.

(3) Notaries shall, further, be responsible for carrying out voluntary auctions. They shall carry out an auction of moveable items only if the auction is occasioned by the auction of immoveable items or by a property dispute recorded or mediated by the notary.

(4) Notaries shall also be responsible for mediating under the provisions of the Act to Reform Property Law in the Acceding Territory (*Sachenrechtsbereinigungsgesetz*).

(5) The extent to which notaries are to be responsible for creating and approving official seals in the context of proceedings to secure an estate is to be determined by the provisions of *Land* law.

#### **Section 21**

##### **[Issue of certificates]**

(1) Notaries shall be responsible for

1. certifying a right of representation and

2. certifying the existence or the registered office of a legal person or commercial enterprise, a change in business name and a conversion of other circumstances of legal consequence

based on an entry in the Commercial Register or a similar register evidencing such facts. The certificate shall have the same probative value as a certificate issued by the court of registration.

(2) Notaries may issue the certificate only after first having satisfied themselves of the fact that the entry has been made, based on inspection of the register or of a certified copy

thereof. The date of inspection of the register or the date of issue of the copy must be stated on the certificate.

(3) Notaries shall, further, be responsible for certifying a power of attorney established by legal act. They may issue the certificate only after first having satisfied themselves that the power of attorney has been established by inspecting a public or publicly certified certificate of power of attorney. The form of and the date on which the certificate of the power of attorney was presented to the notary shall be stated on the certificate.

## **Section 22**

### **[Administration of oath, declaration in lieu of oath]**

(1) Notaries shall be responsible for the administration of oaths as well as for examinations on oath only if the oath or the examination on oath is necessary under the law of a foreign state or under the provisions of a foreign authority or it is otherwise necessary to assert rights abroad.

(2) Notaries are entitled to record declarations in lieu of an oath in all cases in which a statement of fact or testimony is to be substantiated for an authority or other agency.

## **Section 23**

### **[Safekeeping and delivery]**

Notaries shall also be responsible for taking receipt of money, securities and valuables which parties hand over to them for safekeeping or for delivery to third parties; sections 57 to 62 of the Notarial Recording Act shall remain unaffected.

## **Section 24**

### **[Advisory services and representation]**

(1) The office of notary also encompasses the provision of other advisory services to the parties involved in the preventive administration of justice, in particular the drawing up of draft documents and advising of the parties involved. Unless restrictions are imposed under other provisions, notaries shall also be authorised to represent parties before the courts and administrative authorities to that extent.

(2) If lawyers commissioned as notaries perform acts of the type referred to in subsection (1), it shall be assumed that they have acted in their capacity as notary if the act is intended to prepare or perform official functions of the types referred to in sections 20 to 23. In all other respects, it is to be assumed, in case of doubt, that they have acted in their capacity as lawyer.

(3) To the extent that notaries are authorised by law to file applications with the land registry or the authorities holding registers (in particular under section 15 (2) of the Land Registry Code, section 25 of the Shipping Register Code (*Schiffsregisterordnung*) and section 378 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction) in the name of the parties involved, they shall also be authorised to withdraw any applications which have been filed. The declaration of withdrawal shall be effective once the notary adds his or her signature and official seal; certification of the signature shall not be necessary.

## **Division 4**

### **Other duties**

## **Section 25**

### **[Members of staff]**

(1) Notaries may employ members of staff who are qualified to hold judicial office, who have passed the professional examination for civil servants required to hold the office of district notary or who hold the degree of *Diplom-Jurist* only if that notary's personal exercise of the office is not jeopardised thereby.

(2) In order to be able to safeguard the interests of the proper administration of justice, the *Land* governments or the agencies determined by them by way of a statutory instrument shall be authorised to determine by way of a statutory instrument that notaries may employ members of staff who are qualified to hold judicial office, who have passed the professional



examination for civil servants required to hold the office of district notary or who hold the degree of *Diplom-Jurist* only if the supervisory authority has authorised such employment after having heard the chamber of notaries. The authorisation may be linked to conditions and may be issued subject to revocation or time limited.

## **Section 26**

### **Formal declaration by persons employed**

Upon their being hired, persons employed by a notary must make a formal declaration of commitment to the notary pursuant to section 1 of the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants (*Verpflichtungsgesetz*). Particular reference must be made to the provisions of section 14 (4) and section 18. Where a notary has associated himself or herself with other persons for the joint exercise of their profession and their employees have a single employment relationship with these persons, it shall be sufficient for one of the notaries to require the formal declaration to be made before him or her. Notaries must take appropriate measures to ensure that the persons they employ observe the obligation of confidentiality. Persons who are involved in a notary's professional activities as part of preparations for their own professional activity or in another auxiliary capacity shall be equal to persons employed by notaries. Sentences 1 to 3 shall not apply to trainee notaries and trainee lawyers (*Referendare*).

## **Section 26a**

### **Availment of services**

- (1) Notaries may give service providers access to facts to which the obligation of confidentiality under section 18 applies without the consent of those involved to the extent that this is necessary to be able to avail themselves of such services. Service providers are other persons or agencies commissioned with rendering services by notaries in the exercise of their profession.
- (2) Notaries shall be obliged to carefully select their service providers. Cooperation must be terminated immediately where it cannot be guaranteed that a service provider will be able to fulfil the requirements set out in subsection (3).
- (3) Contracts with service providers must be made in writing. Such contracts must
  1. oblige the service provider to maintain confidentiality and advise of the consequences under criminal law of any violation of that obligation,
  2. oblige the service provider to obtain knowledge of others' secrets only insofar as this is necessary in the fulfilment of the contract and
  3. stipulate whether the service provider is authorised to involve other persons in the fulfilment of the contract; where this is the case, the service provider must be required to oblige, in writing, those persons to maintain confidentiality.
- (4) When availing themselves of services which directly refer to a single item of official business, notaries may only grant service providers access to others' secrets if the person concerned has consented thereto.
- (5) Subsections (2) and (3) shall also apply where notaries avail themselves of services to which those concerned have consented, unless those concerned have expressly waived the need to observe the requirements set out in subsections (2) and (3).
- (6) Subsection (3) shall not apply in those cases in which the service provider was formally obliged pursuant to section 1 of the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants. Subsection (3) sentence 2 shall not apply if the service provider is bound by law to maintain confidentiality regarding the service to be rendered.
- (7) Other provisions which restrict a notary's ability to avail himself or herself of services and provisions concerning the protection of personal data shall remain unaffected.

## **Section 27**

### **[Notification of joint practice]**

(1) Notaries shall notify the supervisory authority and their chamber of notaries without delay of the fact that they have established a joint practice or are sharing business premises with others. This duty of notification shall also apply to professional associations within the meaning of section 3 (1) sentence 1 no. 7 of the Notarial Recording Act. The name, profession, other professional activities and place of activity of those involved must be notified. Section 9 shall remain unaffected.

(2) Upon request, notaries shall submit to the supervisory authority and to their chamber of notaries the agreement on which the establishment of a joint practice or the sharing of business premises is based.

### **Section 28**

#### **[Maintenance of independence and impartiality]**

Notaries shall take suitable precautions to guarantee that they maintain independence and impartiality in the exercise of their office, in particular as regards compliance with prohibitions of participation and other duties under the provisions of this Code, of the Notarial Recording Act and of the Court and Notary Fees Act (*Gerichts- und Notarkostengesetz*).

### **Section 29**

#### **[Ban on advertising]**

(1) Notaries must refrain from engaging in any commercial activities, in particular such advertising as conflicts with their public office.

(2) Advertising which notaries are permitted to engage in pursuant to section 8 in the performance of their activities may not cover their activity as a notary.

(3) Lawyers commissioned as notaries who have established a joint practice pursuant to section 9 (2) with persons who are not active at that lawyer's seat or who maintain further law offices or branch offices may state their official designation as notary on business papers, in directories, in advertisements and on signs not affixed to an office only if reference is simultaneously made to the location of their office. Such reference must immediately follow the notary's official title, must correspond in appearance to such title and must include the word '*Amtssitz*' (location of office). Sentence 1 shall not apply if the business papers, directories or advertisements make no reference to a joint practice pursuant to section 9 (2) or to further law offices or branch offices.

(4) Office signs and name plates may only be affixed to an office.

### **Section 30**

#### **[Duty to provide training]**

(1) Notaries shall be involved to the best of their abilities in the training of trainee notaries and trainee lawyers.

(2) Notaries shall provide those trainees in their employ with meticulous professional training.

### **Section 31**

#### **[Code of conduct]**

Notaries shall conduct themselves in accordance with their office in their dealings with colleagues, courts, authorities, lawyers and others providing advisory services to their clients.

### **Section 32**

#### **[Copies of law gazettes]**

Notaries shall hold copies of the Federal Law Gazette I, the law gazette of their respective *Land*, the official bulletin of their *Land* department of justice and the gazette of the Federal Chamber of Notaries. Where several notaries have established a joint practice, it shall be sufficient for them to jointly hold one copy of each.

### **Section 33**

#### **Electronic signature**

(1) Notaries must be in possession of a qualified certificate issued by a qualified trust service provider which can be verified in perpetuity and of the technical means by which to create and validate qualified electronic signatures. When applying for a qualified certificate for electronic signatures for the first time, identification must be provided in the form of the notary's publicly certified signature placed at the bottom of the application. The qualified certificate must also bear an attribute which identifies the holder as a notary and which also indicates the notary's office, as well as the name of the *Land* and of the chamber of notaries in whose district the notary has his or her office.

(2) Notaries may only obtain their qualified certificate from a qualified trust service provider which can guarantee that the certificate will be immediately blocked as soon as an entry notifying the expiry of the notary's office or his or her temporary removal from office is made in the Directory of Notaries.

(3) Notaries may only themselves manage the electronic signature creation data required to create qualified electronic signatures. They may not entrust the qualified electronic signature creation device designated for this purpose to other persons and may not reveal any data used to identify themselves vis-à-vis their qualified electronic signature creation device.

#### **Section 34 Reporting requirements**

Notaries must immediately notify the supervisory authority and the chamber of notaries in whose district they have their office in the event that they ascertain or there is reasonable cause to believe that

1. their official seal has been permanently or temporarily lost or was misused, or a forgery of their official seal is being used,
2. the qualified electronic signature creation device has been lost, was misused or manipulated, or data used to identify them vis-à-vis the qualified signature creation device have become known to another person,
3. data or other precautions taken to protect the Electronic Document Archive, the Electronic Database of Notarial Files, the Central Register of Lasting Powers of Attorney or the Central Register of Wills against unauthorised access have been misused, manipulated or subject to unauthorised access.

In the case referred to in sentence 1 no. 2, notaries must in addition immediately occasion the blocking of the qualified certificate by the trust service provider and must present proof of such blocking when making the notification referred to in sentence 1. In the case referred to in sentence 1 no. 3, the chamber of notaries must immediately notify the Federal Chamber of Notaries where there is reason to believe that the security of the Electronic Document Archive, of the Electronic Database of Notarial Files, of the Central Register of Lasting Powers of Attorney or of the Central Register of Wills has been compromised, including in regard to data transmitted or stored by other agencies.

#### **Division 4a Keeping of files and directories**

##### **Section 35 (repealed)**

##### **Section 36**

#### **Authorisation to issue statutory instruments regarding files and directories**

(1) The Federal Ministry of Justice and Consumer Protection shall, by way of a statutory instrument requiring the approval of the Bundesrat, regulate further details concerning the files and directories to be kept by notaries, as well as concerning their content and the manner in which they are to be kept. In particular, such statutory instrument shall regulate further details concerning

1. the documents which notaries must add to the files and the information which is to be included in the directories, including the data to be collected and the time limits to be observed in that regard,
2. retention periods,
3. the keeping of electronic files and directories pursuant to section 35 (2)<sup>1</sup> and concerning the measures to be taken to guarantee their confidentiality, integrity, transparency and availability even beyond the end of a notary's period in office, including the permissible file formats, interfaces and data linkages between the files and directories,
4. the conditions under which a document which is available in paper form need not be transferred into electronic form although this is required by or on the basis of a law.

When calculating the retention periods referred to in sentence 2 no. 2, particular account is to be taken of the purpose for which the files and directories are being made available with a view to the requirements of the proper administration of justice and of the fact that the clarification of facts must still be possible in the event of public liability claims arising.

(2) The statutory instrument may provide that further information may or shall be included in the directory of documents in addition to those entries which are necessary in order to be able to locate documents. It may also regulate further details concerning the use of the data stored in the directory of documents

1. in electronic legal dealings with the courts, authorities and third parties,
2. in regard to the keeping of other files and directories by a notary and
3. for supervisory purposes.

### **Section 37 (repealed)**

#### **Division 5**

#### **Absence and inability to carry out duties. Deputy notary**

### **Section 38 [Absence]**

If a notary plans to be absent from his or her location of office for more than one week or that notary is unable for factual reasons to carry out his or her duties for more than one week, that notary shall notify the supervisory authority thereof without delay. The permission of the supervisory authority shall be required if the notary's absence from the location of office is to exceed one month.

### **Section 39 [Deputy notary]**

(1) The supervisory authority may appoint a deputy notary (*Notarvertreter*) upon a notary's request for the duration of that notary's absence or inability to carry out his or her duties; the appointment may also be made from the outset for all cases in which the notary will be unable to carry out his or her duties throughout a calendar year (permanent deputy). The appointment shall as a rule not exceed more than one year.

(2) In the event of a notary being suspended from office, a deputy may also be appointed without an application needing to be made. This shall also apply where a notary fails to apply for the appointment of a deputy although he or she is temporarily unable to properly exercise the office for health reasons.

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<sup>1</sup> Reference is here made to a new section 35 which enters into force on 1 January 2020 [translator's note].

(3) Only those persons may be appointed as deputy who have the capacity to hold notarial office. Only a notary, trainee notary or retired notary shall be appointed as permanent deputy; after having heard the chamber of notaries, a lawyer may also be appointed as permanent deputy to a lawyer commissioned as notary. Except in the cases referred to in subsection (2), only those persons who have been proposed by the notary and are willing to take on the office shall be proposed. A custodian appointed pursuant to section 1896 of the Civil Code or a curator appointed pursuant to section 1911 of the Civil Code may also submit the application on the notary's behalf and propose the deputy.

(4) The provisions applicable to the notary shall apply accordingly to the deputy, with the exception of section 19a, unless otherwise provided in the following.

#### **Section 40**

##### **[Appointment]**

(1) Deputies shall be appointed by written order. Unless they have already been sworn in as a notary, deputies shall swear the official oath (section 13) before the president of the regional court before commencing the representation. Where a deputy has already been sworn in as notary pursuant to section 13, it is sufficient for that deputy's attention to be drawn to the previous oath.

(2) The deputy's appointment may be revoked at any time.

#### **Section 41**

##### **[Powers]**

(1) Deputies shall perform the duties of office at the notary's expense. Deputies shall make an addition to their signature to indicate that they are acting in the capacity as deputy and shall use the notary's official seal and stamp.

(2) Deputies shall also refrain from exercising the office to the extent that the notary they are representing would be prohibited from exercising the office.

#### **Section 42**

##### **[Competence as regards pecuniary disputes]**

The regional courts shall have exclusive competence as regards pecuniary disputes between the notary and the deputy notary concerning remuneration or liability for breaches of official duties, regardless of the value in dispute.

#### **Section 43**

##### **[Remuneration of *ex-officio* appointed deputy]**

A notary shall pay an *ex-officio* appointed deputy (section 39 (2)) appropriate remuneration.

#### **Section 44**

##### **[Beginning and end of authority]**

(1) The deputy's authority commences upon his or her taking on the office and, unless the appointment is revoked beforehand, ends upon the office being transferred to the notary. During this time the notary shall refrain from exercising his or her office.

(2) The official acts of the deputy are not rendered invalid on account of the conditions required for the deputy's appointment pursuant to section 39 not having been met or subsequently having ceased to apply.

#### **Section 45**

##### **[Safe custody of files in case of absence]**

(1) If no deputy has been appointed for the duration of a notary's absence or inability to carry out official duties, that notary may deposit his or her files, including inventories and books, in safe custody with another notary in the district of the same or of a neighbouring local court or with the local court in whose district that notary has his or her location of office. The local court must be notified of the fact that the files have been deposited in safe custody with another notary.

(2) It is for the notary with whom or the local court with which the files have been deposited in safe custody to issue execution copies and copies and to permit inspection of the files in place of the notary who is absent or unable to carry out official duties.

(3) If the notary has not deposited his or her files in safe custody pursuant to subsection (1) for the duration of his or her absence or inability to carry out official duties and a request is made for the issue of an execution copy or copy of the files or for inspection of the files, then it is for the local court in whose district the notary has his or her location of office to take the files into safe custody and to carry out the official act being applied for.

(4) It is for the notary with whom the files have been deposited in safe custody to issue the execution copies and certified copies, adding his or her signature and using his or her official seal or stamp. The provisions on the issue of execution copies or copies of court documents shall apply to the issue of execution copies or copies by the local court. Reference is to be made to the notary's absence or inability to perform official functions in the entry regarding the making of the execution copy.

(5) If the files have been deposited in safe custody with a notary, the costs for issuing execution copies or copies shall accrue to that notary and if they have been deposited in safe custody with the local court they shall accrue to the Public Treasury.

#### **Section 46**

##### **[Breach of official duty by deputy]**

In addition to the deputy, the notary shall be liable to the injured party as joint debtor for a breach of official duty on the part of the deputy. The deputy alone shall be liable in the relationship between the notary and the deputy.

#### **Division 6**

##### **Expiry of office. Suspension from office. Administrator for notary**

#### **Section 47**

##### **[Expiry of office]**

The office of notary expires upon

1. discharge from office (section 48),
2. reaching retirement age (section 48a) or death,
3. temporary resignation from office (sections 48b and 48c),
4. final loss of membership of a bar association in the case referred to in section 3 (2),
5. a final criminal conviction leading to loss of office (section 49),
6. final removal from office (section 50),
7. a final judgment handed down by a disciplinary court in which dismissal from office was imposed (section 97 (1) sentence 1 no. 3 and (3)).

#### **Section 48**

##### **[Discharge]**

A notary may request to be discharged from office at any time. The request must be made in writing to the *Land* department of justice. The discharge is to be pronounced by the *Land* department of justice for the date applied for.

#### **Section 48a**

##### **[Retirement age]**

Notaries reach retirement age at the end of that month in which they reach the age of 70.

#### **Section 48b**

##### **[Temporary resignation from office]**

(1) Whoever, whilst holding the office of notary, is in fact caring for or looking after



1. at least one child below the age of 18 or
2. another relative in need of long-term nursing care which has been confirmed in a medical certificate issued by a public health officer

may, with the permission of the supervising authority, temporarily resign from office.

(2) The duration of any temporary resignation from office pursuant to subsection (1) may not exceed 12 years, even in combination with a period in which a notary resigns from office pursuant to section 48c.

#### **Section 48c**

##### **[Return following resignation from office]**

(1) Where a notary declares when applying for permission to temporarily resign from office pursuant to section 48b that he or she wishes to return to his or her notarial office at his or her previous location of office within one year at the latest, that notary shall be re-appointed there within that period. Section 97 (3) sentence 2 shall apply accordingly.

(2) Following re-appointment to the previous location of office it shall not be possible to resign from office again pursuant to subsection (1) in the course of the following two years; section 48b shall remain unaffected. The duration of multiple resignations from office pursuant to subsection (1) may not exceed three years.

#### **Section 49**

##### **[Criminal conviction]**

A criminal conviction shall lead to the loss of the office of notary in the same way as it does for a public official in a *Land* department of justice.

#### **Section 50**

##### **[Removal from office]**

(1) A notary is to be removed from office

1. if the conditions under section 5 are no longer met or it transpires following his or her appointment that these conditions were incorrectly assumed to have been met;
2. if one of the conditions is met under which the appointment of a public official in a *Land* department of justice is invalid, must be declared invalid or must be revoked;
3. if that notary refuses to swear the official oath prescribed in section 13;
4. if that notary takes on a salaried office or pursues an activity which requires authorisation pursuant to section 8 (3) and the admission pursuant to section 8 (1) sentence 2 or the authorisation required pursuant to section 8 (3) is not available at the point at which the *Land* department of justice takes its decision on the removal from office;
5. if, contrary to section 8 (2), that notary pursues a further professional activity or, contrary to the provisions of section 9 (1) or (2), has established a joint practice or shares business premises with other persons;
6. if that notary is in financial difficulties; the notary is presumed to be in financial difficulties if insolvency proceedings have been opened against the notary's assets or the notary has been entered in the register to be kept by the enforcement court (section 26 (2) of the Insolvency Code (*Insolvenzordnung*) and section 882b of the Code of Civil Procedure);
7. if, for health reasons, the applicant is unable to properly exercise the office of notary not merely on a temporary basis;

8. if that notary's economic circumstances, the manner of his or her economic management or management of items deposited in safe custody jeopardise the interests of the consumers of legal services;

9. if that notary repeatedly commits a gross breach of

a) prohibitions of participation under section 3 (1) of the Notarial Recording Act or

b) duties under section 17 (2a) sentence 2 no. 2 of the Notarial Recording Act;

10. if that notary does not maintain the prescribed indemnity insurance (section 19a).

(2) If one of the conditions is met under which the appointment of a public official in the *Land* department of justice may be declared void or may be revoked, the notary may also be removed from office.

(3) Competence for removal lies with the *Land* department of justice. It shall take its decision after hearing the chamber of notaries.

(4) In the proceedings to remove a notary from office pursuant to subsection (1) no. 7, those provisions which are applicable to public officials in the *Land* department of justice shall apply accordingly in respect of the appointment of a representative in the administrative proceedings for a notary who is not able to assert his or her rights in the proceedings, in respect of the notary's duty to be examined by a doctor and in respect of the consequences of his or her refusal to cooperate. A lawyer or notary is, as a rule, to be appointed as representative. The *Land* department of justice shall undertake those tasks assigned to the notary's superior official under these provisions.

## **Section 51**

### **[Storage of files]**

(1) Where the office of notary expires or a notary's location of office is relocated to another local court district, the notary's files and books and documents which were officially handed over to that notary must be deposited in safe custody with the local court. The *Land* department of justice may determine that the items be deposited in safe custody with another local court or with a notary. The provisions of section 45 (2), (4) and (5) shall apply accordingly.

(2) The notary's official seal and stamp must be destroyed by the local court referred to in subsection (1) sentence 1.

(3) Where, after the expiry of a notary's office or the relocation of a notary's location of office, that notary is once more appointed in the local court district in which he or she previously had his or her location of office, the books and files deposited in safe custody in accordance with subsection (1) may be returned to the notary.

(4) Where the notary's location of office is relocated to another local court district within the same municipality, that notary shall retain the files and books in his or her safe custody. The official stamp and seal are not to be handed in.

(5) The *Land* department of justice shall regulate the delivery of a notary's files to a state archive and the destruction of notarial files. Where notarial files have been handed over to a state archive, then, if they are documents issued by a notary who is still in office or documents deposited in safe custody with another notary on the ground referred to in subsection (1) sentence 2, execution copies, enforceable execution copies and copies must be issued by the notary, otherwise by the local court in which that notary had his or her location of office. The provisions of section 45 (4) and (5) of this Code and of section 797 (3) of the Code of Civil Procedure shall apply accordingly.

## **Section 52**

### **[Continued use of official designation]**

(1) Upon the expiry of office, authorisation to use the designation of '*Notar*' or '*Notarin*' shall expire. It shall likewise not be permissible to use the designation together with an addition making reference to the expiry of office.

(2) If the office of a notary appointed to exercise the office as a main occupation has expired on account of that notary being discharged (section 48), reaching retirement age (section 48a) or through removal from office for one of the reasons referred to in section 50 (1) no. 7, then the *Land* department of justice may issue the former notary with permission to continue to use the official designation with the addition of '*außer Dienst (a.D.)*' (retired (rtd)). The same shall apply to a lawyer commissioned as notary if the office has expired on account of being discharged (section 48) or reaching retirement age (section 48a) or if that lawyer commissioned as notary has, upon waiving the rights resulting from admission to the legal profession, been given permission to continue to use the designation of '*Rechtsanwalt*' or '*Rechtsanwältin*' (lawyer).

(3) The *Land* department of justice may withdraw or revoke permission to use the designation of '*Notar außer Dienst*' or '*Notarin außer Dienst*' (retired notary) if circumstances subsequently become known or arise which would result in the expiry of the notary's office for the reasons referred to in section 47 no. 5 and no. 7 or in section 50 (1) nos. 1 to 6, 8 and 9. Where the former notary was admitted to the legal profession, the authorisation referred to in subsection (2) sentence 1 shall lapse if the notary is no longer permitted to use the designation of '*Rechtsanwalt*' or '*Rechtsanwältin*' after his or her admission has lapsed.

### **Section 53**

#### **[Taking over rooms and employees]**

(1) Where the office of a notary appointed to exercise the office as his or her main occupation has lapsed or his or her location of office has been moved, another notary who is already established at the original location of office shall require the permission of the *Land* department of justice to be able to move his or her office into the rooms occupied by the notary leaving office or to take on an employee in his or her own offices who had a particular relationship of trust with the notary. Permission may only be refused if this is necessary in the interest of the administration of justice.

(2) The validity of legal acts concluded on the occasion of the taking over or hiring of employees shall not be affected by a breach of the provision of subsection (1).

### **Section 54**

#### **[Suspension from office]**

(1) A notary may be suspended from office by the supervisory authority

1. if the supervisory authority's adult guardianship court has communicated a decision pursuant to section 308 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction;
2. if it feels that the conditions of section 50 are met;
3. if that notary has stayed outside of his or her location of office for more than two months without the consent of the supervisory authority.

An objection to and rescissory action against the suspension from office shall not have suspensive effect.

(2) A lawyer commissioned as notary may also be suspended from office without the disciplinary court instituting disciplinary proceedings if lawyers' disciplinary proceedings have been instituted under the Federal Code for Lawyers. The provisions on suspension from office following institution of disciplinary proceedings shall apply accordingly. Subsection (1) sentence 2 shall apply accordingly.

(3) Where a lawyer commissioned as notary is suspended from the office of notary following the institution of disciplinary proceedings, the disciplinary court may ban him or her from practising or representing clients (section 150 of the Federal Code for Lawyers) if it is to be expected that the disciplinary proceedings will lead to a decision to dismiss him or her (section 97 (1) sentence 1 no. 3).

(4) The effects of suspension from office arise by operation of law

1. where a notary is ordered into remand detention in criminal proceedings: for the duration of the remand detention;
  2. where a lawyer commissioned as notary has been banned from practising and representing clients pursuant to section 150 of the Federal Code for Lawyers or banned from representing clients in civil-law matters pursuant to section 114 (1) no. 4 of the Federal Code for Lawyers: for the duration of the ban;
  3. where an order is issued against a lawyer commissioned as notary to withdraw or revoke admission to the legal profession pursuant to section 14 of the Federal Code for Lawyers with immediate enforcement: from the time of service of the order throughout its effective period.
- (5) The provisions on the suspension from the office of notary following the institution of disciplinary proceedings shall remain unaffected.

### **Section 55**

#### **[Safe custody of files and official acts following suspension from office]**

- (1) If, in the event of a notary being suspended from office, no deputy has been appointed for that notary, then that notary's files and books, as well as his or her official seal, stamp and official sign shall be deposited with the local court for safe custody for the duration of the suspension from office. Section 45 (2), (4) and (5) shall apply accordingly.
- (2) The notary shall refrain from undertaking any official acts throughout the duration of the suspension from office. A breach shall, however, not affect the validity of the official act. The notary may no longer effect official functions under section 23.

### **Section 56**

#### **[Administrator for notary]**

- (1) Where the office of a notary who has been appointed to exercise that office as a main occupation has expired or that notary's location of office has been moved or, in the case referred to in section 8 (1) sentence 2, a notary appointed to exercise the office as a main occupation does not personally exercise the office, a trainee notary or another person qualified to hold the office of notary shall as a rule be entrusted with temporarily exercising the office of notary (administrator for a notary; *Notariatsverwalter*).
- (2) Where a lawyer commissioned as notary leaves office on account of the expiry of the office, an administrator for a notary may be appointed in that lawyer's place to wind up the notarial business for a period of up to one year if this is felt to be necessary. In justified exceptional cases this period may be extended beyond one year. The administrator for a notary is to be authorised to exercise new official functions within the first three months. Where a liquidator is appointed to wind up a law office, the liquidator may also be entrusted with winding up the notarial business in the capacity as administrator for a notary.
- (3) Where a notary has temporarily resigned from office under section 48c, an administrator shall be appointed for the duration of the resignation from office, at most for one year.
- (4) Where a notary has been provisionally removed from office, an administrator for a notary may be appointed if the appointment of a deputy (section 39 (2) sentence 1) does not appear expedient.
- (5) Trainee notaries shall be obliged to take on the office of administrator for a notary.

### **Section 57**

#### **[Administrator for notary's duties, certificate of appointment]**

- (1) Unless otherwise provided, administrators for a notary shall be subject to the same provisions which are applicable to notaries.
- (2) Administrators for a notary shall be appointed by the *Land* department of justice, after having heard the chamber of notaries, by delivery of a certificate of appointment. Where an administrator has not already been sworn in as a notary, the oath (section 13) shall be sworn before the president of the regional court before taking over the office. Section 40 (1) sentence 3 shall apply accordingly.

## **Section 58**

### **[Continuing official business, fees]**

(1) An administrator for a notary shall take over the files and books of that notary whom he or she has been appointed to replace, as well as the documents and valuables officially deposited with that notary; if the files and books have already been deposited in safe custody with the local court when an administrator for a notary is appointed (section 51 (1) sentence 1), these shall generally be returned.

(2) Administrators for a notary shall continue the official business which the notary had already begun. They shall be entitled to take receipt of those fees which become due after they have taken over the notary's official business. However, in the relationship with the party liable to pay the fees, the administrator must allow those advances paid to the notary before he or she took over the office to be set off.

(3) Insofar as the notary who has left office or his or her legal successor is entitled to the fees, it is for the administrator for a notary to issue an enforceable copy of the cost calculation (section 89 of the Court and Notary Fees Act); if the administrator refuses to issue the copy, the notary or his or her legal successor may apply for a decision from the regional court under section 127 of the Court and Notary Fees Act. If the notary has been assigned to another location of office, that notary as well as the administrator shall remain authorised to issue the enforceable copy. The administrator for a notary shall grant the notary inspection of the books and files; the notary shall bear any costs arising.

## **Section 59**

### **[Administrator for notary's remuneration]**

(1) Administrators for a notary shall conduct the office for the account of the chamber of notaries against payment of appropriate remuneration to be determined by it. Administrators shall submit monthly invoices to the chamber of notaries, unless another agreement has been reached. If they do not pay the chamber of notaries the amounts due to it, these may be collected in the same way as outstanding membership dues.

(2) The chamber of notaries may assert a right to a set-off or right of retention in respect of an administrator's remuneration only to the extent that this is attachable or it has a right to compensation on account of an intentional unlawful act.

(3) The chamber of notaries may agree a rule which differs from subsection (1) sentences 1 and 2 in general or in the individual case. Subsection (2) shall not apply in such a case.

## **Section 60**

### **[Surpluses from administration of notarial affairs]**

(1) The surpluses generated from the administration of notarial affairs for the account of the chamber of notaries must primarily be used to pay for the welfare of members of the profession and their surviving dependants.

(2) Where welfare institutions have been established pursuant to section 67 (4) no. 2, any remaining surpluses are to be paid to these institutions. Where no such welfare institutions exist, any remaining surpluses shall accrue to the chamber of notaries.

## **Section 61**

### **[Breach of official duty by administrator for notary]**

(1) In addition to the administrator for a notary, the chamber of notaries shall be liable as joint debtor vis-à-vis the injured party for a breach of official duty on the part of the administrator for a notary; in the relationship between the chamber of notaries and the administrator for a notary the latter alone shall be liable. The same shall apply insofar as an administrator for a notary is liable for breaches of official duty on the part of a deputy or of a trainee notary under section 46 or section 19 (2). Section 19 (1) sentence 2 and sentence 3 shall apply accordingly. The chamber of notaries' liability shall be limited to the amount of the minimum insurance cover of those insurances which must be taken out in accordance with subsection (2).

(2) The chamber of notaries shall take out insurance to cover itself and an administrator for a notary against losses resulting from the liability under subsection (1), and such insurance cover which must meet the requirements set in section 19a and section 67 (3) no. 3. An administrator for a notary shall also be entitled to claim against the liability insurance in his or her own name.

(3) The state shall not be liable for breaches of official duty on the part of an administrator for a notary.

### **Section 62**

#### **[Pecuniary disputes between chamber of notaries and administrator for notary]**

The regional courts alone shall be competent as regards pecuniary disputes between the chamber of notaries and an administrator for a notary concerning remuneration, invoicing (section 59) or liability for breaches of official duty, regardless of the value in dispute.

### **Section 63**

#### **[Inspection of files by chamber of notaries]**

(1) Administrators for a notary shall be obliged to present files and books, as well as the documents deposited with them in safe custody for inspection by a person commissioned by the chamber of notaries.

(2) The supervisory authority's powers of audit shall remain unaffected.

### **Section 64**

#### **[Duration and end of authority]**

(1) The office of an administrator for a notary appointed pursuant to section 56 (1) shall end when a new notary is appointed or a notary who has been suspended from office or a notary who was unable, for personal reasons, to carry out any duties pursuant to section 8 (1) sentence 2 takes over the office again. The official authority of an administrator for a notary shall continue until he or she has been informed by the *Land* department of justice that the office has ended. The *Land* department of justice may revoke the appointment prematurely for important reasons.

(2) The office of an administrator for a notary appointed pursuant to section 56 (2) shall end upon the expiry of the period for which that administrator was appointed. Subsection (1) sentence 3 shall apply accordingly.

(3) Where, after the expiry of the office of an administrator for a notary, the previous notary takes over the office again or the files and books are deposited in safe custody with the newly appointed notary pursuant to section 51 (1) sentence 2, the notary shall continue the official business which the administrator had already begun. The notary shall be entitled to take receipt of those fees which become due after he or she took over the office. However, in the relationship with the party liable to pay the fees, the notary must allow those advances paid to the administrator for a notary before he or she took over the office to be set off.

(4) After the end of the office of an administrator for a notary, the fees to which he or she is entitled shall be collected by the chamber of notaries in its own name. Sections 19, 88 to 90 and 127 of the Court and Notary Fees Act shall apply accordingly. The chamber of notaries may commission a newly appointed notary or a notary who has been reinstated in office with collecting any outstanding fees at its expense.

## **Division 7**

### **General provisions on administrative proceedings**

#### **Section 64a**

##### **[Applicability of Administrative Procedure Act, transmission of personal information]**

(1) Unless otherwise provided, the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) shall apply to administrative proceedings under this Code or under a statutory instrument issued on the basis of this Code.

(2) Courts and authorities shall transmit personal information which the transmitting agency regards as necessary for the appointment of a notary, of a deputy or administrator for a



notary, for the appointment of a trainee notary, for removal of a notary from office or discharge of a trainee notary, for withdrawing or revoking permission, authorisation or exemption, and for instituting proceedings for improper conduct or breach of official duties to the agency responsible for the decision insofar as this does not interfere with the interests of the data subject worth protecting or the public interest overrides the data subject's interest in secrecy. The data must not be transmitted if this is precluded by specific statutory regulations governing their use. Contrary to section 30 of the Fiscal Code (*Abgabenordnung*), information on the amount of outstanding tax liabilities may be transmitted in preparation for removal from office pursuant to section 50 (1) no. 6 or no. 8; the competent agency may use the transmitted tax data only for the purpose for which they were transmitted.

## **Part 2**

### **Chambers of notaries and Federal Chamber of Notaries**

#### **Division 1**

#### **Chambers of notaries**

##### **Section 65**

##### **[Formation and seat]**

(1) The notaries who are appointed within the district of a higher regional court constitute a chamber of notaries. The *Land* government or an agency determined by it by way of a statutory instrument may, however, determine, by way of a statutory instrument, that several higher regional court districts, or parts of higher regional court districts, or one higher regional court district together with parts of another higher regional court district constitute the district of a chamber of notaries.

(2) A chamber of notaries has its seat at the place of the higher regional court. In the case referred to in subsection (1) sentence 2, the *Land* government or the agency determined by it shall determine the seat.

##### **Section 66**

##### **[By-laws, state supervision, report]**

(1) A chamber of notaries is a corporation under public law. A chamber of notaries' by-laws and their amendments shall be adopted by the assembly of the chamber (*Kammerversammlung*); they shall require the approval of the *Land* department of justice and are to be published in a gazette designated by it.

(2) The *Land* department of justice shall exercise state supervision over the chambers of notaries. Such supervision shall be limited to ensuring compliance with the law and with the by-laws, in particular the duties assigned to the chambers of notaries.

(3) At the end of the business year each chamber of notaries shall submit to the *Land* department of justice a report on its activities in the past year and on the situation regarding those notaries and trainee notaries who are active in the chamber of notaries' area of responsibility.

##### **Section 67**

##### **[Tasks]**

(1) A chamber of notaries represents its member notaries collectively. It shall exercise oversight over the honour and reputation of its members, support the supervisory authorities in their activities, promote the administration of the law of notaries, and ensure that notaries and trainee notaries exercise their profession conscientiously and fairly.

(2) A chamber of notaries shall be responsible for determining, in guidelines, details of the official duties and other duties of its members under statutory provisions and statutory instruments issued on their basis. Section 66 (1) sentence 2 shall apply accordingly. The guidelines may contain more detailed regulations on

1. maintaining the independence and impartiality of a notary,

2. the conduct to be observed pursuant to section 14 (3),
3. safeguarding third-party asset-related interests,
4. complying with the duty to exercise the office in person,
5. the establishment, conduct, continuation and end of a joint practice or other admissible forms of professional cooperation, and on the sharing of business premises,
6. the types of precautions to be taken pursuant to section 28,
7. conduct to be observed pursuant to section 29, in particular in relation to information concerning official functions, conduct in the public domain, business papers, the use of titles and other professional designations, the inclusion of the notary's name in directories, and the affixing of office signs and name plates under the provisions of *Land* law,
8. employing and training members of staff,
9. the principles to be observed when recording documents outside of the notarial jurisdiction and office,
10. the required extent of continuing professional training,
11. the specific professional duties in relation to other notaries, courts, authorities, lawyers and other providers of advice to clients.

(3) In addition to the tasks assigned to chambers of notaries by law, it shall be incumbent upon them to

1. make available the funding needed for the continuing professional training of notaries, their assistants and trainee notaries, and for other burdens carried jointly by the profession;
2. regulate the training and examination of notarial assistants;
3. conclude insurance contracts to supplement the professional indemnity insurance under section 19a in order to also insure against those breaches of duty which are not covered by those insurance contracts taken out pursuant to section 19a because the resulting financial losses exceed the insurance cover or because they are excluded from insurance protection under general insurance conditions on account of being intentional acts. The sum insured for each insured notary and for each insured event under these insurance contracts must amount to at least 250,000 euros for damage resulting from deliberate breaches of duty and at least 500,000 euros for damage resulting from other breaches of duty; the benefits paid by the insurer for all losses caused by a notary in one insurance year may, however, be limited to four times the amount of the minimum insurance cover. Section 19a (7) shall apply accordingly. The *Land* governments or the agencies determined by them by way of a statutory instrument shall be authorised, by way of a statutory instrument and taking account of the possible damages, to determine amounts up to which the insurer's overall benefits may be limited in the insurance contracts for all damage caused by all insured notaries in one insurance year;
4. manage notarial data and technical access authorisations to the Electronic Document Archive and the Electronic Database of Notarial Files;
5. confirm a person's status as notary or administrator for a notary and other official or professional details when issuing qualified certificates; the chamber of notaries may require that such qualified certificates be blocked.

(4) Chambers of notaries may take on other tasks corresponding to the purpose of their establishment. They may, in particular, maintain

1. welfare institutions,
  2. pension funds as further regulated under the provisions of *Land* law,
  3. facilities alone or together with other chambers of notaries whose purpose is to conclude, as the insurer, those insurance contracts listed under subsection (3) no. 3 to cover those risks resulting from breaches of duty which have been caused by the intentional acts of notaries,
  4. facilities alone or together with other chambers of notaries which enable benefits to be paid without any legal obligation for the following:
    - a) damage due to intentional acts by notaries which are not covered by insurance contracts under subsection (3) no. 3,
    - b) damage arising on account of documents held in safe custody which can no longer be located and which are not covered by section 19a or by insurance contracts under subsection (3) no. 3 and for which the injured party cannot obtain compensation by any other reasonable means; the amount of the payment is limited to 500,000 euros per document.
- (5) Chambers of notaries shall, further, render expert opinions when requested to do so by the *Land* department of justice, a court or an administrative authority in matters relating to notaries.
- (6) The *Land* department of justice shall immediately inform the chamber of notaries of
1. the appointment of a notary, administrator for a notary or deputy notary, in each case stating the start and duration of the appointment,
  2. the expiry of the office of a notary or of an administrator for a notary and the revocation of the appointment of a deputy notary,
  3. any temporary removal from office,
  4. the transfer of a notary's office,
  5. assignment of competence for safe custody to another pursuant to section 51 (1) sentence 2.
- (7) (repealed)

#### **Section 68** **[Constituent bodies]**

The constituent bodies of a chamber of notaries are its executive board and the assembly of the chamber.

#### **Section 69** **[Executive board]**

- (1) Notwithstanding the provision of section 70, the executive board shall exercise the powers of a chamber of notaries. In urgent cases it shall take a decision instead of the assembly of the chamber, whose approval must be subsequently obtained.
- (2) The executive board comprises a president, a deputy and further members. The members of the executive board shall be elected by the assembly of the chamber for a four-year term of office.
- (3) Where notaries appointed to exercise the office as a main occupation and lawyers commissioned as notaries are appointed in the chamber of notaries' district, the president and at least half of the other members of the executive board must be notaries appointed to exercise the office as a main occupation.

### **Section 69a**

#### **[Obligation of confidentiality, professional privilege]**

(1) The members of the executive board shall be bound to maintain confidentiality vis-à-vis every person – even after they retire from the executive board – concerning those matters relating to notaries, trainee notaries, applicants for the office of notary and other persons which become known to them whilst serving on the executive board. The same shall apply to employees of the chambers of notaries and of other facilities and institutions referred to in section 67 (4) as well as to notaries and trainee notaries whose services are enlisted by the chamber of notaries or its institutions and facilities.

(2) Without having been granted permission to do so, the persons referred to in subsection (1) may not testify in court proceedings on such matters relating to notaries, trainee notaries, applicants for the office of notary and other persons which become known to them whilst serving on the executive board.

(3) Permission to testify shall be granted by the executive board of the chamber of notaries. Permission shall be refused only if this is unavoidably necessitated by concerns for the status or tasks of a chamber of notaries or the justified concerns of a person about whom facts have become known. Section 28 (2) of the Federal Constitutional Court Act (*Bundesverfassungsgesetz*) shall remain unaffected.

### **Section 69b**

#### **[Formation of sections]**

(1) The executive board may establish several sections where permitted under the chamber of notaries' rules of procedure. It shall delegate those matters to the sections which they are to manage independently.

(2) Each section must comprise at least three members of the executive board. The members of each section shall elect a chair and a deputy from amongst their midst.

(3) Before the start of each calendar year the executive board shall determine the number of sections and their members, shall delegate business to the sections and determine the members of the individual sections. Each member of the executive board may be a member of several sections. These arrangements may be altered in the course of the year only if this becomes necessary on account of a section's heavy workload or as a result of new members joining a section or individual members being unable to carry out their duties on a permanent basis.

(4) The executive board may authorise the sections to hold their meetings somewhere other than the place where the chamber of notaries has its seat.

(5) Within their respective area of competence the sections have the same rights and duties as the executive board.

(6) The executive board shall decide in lieu of a section if it deems this to be appropriate or if the section or its chair makes an application therefor.

### **Section 70**

#### **[President's tasks]**

(1) The president represents the chamber of notaries both in and out of court.

(2) The president facilitates the course of business of the chamber of notaries and of the executive board.

(3) The president chairs the meetings of the executive board and of the assembly of the chamber.

(4) Further tasks may be assigned to the president under the by-laws.

### **Section 71**

#### **[Assembly of chamber]**

(1) The assembly of the chamber shall be convened by its president.

(2) The president must convene the assembly of the chamber once a year. The president must, further, convene the assembly of the chamber if one tenth of the members make a

written application therefor and must indicate the matter which is to be dealt with at the assembly.

(3) The assembly of the chamber shall be convened at least two weeks ahead of the date on which it is to be held, in writing or by public invitation in the publications designated in the by-laws and indicating the agenda. The date on which the invitation is sent out and the date of the assembly of the chamber shall not be included when calculating this convening period. In urgent cases the president may convene the assembly of the chamber at shorter notice.

(4) In particular, the assembly of the chamber shall be responsible for

1. adopting the chamber of notaries' by-laws pursuant to section 66 (1) sentence 2;
2. adopting the guidelines pursuant to section 67 (2);
3. determining the amount and due date of the membership dues;
4. approving the funds needed to cover expenses associated with matters of common interest;
5. auditing the executive board's accounts of the chamber of notaries' receipts and expenditures and the administration of its assets, and approving these accounts.

#### **Section 72** **[Enactment of by-laws]**

Further details concerning a chamber of notaries' constituent bodies and their competences shall be laid down in the by-laws.

#### **Section 73** **[Membership dues]**

- (1) A chamber of notaries shall levy membership dues from the notaries insofar as this is necessary to fulfil its tasks.
- (2) Outstanding membership dues may be collected on the basis of a request for payment issued by the president of the chamber of notaries together with a certificate of enforceability and the official seal of the chamber of notaries pursuant to the provisions applicable to the enforcement of judgments in civil-law disputes.

#### **Section 74** **[Right to information]**

- (1) A chamber of notaries may, in the exercise of its powers, require notaries and trainee notaries to provide information, to present books and files, and to appear in person before its competent constituent bodies. A chamber of notaries shall be authorised to pass on to the facilities and institutions referred to in section 67 (4) those insights which it gains therefrom insofar as these are needed by the facilities and institutions in the fulfilment of their tasks.
- (2) After issuing a prior written warning, a chamber of notaries may impose a penalty payment – even more than once – in order to prompt a notary or trainee notary to fulfil the duties laid down in subsection (1). The penalty payment may not exceed 1,000 euros in each instance. The penalty payment shall accrue to the chamber of notaries; it shall be collected in the same way as outstanding membership dues.

#### **Section 75** **[Admonition, objection]**

- (1) Chambers of notaries shall be authorised to issue an admonition to notaries and trainee notaries for improper conduct of a less serious nature.
- (2) The notary or trainee notary is to be heard before an admonition is issued. An admonition may no longer be issued once more than five years have elapsed since the improper conduct.
- (3) The admonition must be reasoned. It shall be served on the notary or trainee notary. A copy of the notice shall be notified to the supervisory authority.

(4) The notary or trainee notary may file a written objection to the notice with the executive board of the chamber of notaries within one month of service. The executive board shall decide on the objection; subsection (3) shall apply accordingly.

(5) If the objection to the admonition is rejected by the chamber of notaries' executive board, the notary or trainee notary may apply to the higher regional court, sitting as disciplinary court for notaries, for a decision. The application must be made in writing within one month of service of the decision on the objection and must be reasoned. The higher regional court shall take a final decision by order. In all other respects, the provisions of the Federal Disciplinary Act (*Bundesdisziplinargesetz*) on disciplinary proceedings before the administrative courts shall apply accordingly to the court proceedings. Insofar as the costs of the proceedings are imposed on the service employer under these provisions, the chamber of notaries shall take the place of the service employer.

(6) An admonition issued by a chamber of notaries shall be without prejudice to the supervisory authority's right to take measures pursuant to section 94 or by way of disciplinary proceedings. If the supervisory authority avails itself of this right, the authority of the chamber of notaries shall lapse; an admonition which has already been issued shall cease to be effective. If the higher regional court has, however, revoked the admonition because it has found no improper conduct, the exercise of supervisory and disciplinary authority on account of the same conduct is permissible only on the basis of such facts or evidence as were not known to the court when it gave its decision.

## **Division 2**

### **Federal Chamber of Notaries**

#### **Section 76**

##### **[Formation, seat]**

- (1) The chambers of notaries together constitute the Federal Chamber of Notaries.
- (2) The seat of the Federal Chamber of Notaries shall be determined in its by-laws.

#### **Section 77**

##### **[State supervision, by-laws]**

- (1) The Federal Chamber of Notaries is a corporation under public law.
- (2) The Federal Ministry of Justice and Consumer Protection shall exercise state supervision over the Federal Chamber of Notaries. Such supervision shall be limited to ensuring compliance with the law and the by-laws, in particular performance of those tasks which are delegated to the Federal Chamber of Notaries.
- (3) The by-laws of the Federal Chamber of Notaries and amendments thereto, which are adopted by the meeting of representatives, shall require approval by the Federal Ministry of Justice and Consumer Protection.

#### **Section 78**

##### **Tasks**

- (1) The Federal Chamber of Notaries shall fulfil the tasks assigned to it by law. It shall, in particular,
  1. determine the opinions of the individual chambers of notaries in regard to issues which affect the chambers of notaries collectively and establish, by way of joint discussions, the opinion held by the majority;
  2. bring the opinion of the Federal Chamber of Notaries to bear vis-à-vis the competent courts and authorities in matters which affect the chambers of notaries collectively;
  3. represent the chambers of notaries collectively vis-à-vis authorities and organisations;
  4. render expert opinions requested by an authority or federal body involved in the legislative process or by a federal court in matters relating to notaries;



5. make recommendations regarding the guidelines to be issued by the chambers of notaries pursuant to section 67 (2) by resolution of the meeting of representatives;
  6. draw up guidelines regarding the training of notaries' assistants;
  7. keep the Electronic Database of Notarial Files (section 78k);
  8. keep the Directory of Notaries (section 78l);
  9. set up the special electronic notarial mailboxes (section 78n).
- (2) The Federal Chamber of Notaries shall keep
1. the Central Register of Lasting Powers of Attorney (section 78a),
  2. the Central Register of Wills (section 78c),
  3. the Electronic Document Archive (section 78h).
- (3) The Federal Chamber of Notaries may fulfil other tasks corresponding to the purpose of its establishment. It may, in particular,
1. take measures which serve the provision of scientific advice to the chambers of notaries and its members, the continuing training of notaries, the training and continuing training of young professionals and notaries' assistants,
  2. manage notarial data and
  3. support electronic communication between notaries and the courts, authorities and other third parties, as well as the keeping of electronic files and other electronic data processing by notaries.

#### **Section 78a**

##### **Central Register of Lasting Powers of Attorney; authorisation to issue statutory instruments**

- (1) The Federal Chamber of Notaries, in its capacity as the authority holding the register, shall keep an automated electronic register of enduring powers of attorney and care directives. The Federal Ministry of Justice and Consumer Protection shall exercise legal supervision over the authority holding the register.
- (2) Details concerning the following may be included in the Central Register of Lasting Powers of Attorney:
1. the donor,
  2. the attorneys,
  3. the power of attorney and its content,
  4. suggestions regarding the choice of carer,
  5. wishes regarding the provision of care and
  6. the proposer.
- (3) The Federal Ministry of Justice and Consumer Protection shall regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning
1. the establishment and keeping of the Register,
  2. the disclosure of information extracted from the Register,
  3. the application for, amendment to and deletion of entries in the Register,
  4. data transmission and storage and

5. data security.

**Section 78b**  
**Information and fees**

(1) Upon request, the authority holding the register shall disclose information extracted from the Central Register of Lasting Powers of Attorney to the courts. The authority of the courts, notaries and chambers of notaries to inspect entries in the register concerning those documents which they have in their safe custody or have registered shall remain unaffected.

(2) The Central Register of Lasting Powers of Attorney shall be financed by fees levied. The authority holding the register may levy fees for the inclusion of declarations in the register. The person making the application and the person liable to pay fees owed by another shall be obliged to pay these fees. Several persons liable to pay fees shall be liable as joint and several debtors. The courts and notaries may take receipt of the fees on behalf of the authority holding the register.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, ongoing management and use of the Central Register of Lasting Powers of Attorney, including personnel and material costs. Account is thereby also to be taken of the communication channel to be used to submit declarations to be included in the register.

(4) The authority holding the register shall determine, by way of a fee schedule, the fees referred to in subsection (2) sentence 2 and the manner of their collection. The fee schedule requires the approval of the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

**Section 78c**

**Central Register of Wills; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the register, shall keep an automated electronic register concerning the safe custody of documents relating to succession and other data pursuant to section 78d. The capture and use of data shall be limited to that which is necessary in the fulfilment of the statutory tasks of the authority holding the register, the probate courts and depositary institutions. The Federal Ministry of Justice and Consumer Protection shall exercise legal supervision over the authority holding the register.

(2) The Federal Ministry of Justice and Consumer Protection shall regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning

1. the establishment and keeping of the Register,
2. the disclosure of information extracted from the Register,
3. the application for, amendment to and deletion of entries in the Register,
4. data transmission and storage and
5. data security.

(3) The statutory instrument may also regulate further details concerning the content of the notification of death referred to in section 78e sentence 1. Further, the statutory instrument may permit exceptions to

1. section 78e sentence 3 insofar as this concerns the notification of a death to the probate court;
2. the electronic notification under section 78e sentence 4;
3. the obligation to transmit information electronically pursuant to section 34a (1) and (2) of the Notarial Recording Act and section 347 (1) to (3) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

**Section 78d**  
**Content of Central Register of Wills**

(1) The Central Register of Wills shall contain

1. that information regarding the safe custody of documents relating to succession which is to be

a) transmitted by notaries pursuant to section 34a (1) and (2) of the Notarial Recording Act or by courts pursuant to subsection (4) sentence 1 and pursuant to section 347 (1) to (3) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction,

b) transferred pursuant to section 1 of the Act on the Transfer of Directories of Wills to the Central Register of Wills (*Testamentsverzeichnis-Überprüfungsgesetz*),

2. those notifications which are to be transferred pursuant to section 9 of the Act on the Transfer of Directories of Wills to the Central Register of Wills.

The data stored are to be deleted after the end of the 30th calendar year following the notification of a death.

(2) Documents relating to succession shall be wills, inheritance contracts and all documents with declarations which might have a bearing on succession, in particular termination agreements, notices of repudiation and contestation of a will, contracts waiving inheritance and bequests, pre-nuptial and pre-registration agreements, and choices of law. Information regarding safe custody shall be that information which is needed to locate documents relating to succession.

(3) Documents relating to succession can only be registered if they have been

1. publicly recorded or

2. taken into official safe custody.

(4) Where a court settlement concerns a document relating to succession within the meaning of subsection (2) sentence 1, the court shall without delay transmit the information regarding safe custody to the authority holding the Central Register of Wills in accordance with the provisions of the statutory instrument issued pursuant to section 78c (2) and (3). The testator shall notify the court of the data required for registration.

**Section 78e**  
**Notification of death**

It is for the competent registry office to notify the authority holding the register of the death, the declaration of death or a court's finding of the time of death of a person (notification of death). The authority holding the register shall thereupon examine whether the Central Register of Wills contains details pursuant to section 78d (1) sentence 1. Insofar as is necessary in the fulfilment of the tasks of the probate court and of the offices where documents have been deposited in safe custody, the authority holding the register shall without delay notify

1. the competent probate court of the death and any information in accordance with section 78d (1) sentence 1 and

2. the offices where documents have been deposited in safe custody of the death and any information regarding safe custody in accordance with section 78d (1) sentence 1 no. 1.

Notification shall be made in electronic form.

**Section 78f**  
**Information extracted from Central Register of Wills**

(1) Upon request, the authority holding the register shall provide

1. courts with information extracted from the Central Register of Wills and
2. notaries with information regarding safe custody extracted from the Central Register of Wills.

Information shall only be disclosed if the courts and notaries require it in the fulfilment of their tasks. Whilst the testator is alive, information may be disclosed only with the consent of that testator.

(2) The authority of the courts, notaries and chambers of notaries to inspect the entries in the register concerning documents which have been deposited in safe custody with them or which they have registered shall remain unaffected.

(3) The authority holding the register may support the courts in investigating documents which they are holding in official safe custody but regarding which no entry has been made in the Central Register of Wills due to there being no note of safe custody. The information regarding safe custody of the dispositions mortis causa determined on the basis of sentence 1 shall be reported to the Central Register of Wills pursuant to section 347 (1) sentences 1 to 3 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

#### **Section 78g**

##### **Fees levied in respect of Central Register of Wills**

(1) The Central Register of Wills shall be financed by fees levied. The authority holding the register may levy fees for

1. recording declarations in the Register of Wills and
2. disclosing information extracted from the Register of Wills in accordance with section 78f (1) sentence 1 no. 2.

(2) The following shall be obliged to pay fees:

1. the testator in the case referred to in subsection (1) sentence 2 no. 1,
2. the person occasioning the disclosure of information in the case referred to in subsection (1) sentence 2 no. 2.

Several persons liable to pay fees shall be liable as joint and several debtors. The courts and notaries may take receipt of the fees on behalf of the authority holding the register.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, ongoing management and use of the Central Register of Wills, including personnel and material costs. Account shall thereby also be taken of the costs of transferring the note of safe custody under the Act on the Transfer of Directories of Wills to the Central Register of Wills. No account is to be taken of the costs arising on account of including notifications made in accordance with section 9 (1) and (3) of the Act on the Transfer of Directories of Wills to the Central Register of Wills.

(4) The authority holding the register shall determine, by way of a fee schedule, the fees referred to in subsection (1) sentence 2 and the manner of their collection. The fee schedule requires the approval of the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

#### **Section 78h**

##### **Electronic Document Archive; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the document archive, shall maintain a central electronic archive which enables notaries to keep the electronic collection of documents, the directory of documents and the directory of documents in safe custody (Electronic Document Archive). The Federal Ministry of Justice

and Consumer Protection shall exercise legal supervision over the authority holding the document archive.

(2) The availability, integrity, authenticity, confidentiality and transparency of data in the directory of documents, the directory of documents in safe custody and of the documents kept electronically in the Electronic Document Archive must be guaranteed for the entire duration of the retention period. The authority holding the document archive shall take the technical and organisational measures which are necessary to guarantee in perpetuity that the electronic documents in safe custody retain their probative value without the need for the agency holding them to apply another signature.

(3) Electronic documents which are stored together in the Electronic Document Archive must be linked in such a manner that they can only be called up together. Section 42 (3) and section 49 (5) of the Notarial Recording Act shall remain unaffected.

(4) The Federal Ministry of Justice and Consumer Protection shall, by way of a statutory instrument not requiring the approval of the Bundesrat, regulate further details concerning

1. the establishment of the Electronic Document Archive,
2. the keeping and technical operation of the Electronic Document Archive,
3. data transmission and storage,
4. data security and
5. the granting and withdrawal of technical administrative and access authorisations.

#### **Section 78i**

##### **Access to Electronic Document Archive**

Access to the directory of documents, to the directory of documents in safe custody and to electronic documents kept in the Electronic Document Archive shall be reserved to the agency responsible for their safe custody. The authority holding the document archive shall take suitable technical and organisational measures in this regard.

#### **Section 78j**

##### **Fees levied in respect of Electronic Document Archive**

(1) The Electronic Document Archive shall be financed by fees levied. The authority holding the document archive may levy fees for

1. adding electronic documents to the electronic collection of documents and
2. keeping the register of documents in safe custody.

(2) The following shall be obliged to pay the fees:

1. the person obliged to pay the costs of the respective notarial act in the case referred to in subsection (1) sentence 2 no. 1, in derogation therefrom

- a) the Public Treasury in the case referred to in section 119 (1),
- b) the notary in the case referred to in section 119 (3),
- c) the chamber of notaries in the case referred to in section 119 (4),

2. the notary in the case referred to in subsection (1) sentence 2 no. 2.

Several persons liable to pay fees shall be liable as joint and several debtors. Notaries may take receipt of the fees on behalf of the authority holding the document archive.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, ongoing management and use of the Electronic Document Archive, including personnel and material costs. When calculating the fees for adding electronic documents to the electronic collection

of documents, account may be taken of the size of the electronic document. A smaller fee may be levied for certifying signatures which do not necessitate the writing of a draft.

(4) The authority holding the document archive shall determine, by way of a fee schedule, the fees referred to in subsection (1) sentence 2 and the manner of their collection. The schedule shall require approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

#### **Section 78k**

##### **Electronic Database of Notarial Files; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries shall maintain a central electronic database of files which enables notaries to keep, in electronic form, those files and directories which they are not required to deposit in the Electronic Document Archive and to store other data (Electronic Database of Notarial Files).

(2) The Electronic Database of Notarial Files shall be financed by fees levied. The Federal Chamber of Notaries may levy fees for the keeping of files and directories in electronic form and the storing of other data in the Electronic Database of Notarial Files. The person obliged to pay the fees shall be the notary.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, and ongoing management and use of the Electronic Database of Notarial Files, including personnel and material costs.

(4) The Federal Chamber of Notaries shall determine, by way of a fee schedule, the fees referred to in subsection (2) sentence 2 and the manner of their collection. The schedule shall require approval by of the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

(5) The Federal Ministry of Justice and Consumer Protection shall, by way of a statutory instrument not requiring the approval of the Bundesrat, regulate further details concerning

1. the establishment of the Electronic Database of Notarial Files,
2. the keeping and technical operation of the Electronic Database of Notarial Files,
3. data transmission and storage,
4. data security and
5. the granting and withdrawal of technical administrative and access authorisations.

#### **Section 78l**

##### **Directory of Notaries**

(1) The Federal Chamber of Notaries shall keep an electronic directory of notaries and of administrators for a notary (Directory of Notaries). Each chamber of notaries shall enter into the Directory of Notaries data on its member notaries and administrators for a notary appointed in its district. It is for the chambers of notaries to immediately make entries occasioned by notifications by the *Land* department of justice pursuant to section 67 (6).

(2) The Directory of Notaries serves the provision of information to the authorities and the courts, consumers of legal services and other persons involved in legal dealings. It further serves the fulfilment of the tasks incumbent upon the respective chambers of notaries and upon the Federal Chamber of Notaries. Anyone may inspect the Directory free of charge. Searches of the Directory shall be made possible by means of an electronic search system.

(3) The following are to be entered in the Directory of Notaries:

1. facts notified by the *Land* departments of justice pursuant to section 67 (6), including the relevant date,
2. the family name, given name(s) and former family names which the notary has used since his or her appointment,



3. the name of the person responsible for the safe custody of files which are transferred to the notary pursuant to section 51 (1) and (3),
4. the location of office, addresses of offices, and the addresses and dates relating to office hours which are held elsewhere,
5. membership of a chamber of notaries,
6. designation of the special electronic notarial mailbox,
7. telecommunications data as notified by the notary,
8. language skills, insofar as the notary has provided information thereof.

The information referred to in sentence 1 no. 1 to no. 5 is to be entered by the respective chamber of notaries, that referred to in sentence 1 no. 6 to no. 8 by the Federal Chamber of Notaries. The entries concerning administrators for a notary may also be made directly by the competent supervisory authority. The chambers of notaries, the Federal Chamber of Notaries and the supervisory authority shall each bear responsibility for those data which they enter in the Directory.

(4) Subsection (3) shall apply accordingly to administrators for a notary.

(5) Where notaries have been appointed to exercise the office in addition to their profession as lawyer, the data to be collected in regard to them may also be called up by automated procedure from the Central Register kept by the Federal Bar Association (section 31 of the Federal Code for Lawyers). The same shall apply where a lawyer has been appointed as deputy notary.

(6) Where entries made for the provision of information to the entities and persons referred to in subsection (2) sentence 1 concerning a notary's competence to keep files and directories in safe custody or in the fulfilment of other tasks of the chamber of notaries or of the Federal Chamber of Notaries are no longer required, they shall be deleted.

#### **Section 78m**

##### **Authorisation to issue statutory instruments regarding Directory of Notaries**

(1) The Federal Ministry of Justice and Consumer Protection shall, by way of a statutory instrument requiring the approval of the Bundesrat, regulate details concerning the collection of data for inclusion in the Directory of Notaries, the keeping of the Directory of Notaries and inspection of the Directory of Notaries. Unless the statutory instrument provides otherwise, the admissibility of establishing joint procedures pursuant to section 11 of the E-Government Act (*E-Government-Gesetz*) shall remain unaffected.

(2) The statutory instrument may provide or permit that further details which serve the purposes referred to in section 78l (2) sentences 1 and 2, as well as the appointment of a deputy notary and his or her activities may also be stored. Where this is the case, the statutory instrument must define the intended purpose. In particular, the right of inspection may be restricted or ruled out.

#### **Section 78n**

##### **Special electronic notarial mailbox; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries shall, by 1 January 2018, set up a personal electronic mailbox for each notary listed in the Directory of Notaries (special electronic notarial mailbox).

(2) The Federal Chamber of Notaries shall ensure that access to the special electronic notarial mailbox is only possible via a secure procedure which includes two separate layers of security. The Federal Chamber of Notaries may provide different access authorisations for notaries and other persons. It shall be authorised to delete messages stored in the special electronic notarial mailbox after an appropriate period. The special electronic notarial mailbox shall be accessible.

(3) Where an entry is made in the Directory of Notaries of the expiry of a notary's office or of his or her temporary removal from office, the Federal Chamber of Notaries shall revoke his or her access authorisation to the special electronic notarial mailbox. It shall delete the special electronic notarial mailbox as soon as it is no longer required.

(4) Subsections (1) to (3) shall apply accordingly to administrators for a notary.

(5) The Federal Ministry of Justice and Consumer Protection shall, by way of a statutory instrument requiring the approval of the Bundesrat, regulate further details concerning the special electronic notarial mailboxes, in particular details concerning

1. the establishment of the special electronic notarial mailboxes and data which need to be transmitted to that end,
2. the technical features, including accessibility, of the special electronic notarial mailboxes,
3. the keeping of the special electronic notarial mailboxes,
4. access authorisation and use of the special electronic notarial mailboxes,
5. the deletion of messages and
6. the deletion of special electronic notarial mailboxes.

#### **Section 78o** **Complaint**

(1) Unless otherwise provided under the following subsections, a complaint may be filed under the provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction against the decisions of the authority holding the register referred to in sections 78a to 78g and of the authority holding the document archive referred to in section 78j, even if these are taken on the basis of a statutory instrument or fee schedule referred to in the aforementioned provisions and regardless of the value of the complaint.

(2) The complaint must be filed with the authority which took the decision. The authority holding the register may remedy the complaint. It shall submit any complaints it does not remedy to the regional court at the seat of the Federal Chamber of Notaries for a decision.

(3) An appeal shall not be admissible.

#### **Section 79** **[Constituent bodies]**

The constituent bodies of the Federal Chamber of Notaries are the Presiding Board and the meeting of representatives (*Vertreterversammlung*).

#### **Section 80** **[Presiding Board]**

The Presiding Board comprises the President, two deputies and four further members. Four members of the Presiding Board must be notaries appointed to exercise the office as a main occupation, three must be lawyers commissioned as notary. One of the deputies must be a notary appointed to exercise the office as a main occupation, one a lawyer commissioned as notary.

#### **Section 81** **[Election of Presiding Board]**

(1) The Presiding Board shall be elected by the meeting of representatives. Each member of the meeting of representatives shall be eligible to stand for election.

(2) The members of the Presiding Board shall be elected for a four-year term of office.

Where a member retires from office prematurely, a new member shall be elected at the next meeting of representatives for the remainder of that member's term of office.

### **Section 81a**

#### **[Obligation of confidentiality]**

Section 69a shall apply accordingly to the obligation to maintain confidentiality which the members of the Presiding Board of the Federal Chamber of Notaries, the notaries and trainee notaries whose services are enlisted by it, and the employees of the Federal Chamber of Notaries are under.

### **Section 82**

#### **[Presiding Board's tasks]**

- (1) The President shall represent the Federal Chamber of Notaries in and out of court.
- (2) The President shall chair the meetings of the Presiding Board.
- (3) The Presiding Board shall each year submit to the Federal Minister of Justice and Consumer Protection a written report on the activities of the Federal Chamber of Notaries and of the Presiding Board. It shall, further, notify the Federal Minister of the result of the elections to the Presiding Board.

### **Section 83**

#### **[Resolutions, meeting of representatives]**

- (1) The Federal Chamber of Notaries shall regularly adopt its resolutions at the meetings of representatives.
- (2) The tasks assigned to the Federal Chamber of Notaries in section 78 (1) no. 4 shall be carried out by the Presiding Board after it has heard the meeting of representatives. In urgent cases the hearing may be waived; members are, however, to be notified without delay of any measures taken.

### **Section 84**

#### **[Representatives]**

Chambers of notaries shall be represented at the meetings of representatives by their presidents or by another member.

### **Section 85**

#### **[Convocation of meeting of representatives]**

- (1) The meeting of representatives shall be convened in writing by the President. The President shall chair the meeting of representatives. The President must convene the meeting if the Presiding Board or at least three chambers of notaries apply for its convocation. The chambers of notaries' application shall be made in writing and state the matter to be discussed at the meeting.
- (2) In urgent cases the President may convene the meeting of representatives within a shorter timeframe than is set out in the by-laws as regards convocation. In such a case, the matter concerning which a resolution is to be adopted need not be stated.
- (3) Resolutions of the meeting of representatives may also be passed in text form, unless more than three chambers of notaries object thereto.

### **Section 86**

#### **[Composition and voting]**

- (1) Each chamber of notaries has one vote at the meeting of representatives. In the case referred to in section 65 (1) sentence 2, a chamber of notaries has the same number of votes as the higher regional court districts or parts of higher regional court districts it comprises; however, a part of a higher regional court district is not to be considered if the number of notaries admitted to it is lower than the number of notaries who are admitted in a part of the higher regional court district which does not belong to the same chamber of notaries.
- (2) As many notaries may be sent to the meetings of representatives per chamber of notaries as that chamber has votes. Notaries may, further, be admitted to the meetings of representatives to present expert opinions on specific issues.

(3) Unless otherwise provided under this Code or the by-laws, the meeting of representatives shall adopt its resolutions with a simple majority of the votes cast. In the event of a tied vote, the chair shall have the casting vote; in the case of elections there shall be a drawing of lots.  
(4) The resolution shall not be implemented where a majority of at least three quarters of the representatives who are exercising their notarial office as a main occupation or of at least three quarters of the representatives who are lawyers commissioned as notaries object thereto.

#### **Section 87**

##### **[Presiding Board's reporting requirement]**

The Presiding Board shall report to the meeting of representatives on all important matters.

#### **Section 88**

##### **[Honorary capacity]**

The members of the Presiding Board and of the meeting of representatives shall perform their duties in an honorary capacity.

#### **Section 89**

##### **[By-laws]**

Further details concerning the constituent bodies of the Federal Chamber of Notaries and its powers shall be laid down in its by-laws.

#### **Section 90**

##### **[Right to information]**

The Federal Chamber of Notaries shall be authorised to request reports and expert opinions from the chambers of notaries in the fulfilment of the tasks assigned to it under this Code or its by-laws.

#### **Section 91**

##### **[Membership dues]**

- (1) The Federal Chamber of Notaries shall levy those membership dues from the chambers of notaries which are required to cover its personnel and material needs.
- (2) The amount of the membership dues shall be set by the meeting of representatives.

### **Part 3**

#### **Supervision. Disciplinary proceedings**

##### **Division 1**

##### **Supervision**

#### **Section 92**

##### **[Supervisory authority]**

The right of supervision lies with

1. the president of the regional court in respect of notaries and trainee notaries in that regional court district;
2. the president of the higher regional court in respect of notaries and trainee notaries in that higher regional court district;
3. the *Land* department of justice in respect of all notaries and trainee notaries in that *Land*.

#### **Section 93**

##### **[Powers of supervisory authorities]**

- (1) It shall be incumbent upon the supervisory authorities to regularly audit and monitor the performance of official functions and the service of trainee notaries. Additional interim audits and random checks shall be permissible without special reason. In the case of a newly

appointed notary, the first audit shall be carried out within two years of his or her taking up office.

(2) The subject matter of the audit is the proper performance of the official functions of a notary. The audit shall also cover the office premises, the keeping and safekeeping of books, inventories and files, the proper automated processing of personal data, the proper holding in safe custody of valuables, the notification in good time of when deputies are appointed, as well as the existence of professional indemnity insurance. In any case, a large number of documents and ancillary files are to be examined as well as cost calculations audited.

(3) Competence for carrying out the audit is based on the provisions enacted in that regard by the *Land* department of justice. After having heard the chamber of notaries, the supervisory authority may enlist the services of notaries to assist in conducting the audits. The services of public officials in the judicial administration may also be enlisted to examine and audit the inventories and books and to examine the cost calculations and invoicing of fees, including their collection, and items deposited in safe custody and the like; these public officials shall have no power of oversight. Where a notary's cost calculation and cost collection is already being audited by a person commissioned by the Notaries' Fund, no audit shall be necessary.

(4) Notaries shall be obliged to present for inspection and to hand over to the supervisory authority or the person commissioned by it to conduct the audit their files, inventories and books, and any documents deposited in their safe custody, to grant access to the devices used to automatically process personal data, as well as to provide the required means of accessing them. Persons with whom a notary has or had a joint practice or with whom a notary shares or shared business premises shall be obliged to provide the supervisory authority with information and to present files insofar as this is necessary to verify compliance with the prohibitions of participation. The same shall apply to third parties with whom a notary has or had a joint practice within the meaning of section 27 (1) sentence 2.

#### **Section 94**

##### **[Disapproval]**

(1) The supervisory authorities shall be authorised to express their disapproval of notaries' and trainee notaries' improper conduct and breaches of duty of a less serious nature.

Section 75 (2) and (3) sentence 1 and sentence 2 shall apply accordingly.

(2) Notaries and trainee notaries may file a complaint, in writing and within one month of service, against such expression of disapproval with the supervisory authority which expressed it. The supervisory authority may remedy the complaint. If it does not do so, the next highest supervisory authority shall decide on the complaint. The decision must be reasoned and served on the notary or trainee notary. If the complaint against the expression of disapproval is rejected, the notary or trainee notary may apply to the higher regional court, in its capacity as the disciplinary court for notaries, for a decision. Section 75 (5) sentences 2 to 4 shall apply accordingly.

(3) Expressions of disapproval shall be issued without prejudice to the right of the supervisory authorities to take disciplinary measures. If a supervisory authority avails itself of that right, the disapproval shall cease to be effective. However, if the higher regional court has revoked the disapproval because it has found no improper conduct, the exercise of the power to take disciplinary measures on account of the same conduct shall be permissible only on the basis of such facts or evidence as were not known to the court when it gave its decision.

#### **Division 2**

##### **Disciplinary proceedings**

#### **Section 95**

##### **[Disciplinary offence]**

Notaries and trainee notaries who culpably breach the official duties incumbent upon them shall be deemed to have committed a disciplinary offence.

**Section 95a**  
**[Limitation period]**

- (1) Prosecution shall no longer be permissible once more than five years have elapsed since commission of a disciplinary offence which does not justify dismissal for a definite period or on a permanent basis or dismissal from the previous location of office. This period shall be interrupted by the institution of disciplinary proceedings, the filing of a disciplinary action or the filing of an additional disciplinary action. It shall be suspended for the duration of opposition proceedings, court disciplinary proceedings or for the duration of the suspension of disciplinary proceedings in accordance with section 22 of the Federal Disciplinary Act.
- (2) Where criminal proceedings have been instituted on account of the same facts before the expiry of the time limit, the time limit shall be suspended for the duration of the criminal proceedings.

**Section 96**  
**[Applicability of Federal Disciplinary Act]**

- (1) Unless otherwise provided under this Code, the provisions of the Federal Disciplinary Act shall apply accordingly. The tasks and powers assigned to superior officials under these provisions shall be exercised by the supervisory authorities, the tasks and powers of the highest service authority by the *Land* department of justice.
- (2) A person who is qualified to hold judicial office is to be commissioned with carrying out the investigations. The court may request judicial assistance from the local court under section 25 (2) of the Federal Disciplinary Act when it comes to carrying out an examination by the court.
- (3) The provisions of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) on the participation of honorary judges which are applicable under section 3 of the Federal Disciplinary Act shall not apply. The time limits set out in section 3 of the Federal Disciplinary Act read in conjunction with section 116 (2) and section 117 (4) of the Code of Administrative Court Procedure shall be five weeks in each case.
- (4) Provision may be made under *Land* law to the effect that section 41 (1) sentence 1 of the Federal Disciplinary Act shall not apply. The *Land* governments shall be authorised to delegate the tasks and powers referred to in subsection (1) sentence 2 by way of a statutory instrument to the authorities subordinate to the *Land* department of justice. The *Land* governments may, by way of a statutory instrument, delegate this authorisation to the *Land* departments of justice.
- (5) The provisions of Title 17 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) shall apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning appointments to the higher regional court and to the Federal Court of Justice in disciplinary proceedings against notaries shall not apply.

**Section 97**  
**[Disciplinary measures]**

- (1) The following measures may be imposed in disciplinary proceedings:
1. a written reprimand (*Verweis*),
  2. a fine,
  3. dismissal.

A written reprimand and fine may be imposed in parallel.

- (2) Notaries appointed to exercise the office as a main occupation may also be dismissed from their previous location of office by way of a disciplinary measure. In such a case, the *Land* department of justice must without delay assign the notary to another location of office after the decision becomes final and after having heard the chamber of notaries. A fine may also be imposed in addition to dismissal from the previous location of office.
- (3) Lawyers commissioned as notary may also be dismissed for a definite period by way of a disciplinary measure. In such a case, re-appointment may be refused only if the lawyer



commissioned as notary is found guilty, in the meantime, of conduct which makes him or her appear unworthy of once more exercising the office of notary.

(4) A fine of up to 50,000 euros may be imposed against notaries and a fine of up to 5,000 euros against trainee notaries. If the act occasioning the fine was committed out of avarice, the fine may amount to up to double the advantages gained.

(5) In the case of a lawyer commissioned as notary, dismissal under subsection (1) sentence 1 no. 3 shall also have the consequence of disbarment from the legal profession.

#### **Section 98**

##### **[Disciplinary order, disciplinary action]**

(1) A written reprimand and a fine may be imposed by disciplinary order issued by the supervisory authority. Where the penalty is to be dismissal, dismissal from the previous location of office or dismissal for a definite period, a disciplinary action is to be brought against the notary. Section 14 (1) no. 2 of the Federal Disciplinary Act shall apply accordingly to dismissal from the previous location of office and dismissal for a definite period.

(2) The president of the regional court may only impose fines against notaries of up to 10,000 euros, against trainee notaries of up to 1,000 euros.

#### **Section 99**

##### **[Disciplinary courts]**

The disciplinary court of first instance for notaries shall be the higher regional court, the disciplinary court of second instance the Federal Court of Justice.

#### **Section 100**

##### **[Delegating tasks by statutory instrument]**

Where several higher regional courts have been established in one *Land*, the *Land* government may, by way of a statutory instrument, delegate the tasks assigned under this Code to the higher regional court in its capacity as the disciplinary court to one or several higher regional courts or the highest regional court for the districts of all or several higher regional courts if this serves to ensure consistency in court decisions. The *Land* governments may delegate these authorisations by way of a statutory instrument to their *Land* departments of justice.

#### **Section 101**

##### **[Composition of higher regional court]**

In disciplinary proceedings against notaries the higher regional court shall sit in a composition of a presiding judge, one associate judge who is a permanently appointed judge in an established post and one associate judge who is a notary.

#### **Section 102**

##### **[Appointment of judges and deputies]**

The presiding judge, who must at least be a presiding judge at the higher regional court, his or her deputies, the associate judges and their deputies shall be appointed for a five-year term of office by the president of the higher regional court from amongst the permanent members of the higher regional court. In all other respects, the provisions of the Title 2 of the Courts Constitution Act and section 6 of the Introductory Act to the Courts Constitution Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*) shall apply accordingly.

#### **Section 103**

##### **[Appointment of associate judges who are notaries]**

(1) Associate judges who are notaries shall be appointed by the *Land* department of justice. They must be appointed as notaries within the jurisdiction of the disciplinary court. They are to be taken from the list of proposed candidates which the executive board of the relevant chamber of notaries submits to the *Land* department of justice. The *Land* department of justice shall determine how many associate judges are necessary; it shall first hear the

executive board of the chamber of notaries. The list of proposed candidates drawn up by the executive board of the chamber of notaries must contain at least one and a half times the required number of notaries. Where a higher regional court covers several districts of chambers of notaries or parts of such districts, the *Land* department of justice shall allocate the number of associate judges to the districts of the individual chambers of notaries.

(2) An associate judge may not simultaneously be

1. president of one of the Funds (section 113 (3)) or a member of the executive board of a chamber of notaries, of the administrative board of one of the Funds or of the Presiding Board of the Federal Chamber of Notaries;

2. employed by a chamber of notaries, one of the Funds or the Federal Chamber of Notaries as his or her primary or secondary occupation;

3. a member of another disciplinary court (section 99).

(3) Only a notary who is at least 35 years of age and has held the office of notary for at least five years without interruption may be appointed as associate judge.

(4) A notary

1. who meets the conditions for suspension from office,

2. against whom disciplinary proceedings have been instituted or, in the case of a lawyer commissioned as notary, against whom lawyers' disciplinary proceedings have been instituted,

3. against whom public charges have been preferred for a criminal offence which may lead to him or her being found unfit to hold public office,

4. who, in disciplinary proceedings, has been issued with a written reprimand or who has incurred a fine within the last five years, or has been dismissed from the previous location of office or dismissed for a definite period within the last 10 years,

5. who, in lawyers' disciplinary proceedings, has been issued with a written reprimand or has incurred a fine within the last five years or who has been banned from representing clients (section 114 (1) no. 4 of the Federal Code for Lawyers) within the last 10 years

cannot be appointed as associate judge.

(5) Associate judges shall be appointed for a five-year term of office; they may be re-appointed after the end of their term of office. Where an associate judge retires from office prematurely, a successor shall be appointed for the remainder of that associate judge's term of office.

## **Section 104**

### **[Rights and duties of associate judges who are notaries]**

(1) Associate judges who are notaries have all the rights and duties of a professional judge for the duration of their office as associate judges. They exercise their office in an honorary capacity. They receive compensation from the Public Treasury for expenses incurred in connection with their activities, which shall amount to one and a half times the highest amount quoted in No. 32008 of the Cost Schedule annexed to the Court and Notary Fees Act. Further, they shall be entitled to reimbursement of their travel and accommodation expenses in accordance with Nos. 32006, 32007 and 32009 of the Cost Schedule annexed to the Court and Notary Fees Act.

(1a) The office of associate judge ends as soon as the office of notary expires or where a circumstance subsequently arises which precludes appointment pursuant to section 103 (2) and the associate judge consents in each case. The associate judge, the Fund and the chamber of notaries shall without delay notify the *Land* department of justice and the higher regional court of the circumstances referred to in sentence 1. It is for the first civil division of the higher regional court which is competent as disciplinary court to give a decision to

terminate the office pursuant to sentence 1 upon application of the *Land* department of justice if the member concerned has not consented thereto; subsection (2) sentence 3 and sentence 5 shall apply accordingly.

(2) An associate judge is to be relieved of the office upon application of the *Land* department of justice if

1. it subsequently becomes known that the associate judge should not have been appointed;
2. a circumstance subsequently arises which precludes the appointment;
3. the associate judge commits a gross breach of official duty.

The application shall be considered by the first civil division of the higher regional court or of the highest regional court which is competent as disciplinary court. The members of the disciplinary court (section 102) may not be involved in the decision-making. Before the decision is taken the notary and the executive board of the chamber of notaries are to be heard. The decision shall be final.

(3) The *Land* department of justice may discharge an associate judge from office upon that judge's application if he or she is prevented, for health reasons, from continuing to hold office for a not unforeseeable period of time or the member cannot for substantial personal reasons reasonably be expected to continue to hold office.

#### **Section 105**

##### **[Appeal]**

The provisions of the Federal Disciplinary Act concerning an appeal against the decisions of the administrative court shall apply accordingly to the appeal against the decisions of the higher regional court.

#### **Section 106**

##### **[Composition of Federal Court of Justice]**

In disciplinary proceedings against notaries the Federal Court of Justice shall sit in a composition of a presiding judge, two judges and two notaries as associate judges.

#### **Section 107**

##### **[Appointment of judges and deputies]**

The presiding judge, who must at least be a presiding judge at the Federal Court of Justice, his or her deputies, and the associate judges and their deputies shall be appointed for a five-year term of office by the Presiding Board of the Federal Chamber of Notaries from amongst the permanent members of the Federal Court of Justice. In all other respects, the provisions of Title 2 of the Courts Constitution Act and section 6 of the Introductory Act to the Courts Constitution Act shall apply accordingly.

#### **Section 108**

##### **[Appointment of associate judges who are notaries]**

(1) Associate judges who are notaries shall be appointed by the Federal Ministry of Justice and Consumer Protection. They are to be chosen from the list of proposed candidates which the Presiding Committee of the Federal Court of Justice submits to the Federal Ministry of Justice and Consumer Protection based on proposals made by the chambers of notaries. The Federal Ministry of Justice and Consumer Protection shall determine how many associate judges are necessary; it shall first hear the Presiding Board of the Federal Chamber of Notaries. The list of proposed candidates must contain the names of at least twice as many notaries as are required, half of whom must exercise the notarial office as a main occupation and half of whom must be trainee notaries.

(2) Section 103 (2) to (5) and section 104 (1) sentences 2 to 6 and (1a) to (3) shall apply accordingly, with the proviso that the Federal Ministry of Justice and Consumer Protection shall take the place of the *Land* department of justice and the Presiding Board of the Federal

Chamber of Notaries is also to be heard before a decision is taken to relieve an associate judge of his or her office.

(3) Notaries are honorary judges. During those sessions which they are called to participate in they have the status of professional judges.

(4) Notaries shall be bound to maintain confidentiality regarding those matters which become known to them in their capacity as associate judge. Section 69a shall apply accordingly. Permission to testify shall be granted by the President of the Federal Court of Justice.

(5) Notaries appointed as associate judges shall be called to participate in individual sessions in the order in which they appear in a list which the Chair of the Panel shall draw up before the beginning of each business year after having heard the two eldest of the notaries appointed as associate judges.

#### **Section 109**

##### **[Applicability of Federal Disciplinary Act as regards disciplinary proceedings]**

The provisions of the Federal Disciplinary Act as regards disciplinary proceedings before the higher administrative court shall apply accordingly to proceedings before the Federal Court of Justice in disciplinary proceedings against notaries.

#### **Section 110**

##### **[Type of proceedings in case of misconduct by lawyers commissioned as notaries]**

(1) Whether a decision is to be taken on misconduct by a lawyer commissioned as notary in the course of disciplinary proceedings or in lawyers' disciplinary proceedings shall be determined on the basis of whether the misconduct is primarily linked to the office of notary or to the activity of a lawyer. In case of doubt or where no such link exists, a decision is to be taken in lawyers' disciplinary proceedings in the case of a lawyer commissioned as notary, otherwise in disciplinary proceedings.

(2) Where a lawyers' disciplinary court or a disciplinary court has already declared by final and binding decision that it is competent or not competent, the other court is bound by this decision.

#### **Section 110a**

##### **[Retention period]**

(1) Entries made in the files kept on a notary concerning a written reprimand or a fine are to be deleted after 10 years, including if the two measures were imposed in parallel. The case records resulting from these disciplinary measures shall be deleted from the files and destroyed.

(2) The period shall begin to run on that day on which the disciplinary measure became incontestable.

(3) The period shall not end as long as criminal proceedings, disciplinary proceedings, lawyers' disciplinary proceedings or proceedings before a professional court are pending against a notary, as long as another disciplinary measure or measure imposed by a lawyers' disciplinary court may be taken into consideration or a judgment imposing a fine has not yet been enforced.

(4) After the expiry of the time limit, a notary shall be regarded as unaffected by disciplinary measures.

(5) Subsections (1) to (4) shall apply accordingly to admonitions issued by a chamber of notaries and for disapproval expressed by the supervisory authority. The time limit shall be five years.

(6) Entries concerning criminal convictions or other decisions in proceedings on criminal offences, regulatory offences or breaches of professional or official duties which did not lead to a disciplinary measure, admonition or disapproval shall be deleted after five years.

Subsection (1) sentence 2 and (2) and (3) shall apply accordingly.

#### **Part 4**

##### **Transitional and final provisions**

**Section 111**  
**[Competence]**

(1) Higher regional courts shall rule at first instance on public-law disputes under this Code, under a statutory instrument issued on the basis of this Code or under the by-laws of one of the chambers of notaries established under this Code, including the Federal Chamber of Notaries, unless the disputes are of a disciplinary nature or are expressly assigned to another court (administrative matters pertaining to notaries).

(2) The Federal Court of Justice shall rule on

1. an appeal on points of fact and law (*Berufung*) lodged against a judgment handed down by a higher regional court,
2. a complaint lodged under section 17a (4) sentence 4 of the Courts Constitution Act.

(3) The Federal Court of Justice shall rule at first and last instance on

1. actions relating to decisions taken by the Federal Ministry of Justice and Consumer Protection or for which the Federal Ministry of Justice and Consumer Protection is responsible,
2. the invalidity of the elections of and resolutions passed by the Federal Chamber of Notaries.

(4) The higher regional courts and the Federal Court of Justice shall rule sitting in the composition prescribed for disciplinary proceedings against notaries.

**Section 111a**  
**[Local jurisdiction]**

Local jurisdiction shall lie with that higher regional court in whose district the administrative act was issued or should be issued; the same shall apply analogously to sovereign acts which interfere with or give rise to professional rights and duties of those concerned. In all other matters, local jurisdiction shall lie with that higher regional court in whose district the respondent has his or her place of business or, alternatively, his or her place of residence. Where several higher regional courts have been established in one *Land*, the *Land* government may, by way of a statutory instrument, issue deviating rules concerning the jurisdiction of one or several higher regional courts. The *Land* governments may, by way of a statutory instrument, delegate this authorisation to their respective *Land* departments of justice.

**Section 111b**  
**[Applicable provisions of Code of Administrative Court Procedure]**

(1) Insofar as this Code does not contain deviating provisions in respect of court proceedings, the provisions of the Code of Administrative Court Procedure shall apply accordingly. Higher regional courts shall be equal in status to higher administrative courts; section 111d shall remain unaffected.

(2) The provisions of the Code of Administrative Court Procedure concerning the participation of honorary judges and sections 35, 36 and 47 of the Code of Administrative Court Procedure shall not apply. The time limits set out in section 116 (2) and section 117 (4) of the Code of Administrative Court Procedure shall be five weeks in each case.

(3) Notaries and trainee notaries may represent themselves.

(4) In derogation from section 80b of the Code of Administrative Court Procedure, the suspensive effect of the rescissory action shall end upon an administrative act becoming incontestable.

**Section 111c**  
**[Opposing party]**

(1) Actions shall be brought against that chamber of notaries or authority

1. which issued or should issue an administrative act; the same shall apply analogously to sovereign acts which interfere with or realise professional rights and duties of those concerned;
2. whose decision is the subject matter of the proceedings.

Actions against examination decisions and other measures taken by the Examination Office shall be brought against the head of the Examination Office.

(2) In proceedings between a member of the presiding board or executive board and a chamber of notaries, the chamber of notaries is represented by one of its members, who is to be specifically appointed by the president of the competent court.

#### **Section 111d**

##### **[Appeal on points of fact and law]**

The parties involved shall have the right to file an appeal on points of fact and law against judgments, including part-judgments, judgments as to the merits of the claim and interlocutory judgments on admissibility, provided they are admitted by the higher regional court or by the Federal Court of Justice. Part 12 of the Code of Administrative Court Procedure shall apply to the appeal proceedings, with the proviso that the higher regional court shall take the place of the administrative court and the Federal Court of Justice shall take the place of the higher administrative court.

#### **Section 111e**

##### **[Legal action against elections and resolutions]**

(1) Elections and resolutions of the constituent bodies of the chambers of notaries, of the Federal Chamber of Notaries and of the Funds, excepting those concerning guidelines pursuant to section 71 (4) no. 2, may be declared invalid or null and void if they were founded on a violation of the law or by-laws, or if their content is incompatible with the law or by-laws.

(2) A legal action may be brought by the authority exercising state supervision or by a member of a chamber of notaries. An action against a resolution which is brought by a member of a chamber of notaries shall be admissible only where the member asserts that the resolution violates his or her rights.

(3) The member of the chamber of notaries must file the action within one month of the election or of the passing of the resolution.

#### **Section 111f**

##### **[Fees]**

In administrative matters pertaining to notaries, fees shall be levied in accordance with the Fee Schedule in the Annex to this Code. In all other respects, the provisions of the Court Fees Act (*Gerichtskostengesetz*) applicable to costs in proceedings before the courts of the administrative jurisdiction shall apply accordingly, unless otherwise provided under this Code.

#### **Section 111g**

##### **[Assessment of value in dispute]**

(1) The value in dispute is assessed in accordance with section 52 of the Court Fees Act. The assessment shall be made *ex officio*.

(2) In proceedings concerning an action for the appointment of a notary or the appointment of a trainee notary, removal from office, dismissal or dismissal from a previous location of office or discharge from service as trainee notary, the value in dispute shall be assumed to be 50,000 euros. The court may determine a higher or a lower value, taking account of the circumstances of the individual case, in particular the extent and importance of what is at stake, as well as the claimant's asset and income situation.

(3) The assessment shall be non-appealable; section 63 (3) of the Court Fees Act shall remain unaffected.



### **Section 111h**

#### **[Legal redress for excessive length of proceedings]**

The provisions of Title 17 of the Courts Constitution Act shall apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning the composition of the higher regional court and of the Federal Court of Justice in administrative matters pertaining to notaries shall not apply.

### **Section 112**

#### **[Delegation of powers]**

The *Land* governments shall be authorised to delegate, by way of a statutory instrument, the tasks and powers accorded to the *Land* departments of justice under this Code to the authorities subordinate to them. The *Land* governments may, by way of a statutory instrument, delegate this authorisation to the *Land* departments of justice.

### **Section 113**

#### **[Notaries' Fund and Notaries' Fund for the Five Eastern Länder]**

(1) The Notaries' Fund (*Notarkasse*) is a public-law institution with legal capacity of the Free State of Bavaria. It has its seat in Munich. Its area of activity covers the Free State of Bavaria and the district of Zweibrücken Higher Regional Court. It has an official seal. It shall be subject to the legal supervision of the Bavarian State Ministry of Justice, which shall exercise supervision based on more detailed agreement reached between the involved departments of justice. The budget and financial management of the Notaries' Fund shall be audited by the Highest Bavarian Audit Institution under the provisions of the Bavarian Budget Code (*Bayerische Haushaltsordnung*).

(2) The Notaries' Fund for the Five Eastern Länder (*Ländernotarkasse*) is a public-law institution with legal capacity of the Free State of Saxony. It has its seat in Leipzig. Its area of activity covers the districts of the chambers of notaries in Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia. It has an official seal. It shall be subject to the legal supervision of the State Ministry of Justice of Saxony, which shall exercise its supervision based on more detailed agreement reached between the involved departments of justice. The budget and financial management of the Notaries' Fund for the Five Eastern Länder shall be audited by the Audit Institution of Saxony under the provisions of the Budget Code of Saxony (*Sächsische Haushaltsordnung*).

(3) The Notaries' Fund and the Notaries' Fund for the Five Eastern Länder (the Funds) shall be responsible for

1. supplementing the professional income of notaries insofar as this is necessary to maintain the proper preventive administration of justice;
2. providing for notaries who have retired upon reaching retirement age or on account of being unable to discharge their office, for trainee notaries who are unable to undertake their service, and for surviving dependants, whereby the amount of the provision is calculated independently of the contributions paid and in accordance with the pensionable service time, including credited and supplementary periods;
3. providing uniform insurance cover for notaries pursuant to section 19a and chambers of notaries pursuant to section 61 (2) and section 67 (3) no. 3;
4. promoting the continuing academic and practical training of notaries and trainee notaries, and the professional training of staff employed by notaries, including conducting examinations;
5. making available the required funding to the chambers of notaries established in the areas covered by the Funds;
6. paying the salaries of trainee notaries on behalf of the chambers of notaries;

7. managing the finances of the notarial offices taken on by an administrator for a notary on behalf of the chambers of notaries;

8. rendering expert opinions under the law governing notarial costs when requested by a *Land* department of justice, a court or an administrative authority in the areas of activity of the Funds.

(4) The Funds may take on further tasks corresponding to the purpose for which they were established. In particular, they may

1. employ qualified staff who are assigned to notaries in the areas of activity of the Funds for the provision of services,

2. maintain facilities and institutions within the meaning of section 67 (4) no. 3 either alone or together with the other of the two Funds or the chambers of notaries,

3. conclude follow-on insurance over and above subsection (3) no. 3,

4. take on the centralised execution of administrative tasks of individual notarial offices, thereby participating voluntarily to the exclusion of the realisation of profits against reimbursement of costs.

(5) Tasks assigned to the chambers of notaries may be delegated by the *Land* departments of justice to the Funds with the consent of the chambers of notaries and of the Funds.

(6) Notaries shall be obliged to employ those staff assigned to them for the provision of a service who are in an employment relationship with the Funds.

(7) The procedural provisions applicable to civil-servant salaries shall apply accordingly to the pension and salary claims established under subsection (3) no. 2 and no. 6 against the Funds.

(8) The constituent organs of each Fund are its president and administrative board.

(9) The presidents shall represent their Fund in and out of court. The presidents shall manage the business of their Fund and shall be responsible for seeing to those matters which are not incumbent upon the administrative board. The presidents shall chair the meetings of the administrative board and enforce its resolutions.

(10) The president of the Notaries' Fund shall be elected for a four-year term of office by the notaries in the area of activity of the Notaries' Fund. The president of the Notaries' Fund for the Five Eastern Länder shall be elected for a four-year term of office by the administrative board of the Fund. The presidents must be notaries in the area of activity of their Fund and may not simultaneously be a member of the administrative board.

(11) In particular, the administrative boards shall take decisions in regard to

1. by-laws and administrative provisions,

2. the budget and adapting expenditure to budget needs,

3. the amount of the salaries paid to trainee notaries,

4. the principles applicable to the training, examination and hiring of qualified staff,

5. determining the total number of and the principles applicable to assigning qualified staff to notaries,

6. the principles on which the Funds' investments are to be based.

The administrative boards shall pass their resolutions with a simple majority of the votes cast, unless otherwise provided under the by-laws.

(12) The members of the administrative board of the Notaries' Fund shall be elected for a four-year term of office by the notaries in the respective higher regional court districts in the area of activity of the Notaries' Fund. The notaries in a higher regional court district shall elect two members each to the administrative board. If the number of inhabitants in a higher

regional court district exceeds 2 million, the number of members of the administrative board from that higher regional court district shall increase by one member per 2 million inhabitants or parts thereof. The members of the administrative board must be notaries with their location of office in the district of the relevant higher regional court.

(13) The members of the administrative board of the Notaries' Fund for the Five Eastern Länder shall be elected for a four-year term of office by the notaries in the respective chambers of notaries in the area of activity of the Notaries' Fund for the Five Eastern Länder. The notaries in a chamber of notaries shall elect two members each to the administrative board; if the number of inhabitants in the district of a chamber of notaries exceeds 3 million, three members are to be elected. The members of the administrative board must be notaries with their location of office in the district of the relevant chamber of notaries.

(14) Section 69a shall apply accordingly to the constituent bodies and staff of the Funds. The administrative boards may exempt them from the obligation of confidentiality. It is for the administrative boards to grant permission to testify in court proceedings.

(15) The Funds are to be consulted before notarial offices are advertised and withdrawn and before trainee notaries are appointed in the area of activity of the Funds.

(16) Before adopting their budget, the chambers of notaries in the areas of activity of the Funds shall consult the Funds. An advisory board shall be formed at each of the Funds to discuss the matters referred to in subsection (3) no. 5, to which each chamber of notaries in the areas of activity of the Funds seconds one member and the administrative board seconds the same number of members. The presidents of the Funds shall chair the meetings of the advisory boards. The Funds shall not be bound by the vote of the advisory boards.

(17) The Funds shall impose charges on notaries based on the relevant by-laws on charges insofar as this is necessary in the fulfilment of their tasks. Assets may be formed to safeguard those obligations which result from the Funds' tasks. The amount of the charges shall be based on each notary's ability to pay. The charges may also be graduated according to the sum of the fees to be levied by each notary. The by-laws on charges may determine allowances and fees which are exempt from the duty to pay a charge. Further, it shall regulate

1. the basis for assessing the charges,
2. the amount, assessment and due date of the charges,
3. the procedure for collection,
4. a notary's ancillary duties under tax law,
5. the deferment of and interest on the charges owing, and late payment fines and securities,
6. whether and in what amount the salaries of trainee notaries (section 7 (4) sentence 4) or of qualified staff assigned to a notary are to be reimbursed.

If no by-laws relating to charges have been adopted, the supervisory authority may provisionally set the charges. Outstanding charges may be collected on the basis of requests for payment issued by the president together with a certificate of enforceability pursuant to the provisions applicable to the enforcement of judgments in civil matters. The Funds may verify whether the notary is fulfilling the duty to pay charges, including the underlying cost calculations and cost collection. Notaries must permit the person commissioned with conducting the audit to inspect their files, documents, accounts, inventories and books, they must hand these over and supply the required information.

(18) The Funds may, in the exercise of their powers, request notaries and trainee notaries to supply information, to present books and files, and to appear in person before their president or administrative board. After issuing a prior written warning, the presidents may impose a penalty payment – even more than once – in order to prompt notaries and trainee notaries to

fulfil these obligations. The penalty payment may not exceed 1,000 euros in each instance. The penalty payment shall accrue to the Fund; it shall be recovered in the same way as outstanding charges.

(19) In all other respects, the tasks and legal relations of the Funds, their constituent organs and their competences shall be determined under the by-laws. The adoption and amendment of the by-laws and the by-laws relating to charges shall require approval by the supervisory authority and publication in order to be effective. Publication in the case of the Notaries' Fund shall be made in the Official Gazette of the Chamber of Notaries of Bavaria and of the Notaries' Fund. Publication in the case of the Notaries' Fund for the Five Eastern Länder shall be made in the Official Gazette of the Notaries' Fund for the Five Eastern Länder.

### **Section 113a (repealed)**

### **Section 113b**

#### **[Chambers of notaries outside of Funds' areas of activity]**

Chambers of notaries outside the areas of activity of the Notaries' Fund and of the Notaries' Fund for the Five Eastern Länder in whose area of responsibility notaries are appointed to exercise the office as a main occupation may

1. take measures to provide the necessary support to the incumbents of newly-occupied notarial offices;
2. levy graduated membership dues from notaries pursuant to section 73 (1) based on each notary's ability to pay; the business figures and the sum of costs levied by a notary may be used, either individually or taken together, as the assessment basis;
3. levy extraordinary membership dues from a notary who does not continue a joint practice with a successor in office.

### **Section 114**

#### **[Special provisions applicable to Baden-Württemberg]**

(1) Notaries shall be appointed in Baden-Württemberg in accordance with section 3 (1). The special provisions of sections (2) to (7) shall also apply to Baden-Württemberg.

(2) Anyone who, on 31 December 2017, was employed as a notary by the *Land* of Baden-Württemberg or who, as a deputy notary within the meaning of the Baden-Württemberg Act on Non-Contentious Jurisdiction (*Badenwürttembergisches Landesgesetz über die freiwilligen Gerichtsbarkeit*) of 12 February 1975 (Law Gazette for Baden-Württemberg, p. 116), as last amended by Article 4 of the Act of 21 April 2015 (Law Gazette for Baden-Württemberg, p. 281), in the version applicable on 31 December 2017, was working in the Notarial Recording and Preventive Administration of Justice departments within a state notarial office and who had, at his or her own request, been released from employment by the *Land* of Baden-Württemberg as at midnight on 31 December 2017, shall be regarded as appointed as a notary within the meaning of section 3 (1) on 1 January 2018. The *Land* departments of justice shall issue a certificate of appointment as proof thereof. Section 13 shall apply accordingly.

(3) The notaries referred to in subsection (2) shall continue to conduct the notarial business of the divisions and departments in the state notarial offices of which they were in charge on 31 December 2017 in their capacity as notary appointed pursuant to section 3 (1). The *Land* of Baden-Württemberg shall continue to be entitled to cost claims under the previously applicable provisions of *Land* law, including transitional provisions, to the extent which a notary would be entitled in relation to an administrator for a notary pursuant to section 58 (2) sentence 2. The notaries referred to in subsection (2) shall take over the notarial files and books and the official documents and valuables entrusted to them which were kept in these divisions and departments or had been handed over to them. Up until 31 December 2019,

the notaries referred to in subsection (2) may, pursuant to section 51 (1), deposit files and books for entire years and the officially deposited documents in that regard which they no longer require in the fulfilment of their tasks.

(4) Notarial business of the divisions and departments of state notarial offices which must be continued pursuant to subsection (3) and has not yet been completed on 31 December 2017 shall be wound up by notarial liquidators (*Notariatsabwickler*). Specific details regarding the office of notarial liquidator shall be set out in *Land* legislation.

(5) Persons who were appointed as notary by the *Land* of Baden-Württemberg on 31 December 2017 or who met the conditions for appointment as district notary and who apply to be appointed as notary in accordance with section 3 (1) shall be equal to applicants who have served for three years as a trainee notary and are trainee notaries in the service of the *Land* of Baden-Württemberg. Section 5 sentence 1 shall thus not apply. Section 6 (3) sentence 1 and sentence 2 shall apply, with the proviso that account is also to be taken of the applicant's professional background, especially performance whilst in the judicial service of the *Land*.

(6) Access to the service as trainee notary within the meaning of section 7 shall also be open to anyone who was qualified for the civil-service career of district notary on 31 December 2017. The *Land* department of justice may refrain from taking persons qualified to hold judicial office under the German Judiciary Act on to serve as trainee notaries if suitable applicants who are qualified for the civil-service career of district notary pursuant to sentence 1 are available; selection from amongst such applicants is to be based on personal and professional aptitude, taking particular account of the result of the professional examination for civil servants. Anyone who has served a three-year period as a trainee notary and is a trainee notary in the service of the *Land* of Baden-Württemberg shall be deemed to be qualified within the meaning of section 5.

(7) The supervisory authorities may also commission public officials of the *Land* of Baden-Württemberg who were employed as a notary by the *Land* of Baden-Württemberg on 31 December 2017 or who met the conditions for appointment as district notary with reviewing and monitoring the exercise of notarial duties and the services of trainee notaries.

#### **Section 115 (repealed)**

#### **Section 116**

##### **[Special provisions applicable to Baden-Württemberg, Hamburg, Rhineland-Palatinate, Mecklenburg-Western Pomerania and Lower Saxony]**

(1) Lawyers commissioned as notaries who are in the employ of the *Land* of Baden-Württemberg on 31 December 2017 shall remain in office. Upon request and after being heard by the chamber of notaries at their previous location of office, they may be appointed as notary within the meaning of section 3 (1). Section 6 (1) sentence 2, (3) sentence 1 and sentence 2, and sections 6b, 7 and 13 shall not apply. A request in accordance with sentence 2 must be submitted in writing to the *Land* department of justice by 31 December 2019. Upon appointment as notary within the meaning of section 3 (1), admission to the legal profession shall be regarded as finally revoked. The *Land* department of justice shall notify the bar association of any appointment pursuant to sentence 5.

(2) Section 3 (2) shall not apply to Hamburg and Rhineland-Palatinate. Where lawyers in those *Länder* were exercising the office of notary as a secondary occupation on 1 April 1961, matters are to be left as they are.

(3) Only lawyers commissioned as notaries shall be appointed in the area referred to in Article 1 (1) of the Inter-State Treaty between Mecklenburg-Western Pomerania and Lower Saxony on the Restructuring of Communities in the Former Amt Neuhaus and Other Areas to Lower Saxony (*Staatsvertrag zwischen den Ländern Mecklenburg-Vorpommern und Niedersachsen über die Umgliederung der Gemeinden im ehemaligen Amt Neuhaus und anderer Gebiete nach Niedersachsen genannten Gebiet*).

### **Section 117**

#### **[Joint higher regional court for several *Länder*]**

Where a joint higher regional court has been established for several *Länder*, the following shall apply:

1. The *Land* department of justice in the *Land* in which the higher regional court does not have its seat may delegate to another judge the powers accorded to the president of a higher regional court under this Code.
2. The notaries of each *Land* shall constitute a chamber of notaries. Section 86 (1) sentence 2 shall not apply.

### **Section 117a**

#### **[Chambers of notaries in Frankfurt am Main Higher Regional Court district and eastern *Länder*]**

- (1) In derogation from section 65 (1) sentence 1, there may be two chambers of notaries in the district of Frankfurt am Main Higher Regional Court.
- (2) The chambers of notaries already established in Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia on 8 September 1998 whose seat is, in derogation from section 65 (2), not located at the seat of the higher regional court shall continue to exist.

### **Section 117b**

#### **[Degree in German Democratic Republic]**

In derogation from section 5, whoever completed his or her degree in law at a higher education institution in the German Democratic Republic by taking the state examination and completing a two-year preparatory service plus a state examination may be appointed as notary. The requirement of a two-year preparatory service plus a state examination shall be waived if the applicant worked as a notary in a state notary's office or worked as a lawyer for 10 years and can provide proof of possessing notary-specific knowledge.

### **Section 118 (repealed)**

### **Section 119 (repealed)**

### **Section 120**

#### **[Transitional provision for appointment procedures]**

Section 6 of the Federal Code for Notaries in the version applicable up until 2 April 2009 shall apply to appointment procedures which had not been completed before the entry into force of Article 1 no. 1 of the Act to Amend the Federal Notaries' Act (*Gesetz zur Änderung der Bundesnotarordnung*) (Amendment of Access to the Office of Lawyer Commissioned as Notary) of 2 April 2009 (Federal Law Gazette I, p. 696).