

NOTAR

CHRISTIAN STEER
M. JUR. (OXFORD)



Identification of Suspicious
Activities and Reporting
Obligations for Notaries under
German Law

– Practical Examples –

Algiers, 31/01/2012

Contents

- Frequency in practice of money-laundering cases in notarial certification
- Specific points for attestation of signatures
- Focus:
Identifying the parties and common practical problems
- Information on the purpose of business relations
- Identifying the economic beneficiaries
- Documentation and filing obligation
- Reporting suspicious cases

2



Frequency in practice

- Property acquisition and property finance:
 - Extremely frequent
(several hundred cases a year for each full-time notary)
- Acquisition of businesses or majority shareholdings in companies:
 - Moderately frequent.
 - Business transfers from parents to children without payment or in return for benefits are commoner than real purchases by outside parties.
- Custody services:
 - Occasionally in connection with property acquisition.
 - Very rarely not connected to other notarial certification services.
- Company start-ups:
 - Moderately frequent.

3



Attestation of signatures

- Difference between certification [*Beurkundung*] and attestation [*Beglaubigung*]:
 - Certification: notary drafts the contract and/or is responsible for its content.
 - Attestation: notary merely confirms the authenticity of a signature.
- Frequency in practice extremely high.
- Rarely has money-laundering implications as the notary has no duty to verify content.

4



Identifying the parties

- Usual method: official photographic identification
 - Passport
 - Identity card
- Problem 1: out-of-date passports/ID cards
- Problem 2: identification with drivers' licences
- Problem 3: documents held by foreign nationals in lieu of passports
- Problem 4: persons known to the notary personally
- Problem 5: parties to the contract presented by other persons

5



Information on the purpose of business relations

- The purpose is generally apparent from the document itself.
- The same applies to trust accounts [*Treuhandkonten*] where they are set up with another notarial certification.
- The case is different for isolated accounts on trust or other isolated custody work:
 - These cases are rare, but are the most problematic when it comes to money-laundering regulations.
- Let us look at two examples in practice:

6



Example 1:

- Client wants to sell concrete for € 300m to a customer in central Africa in many tranches.
 - For each tranche, the customer shall pay first into a notary's trust account. After payment, the concrete shall be delivered. After confirmation of arrival of concrete in Africa, the money shall be paid from notary to vendor.
- Reporting obligation for the notary?

7



Example 2:

- Client asks notary to take € 1m on a notary's trust account. The money shall be transferred from Iraq to a Turkish bank account by a relative of the client. The money shall then be transferred from the Turkish bank account to the notary's trust account.
 - Upon later instruction by the client, the money shall be transferred from the notary's bank account to a German bank account of the customer.
- Reporting obligation for the notary?

8



Taking receipt of cash

- A notary is categorically prohibited from taking receipt of cash for deposit in a fiduciary account [*Anderkonto*] or for custody in cash.
- Cash payments by one party to a contract to the other during or after certification are permitted. In practice, this usually only happens with minor transactions. The notary has no special supervisory obligations.
- The notary's fees may also be paid in cash.
- The notary is therefore not prohibited from taking receipt of any cash, only from holding third-party cash.

9



Identifying the economic beneficiary

- Usually natural persons if such are involved.
- Case is different if a person is acting as nominee or fiduciary
→ often difficult for the notary to establish
- For companies, the economic beneficiary/ies can generally be found in the commercial register

10



Documentation and filing obligation

- Usually met by recording ID document details (identification document type and number, issuing authority, date of issue and expiry)
- or photocopying and filing the ID document in the supplementary file.
- Problem: persons known to the notary personally or presented by third parties.

11



Documentation duty for accounts held on trust and filing obligation

- Separate account for each transaction.
- Account bank notified of the economic beneficiary.
- Registers (register of accounts [*Verwahrungsbuch*] and register of transactions per account [*Massebuch*]) in which each individual credit and debit transaction is recorded.
- Regular inspection of these registers by the supervisory authority (president of the competent local regional court [*Landgericht*]).

12



Reporting suspicious cases

- Very rare in practice:

reports by ...	2010	2009
banks	10.277	8.111
attorneys	10	18
casinos	11	8
notaries	4	5

source: German Federal Office of Criminal Investigation – Federal Intelligence Unit (FIU) – Annual Report 2010.

13



Reporting suspicious cases

- The few reports by notaries could be because the existing system is inefficient...
- ... or because strict rules governing custody of third party funds and the stringent documentation requirements act as a deterrent, i.e. there would be far more suspicious cases without these mechanisms.

14



Conclusion

- In everyday practice, the anti-money-laundering obligations of most relevance to notaries are the comprehensive identification and documentation requirements.
- The receipt and custody of funds in trust is relatively rare in Germany. This may well prevent much money-laundering from being attempted.
- Suspicious cases are in practice rare.



Thank you for your attention.