

Table of Contents

| | |
|--|------|
| Foreword | V |
| Selected Abbreviations | XIII |
| Sources Cited | XV |
| Chapter 1 – Introduction and Project Description | 1 |
| Chapter 2 – The German Notariat as an Institution of Preventative Justice | 7 |
| 1. Restorative and Preventative Justice | 7 |
| 2. Balancing Elements of Restorative and Preventative Justice | 8 |
| 3. The Value of Certainty and Predictability in German Law..... | 8 |
| 4. The Significance of Notarial Authentication..... | 9 |
| 5. Some Important Characteristic Features of the Notarial Profession..... | 10 |
| 6. Avoidance of Unnecessary Legal Disputes as a Function of the German Notariat..... | 13 |
| Chapter 3 – Brief History and Background of the German Notariat | 15 |
| 1. Judicial Non-Contentious Jurisdiction and the Origin of the Notariat | 15 |
| 2. The Spread of the Notariat throughout Continental Europe..... | 16 |
| 3. The Further Development of the Notariat in Germany | 18 |
| 4. The Modern German Notariat and the European Union | 19 |
| a) The State of the Notariat at the Beginning of the European Communities | 19 |
| b) The European Union and the Traditional Liberal Professions..... | 21 |
| c) The European Commission’s Original Conception of the Notariat..... | 22 |
| d) The 2011 ECJ Decision on Nationality Requirements for Notarial Office..... | 23 |
| e) Recent ECJ Affirmation of the Authentication Monopoly of Notaries | 24 |
| f) Remaining Doubts and the Necessity for Notaries to Be Vigilant..... | 25 |

| | |
|--|-----------|
| g) Digitalization and Recent Steps towards Cooperation with the Notariat | 28 |
| h) Conclusion for the Starting Point of the Inquiry | 29 |
| Chapter 4 – The Modern German Notarial Profession | 31 |
| 1. The Notarial Profession and its Regulation by Federal Law | 31 |
| 2. Forms of Notarial Practice | 32 |
| 3. The Number of Notaries in Germany | 33 |
| 4. Cooperation Between Notaries | 33 |
| 5. Determination of the Number of New Appointments | 34 |
| 6. Education and Training of Notaries | 35 |
| 7. Selection for Appointment | 36 |
| 8. The Independent Professional and the Notarial Office | 37 |
| 9. Remuneration of Notaries | 38 |
| 10. The Economic Status of Notaries | 39 |
| 11. Liability of Notaries | 39 |
| 12. Supervision of Notaries | 40 |
| 13. Public Perception of German Notaries and Their Work | 40 |
| Chapter 5 – German Notaries and Real Estate Transactions | 41 |
| 1. The Function of Notaries in Real Estate Transactions | 41 |
| a) The Authentication of Real Estate Transfers | 41 |
| b) The Authentic Real Estate Transfer Contract | 42 |
| c) Real Estate Title Registration and the “Gatekeeper- Function” of Notaries | 44 |
| d) Drafting and Authenticating the Real Estate Purchase Contract | 47 |
| e) The Role of the Preliminary Notice | 50 |
| f) Completion of the Purchase Contract | 51 |
| g) Financing Real Estate Purchases | 52 |
| h) Payment of the Purchase Price and Registration of the Title | 53 |
| i) The “Platform-Function” of Notaries in Real Estate Transactions | 54 |
| 2. Notaries' Fees and Costs in Real Estate Transactions | 55 |
| 3. An Example of an Actual Real Estate Transaction | 57 |
| Chapter 6 – German Notaries and Corporate Law Matters | 63 |
| 1. Limited Liability Entities and Preventative Justice | 63 |
| a) Limited Liability Entities and Authentication by Notaries | 63 |
| b) Public Registration of Business Entities and the Gate- keeper-Function of Notaries | 64 |
| c) Notaries' Platform-Function in Corporate and LLC Law Matters | 65 |

| | |
|--|------------|
| 2. Limited Liability Companies | 66 |
| a) Structure and Fundamental Features..... | 66 |
| b) Formation of a Limited Liability Company..... | 68 |
| c) Registration in the Commercial Register..... | 69 |
| d) Activities of the Notary in the Preparatory Phase..... | 71 |
| e) The Roles of Lawyers and Tax Advisers..... | 72 |
| f) Payment of the Initial Portion of the Stated Capital | 73 |
| g) Role of the Commercial Register Magistrates | 74 |
| h) Fees and Costs of Organization of a Limited Liability Company..... | 75 |
| i) Changes in the Operation Agreement or Stated Capital | 77 |
| j) Transfer of Ownership Shares and Ownership Shares in Trust..... | 78 |
| k) Simplified Limited Liability Companies: Entrepreneur Companies | 79 |
| 3. Stock Corporations..... | 80 |
| a) Formation of a Stock Corporation | 81 |
| b) The Process of Notarial Authentication..... | 82 |
| c) The Roles of Lawyers and Tax Advisers..... | 83 |
| d) Reading Aloud and Personal Presence | 84 |
| e) The Process of Registration | 85 |
| f) The Notary as a Founding Examiner | 86 |
| g) Authentication of Resolutions at Stockholders' Meetings..... | 87 |
| h) Notarial Fees in Stock Corporation Matters | 89 |
| 4. Other Transactions of Corporate Entities | 90 |
| a) A Typical Merger Transaction..... | 91 |
| b) Purchase of Enterprises | 93 |
| 5. Notaries and Lawyers in Corporate Law Matters..... | 95 |
| 6. Notarial Responsibilities with Respect to Taxes and Money- laundering..... | 98 |
| 7. A Typical Corporate Law Transaction..... | 99 |
| 8. European Law and the Development of German Corporate Law | 104 |
| Chapter 7 – Real Estate and Corporate Law Transactions in the United States | 107 |
| 1. Real Estate and Corporate Law in the United States..... | 107 |
| 2. Real Estate Transactions | 108 |
| a) Real Estate Conveyancing..... | 108 |
| b) Real Estate Transaction Effectuation..... | 109 |
| c) Real Estate Transaction Costs | 111 |
| d) A Simple House Purchase Transaction..... | 112 |
| 3. Corporation Law Transactions in the United States..... | 116 |
| a) Formation of Limited Liability Entities..... | 117 |

| | |
|---|------------|
| b) The Role of Public Registers | 118 |
| c) Costs of Formation of Limited Liability Entities..... | 119 |
| d) Organization of a Limited Liability Company..... | 121 |
| e) Formation of a Stock Corporation | 127 |
| f) Costs of Formation of a Stock Corporation | 132 |
| g) “Do It Yourself” Real Estate and Corporate Law Trans- actions..... | 133 |
| Chapter 8 – Comparative Observations..... | 135 |
| 1. Criteria for Comparison | 136 |
| a) Transaction Security | 136 |
| b) Participants' Transaction Costs | 136 |
| c) Time for Transaction Completion..... | 137 |
| d) Simplicity and Understandability | 137 |
| e) Transparency | 138 |
| f) Availability of Expert Advice..... | 138 |
| g) Interest of the State | 139 |
| h) Other Criteria? | 139 |
| 2. The Comparative Performance of the German Notarial System..... | 140 |
| a) Transaction Security | 140 |
| aa) Real Estate Transactions..... | 140 |
| bb) Corporate Law Transactions..... | 143 |
| cc) Enhanced Security of Registers by Reason of Notarial Gatekeeper-Function | 144 |
| b) Transaction Costs to Participants..... | 144 |
| aa) Real Estate Transactions..... | 144 |
| bb) Corporate Law Transactions..... | 148 |
| cc) Cost Distribution and Cross-Subsidization | 151 |
| dd) “Do It Yourself?” | 152 |
| c) Prompt and Efficient Transaction Performance..... | 154 |
| aa) Real Estate Transactions..... | 154 |
| bb) Corporate Law Transactions..... | 155 |
| cc) Platform-Function of Notaries and Counting “Steps” | 155 |
| d) Meaningful Advice to Participants | 156 |
| e) Interest of the State | 158 |
| f) Overall Preventative Justice Considerations..... | 160 |
| 3. Criticism of German Notaries in Real Estate and Corporate Law Matters | 162 |
| a) World Bank, OECD and political currents within the European Union..... | 162 |
| b) Deregulating Changes in Notarial Institutions within the European Union..... | 163 |
| c) Lower Transaction Costs in England?..... | 166 |

| | |
|---|------------|
| d) Overall Evaluation of the German Notarial Function – The Bottom Line..... | 167 |
| Chapter 9 – Summary and Conclusion | 169 |
| 1. Summary of Study..... | 170 |
| a) Regulation..... | 170 |
| b) Competence | 170 |
| c) Land and Commercial Registers and the Notarial “Gate- keeper Function”..... | 171 |
| d) Transaction Security | 171 |
| e) Promptness, Step Counting and “Platforms” | 171 |
| f) Costs | 172 |
| g) Neutral Advice..... | 173 |
| 2. World Bank and OECD Studies..... | 173 |
| 3. Conclusion | 175 |
| Appendix A | 177 |
| Appendix B | 181 |
| I. The “Doing Business Reports” of the World Bank..... | 181 |
| II. Relevant Features in Common-Law Cultures and Their Social and Economic Consequences | 181 |
| 1. Relevant Features | 181 |
| 2. Typical Social and Economic Consequences | 182 |
| III. Emphasis on Transaction Security in Civil Law-Oriented Countries and Preventative Justice by Civil Law Notaries | 182 |
| 1. Emphasis on Transaction Security..... | 182 |
| 2. Consequences of Preventative Justice | 183 |
| 3. Consistency of Notarial Practice with Rapid and Reliable Electronic Communication | 183 |
| 4. Use of Artificial Intelligence | 183 |
| IV. Transaction Costs in Civil and Common Law Jurisdictions | 184 |
| 1. Transaction Costs in Germany..... | 184 |
| 2. Transaction Costs in Common-Law Jurisdictions Com- pared | 184 |
| V. Observations Not Adequately Reflected in World Bank “Doing Business” Analyses | 185 |
| VI. Preventative and Restorative Justice | 185 |
| VII. Significance of Socio-Cultural Background..... | 186 |
| VIII. The Example of a Startup Limited Liability Company | 186 |