

Newsletter No 25 (EN)

Notarisation of Documents and Signatures in Germany and Thailand June 2010

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in Germany and Thailand

I. When do I need a notarisation?

a) GERMANY

There are certain cases and transactions where a notarisation of documents or signatures is required, for example for real estate matters, registration issues, special bank transactions or if the parties agreed to do so.

Typical documents requiring notarisation in Germany are:

- Real estate matters: If buying or selling real estate (land and/or buildings and apartments), notarization is generally required. It is a specification of German law that one has to separate between the mere sales contract relating to a good and the actual transfer of ownership. In the case of real estate, only the actual contract of sale needs to be notarized. However, mostly the transfer of ownership is also done by the notary public. If a German notary public is asked to do so, he or she will implement these two legal transactions (sale plus transfer of ownership in one contract), the fee for which is 20/10 of the matter. However, the sales contract alone does not have to be notarized by a German notary public. This can just as well be done by a foreign notary public and in many cases, a Swiss notary public is chosen because his or her fee is negotiable. The contract concerning transfer of ownership must be notarized by a German notary public, but the fee for this transaction is only 5/10 of the matter.
- Marriage contract and same-sex partnership contracts (§ 1410 BGB; § 7 Abs. 1 LPartG,
- Declaration of adoption (§§ 1750 Abs. 1 S. 2; 1762 Abs. 3 BGB),
- Contract of inheritance (§ 2276 Abs. 1 S. 1 BGB),
- Set up of a limited company (private or public) (§ 2 Abs. 1 S. 1 GmbHG).

b) THAILAND

Although there are no notary publics in Thailand, notarisation is required or might be needful in some cases, such as:

- Real estate matters: Since the sales agreement concerning property is made before the responsible government officer, notarisation of the sales agreement is not required. However, if buying a condominium in Thailand as a foreigner with the assistance of a lawyer, notarisation of the power of attorney is required. The officer may also ask for notarisation of the passport copy.
- In the case of a registration of a trademark in Thailand by a foreigner, the power of attorney must be notarised.

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- For projects by Government Authorities or State Enterprises the notarisation of documents showing the status of the foreign company is required.
- Registration of a branch office or representative office under the Foreign Business Act. All company registration documents and the power of attorney must be notarised.
- Notarisation of contracts might be necessary if the contracting parties agreed to do so.

II. Who is responsible for notarisation and certification?

a) Authorised persons for the notarisation of documents, transactions and for certifications in Germany are notary publics.

Furthermore there are authorities with notary power, for example embassies according to sec. 2 of the Consular Act (*Konsulargesetz*). According to sec. 10 of the Consular Act the notarisation which the embassies provide are equal to those of notary publics.

b) The Law Society of Thailand provides the services of notarisation and certification through specialised attorneys. They are specially certificated and called “Notarial Service Attorneys”, as is our own employee Khun Onnapa Boonpiputtanapong – see a certificate copy attached. The Law Society of Thailand will confirm their notarisation if required.

III. Legal Regulations

a) in Germany

Notarisation and the amount of notary fees are regulated in Germany by the Federal Notarisation Act (*Beurkundungsgesetz*), the Federal Notary Ordinance (*Bundesnotarordnung*) and the Federal Fees Ordinance (*Kostenordnung*).

Fees for notarisation and other certifications are regulated in sec. 17 Federal Notary Ordinance.

Under the provisions of this law the fees depend on the value of the matter (see below). The fee for a “simple” service can be high because of the high value of the matter or low in another case although the notary had to invest a lot of time and work.

The minimum fee is EUR 10.(sec. 33 Federal Fees Ordinance).

The list on page 6 is copied from the appendix to the Federal Fees Ordinance and exhibits the amount of the fee according to the value of matter.

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What is the “value of matter” mentioned in the German law?

The value of the matter depends on the economic value of the authenticated statement (sec. 18 Federal Fees Ordinance). Often the economic value of a case is expressed in the statement itself in the form of an amount of money. For example if property will be sold for EUR 100,000, the value of that matter is EUR 100,000.

However, in certain cases the value has to be estimated. If this is not possible, the value of the matter has to be fixed at EUR 3,000 (sec. 30 Federal Fees Ordinance).

Additional costs

According to sec. 136 ff., and sec. 152 f. of the Federal Fees Ordinance, additional expenses can be charged, for example documentary costs (EUR 0.50/page) and additional actual expenses (e.g. for travel and telephone).

According to sec. 151 a, Federal Fees Ordinance VAT has to be added.

Can the fees be reduced in Germany?

The Notary is not allowed to reduce or raise the notary legal fees (sec. 17 Federal Notary Ordinance). Thus each and every notary in Germany charges the same fees (whereas fees of notarisation in Switzerland are negotiable).

b) in Thailand

There is no regulation by law concerning notary publics in Thailand and fees are not fixed as in Germany. Therefore each “Notarial Service Attorney” in Thailand may charge as agreed.

Fees for legalizations by the Embassies are regulated in sec. 25 f. of the Consular Act.

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V. Examples for the calculation of notary fees:

a) For the notarisation of a contract of sale of land including conveyance concerning property to the amount of EUR 500,000 notary fees would be calculated as follows:

2 fees, 1 for each contracting party (20/10) (2 x 807, - €, see Appendix on page 6)	EUR 1,614.00
Fee for notarisation of an excerpt from the commercial register	EUR 25.00
Fees for certification of the signatures of the contracting parties (2 x 15, - €)	EUR 30.00
Fee for registration and conveyance of the property	EUR 400.00
<u>Expenses for documentary costs for 50 pages à 0.50 € and others</u>	<u>EUR 50.00</u>
Subtotal	EUR 2,119.00
<u>+ 19 % VAT (sec. 151 a Federal Fees Ordinance)</u>	<u>EUR 402.61</u>
Total fees approximately	EUR 2,515.61
(In THB (as of April 2010) approximately THB 110,000)	

b) For the increase of share capital in the amount of EUR 20,000 including all notarisation and registration issues, notary fees would be calculated as follows:

Notarisation of shareholders' resolution (sec. 47 Federal Fees Ordinance)	EUR 114.00
Notarisation of the declaration of increase capital (sec. 36 para 1 Federal Fees Ordinance)	EUR 72.00
Notarisation of registration in the companies' register (sec. 38 para 2 Federal Fees Ordinance)	EUR 36.00
<u>Expenses for documentary costs for 50 pages à 0.50 € and others</u>	<u>EUR 50.00</u>
Subtotal	EUR 272.00
<u>+ 19 % VAT (sec. 151 a Federal Fees Ordinance)</u>	<u>EUR 51.68</u>
Total fees approximately	EUR 323.68
(In THB (as of April 2010) approximately THB 14,000)	

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Appendix to the Federal Fees Ordinance (sec. 32)

Value of matter up to ... EUR	Fee ... EUR	Value of matter up to ... EUR	Fee ... EUR	Value of matter up to ... EUR	Fee ... EUR
1,000	10	250,000	432	640,000	1,017
2,000	18	260,000	447	650,000	1,032
3,000	26	270,000	462	660,000	1,047
4,000	34	280,000	477	670,000	1,062
5,000	42	290,000	492	680,000	1,077
8,000	48	300,000	507	690,000	1,092
11,000	54	310,000	522	700,000	1,107
14,000	60	320,000	537	710,000	1,122
17,000	66	330,000	552	720,000	1,137
20,000	72	340,000	567	730,000	1,152
23,000	78	350,000	582	740,000	1,167
26,000	84	360,000	597	750,000	1,182
29,000	90	370,000	612	760,000	1,197
32,000	96	380,000	627	770,000	1,212
35,000	102	390,000	642	780,000	1,227
38,000	108	400,000	657	790,000	1,242
41,000	114	410,000	672	800,000	1,257
44,000	120	420,000	687	810,000	1,272
47,000	126	430,000	702	820,000	1,287
50,000	132	440,000	717	830,000	1,302
60,000	147	450,000	732	840,000	1,317
70,000	162	460,000	747	850,000	1,332
80,000	177	470,000	762	860,000	1,347
90,000	192	480,000	777	870,000	1,362
100,000	207	490,000	792	880,000	1,377
110,000	222	500,000	807	890,000	1,392
120,000	237	510,000	822	900,000	1,407
130,000	252	520,000	837	910,000	1,422
140,000	267	530,000	852	920,000	1,437
150,000	282	540,000	867	930,000	1,452
160,000	297	550,000	882	940,000	1,467
170,000	312	560,000	897	950,000	1,482
180,000	327	570,000	912	960,000	1,497
190,000	342	580,000	927	970,000	1,512
200,000	357	590,000	942	980,000	1,527
210,000	372	600,000	957	990,000	1,542
220,000	387	610,000	972	1 000,000	1,557
230,000	402	620,000	987		
240,000	417	630,000	1,002		

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