

## CORPORATE LAW AND ANTI-MONEY LAUNDERING

### THE ROLE OF THE NOTARY





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## **THE ROLE OF THE NOTARY**

*Professor Birgit Snijder-Kuipers*

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Omslagontwerp: Ronald Koopmans

Ontwerp binnenwerk: Ronald Koopmans

Opmaak binnenwerk: Iustitia *Scripta*

Illustraties: Jesse van Muylwijk

ISBN: 9789083518015

NUR-code: 822

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## INTRODUCTION

*Citius, altius, fortius*

In the summer of 2024, just before the Paris Olympics, I had the privilege of teaching a Corporate Law and Anti-Money-Laundering course at the 12 th edition of the World Notariat University. This academic training programme, founded by French notary Jean-Paul Decorps, forms part of activities organised by the UINL and aims to increase the understanding of the concepts of comparative law and international law through exchanges of good notarial practices between young notaries.

One of the objectives of the World Notariat University is to raise awareness about the globalisation of legal relations, and the role that the notary must play towards citizens and public authorities. This is particularly the case in the area of anti-money-laundering since challenges in this field affect governments, financial institutions, citizens and legal professionals around the world – and especially us notaries; for example, when fulfilling our gatekeeping function.

The current World Notariat University training cycle is organised around the theme of the 2023-2025 UINL legislature, "Respecting public policy: an essential mission of the notariat, a constant challenge for the notary". In all, 113 participants from 42 different countries took part in the 2024 edition. In April we met online and then, in the first week of July, we met in person in Paris for a full week of face-to-face seminars.

The participants, selected by the notarial organisations of their respective countries, formed a geographically diverse group, which brought about a stimulating exchange of views and provided for valuable insights into the law of their countries of origin. To make sure that the insights we have gained are shared with the largest possible audience, I took it upon myself to collect the participants' written contributions in this book.

My own notarial chamber, the Royal Dutch Association of Civil-law Notaries (KNB), recognises the importance of this endeavour and has generously agreed to sponsor the printing of this book for all the participants. In true Olympic spirit - which requires mutual understanding with friendship and solidarity - we strive to contribute to building a peaceful and better world through education and cooperation. Participants and the KNB alike demonstrate their ambitions in this regard with this book: together and with Olympian effort, we can bring about a better future.

The participants will meet again later this year at the UINL Congress in Berlin. I look forward to hearing about how their notarial careers are taking shape and how they have successfully implemented the best practices which you will read more of in this book. My special thanks go to De Brauw editors Julie Roelvink and Leticia Vasquez for shaping the various country contributions into an easy-to read publication.

*Professor Birgit Snijder-Kuipers*  
Nijmegen, February 2025





## WORLD NOTARIAT UNIVERSITY CONFERENCE – JULY 2024

### CORPORATE LAW AND ANTI-MONEY LAUNDERING – THE ROLE OF THE NOTARY

– By Birgit Snijder-Kuipers<sup>1</sup>, with contributions by 21 country experts<sup>2</sup>

#### 1 INTRODUCTION

My love affair with corporate law began in 2003, when I decided I would do my PhD thesis on the transfer of the form of legal entities. I received my PhD in 2010 and since then, increasingly more anti-money laundering legislation has been passed. Because of this growth in legislation, I decided to combine corporate practice with research on anti-money laundering and the role that notaries play in this respect. This resulted in a solid union of the two, because knowledge of corporate law is essential in detecting suspicious corporate structures.

In the first week of July 2024, the 12th edition of the World Notariat University conference<sup>3</sup> was held in Paris. This year's theme was "Respecting public policy: an essential mission of the notariat, a constant challenge for the notary". Participants from 40 countries attended the conference.

At the conference, we focused on the role of the notary from a public policy perspective. Notaries play an important role in society: in fact, our work touches upon every aspect of life. We examined the role we play in family law, personal law, wills and estates, and were seamlessly guided by our expert moderators. The various presentations also gave us an overview of the existing differences between countries worldwide. But in this publication, the focus is on corporate law and the role notaries play in preventing money laundering and the financing of terrorism. The publication also reflects presentations and questionnaires from the different countries that participated in the corporate law and anti-money laundering workshop.

#### 2 CORPORATE LAW

Notaries participate in a wide range of activities in society. Let's look at three: family law (including succession), real estate, and corporate law. In general, a notary is involved in many aspects of family law first and foremost, and in a close second place, real estate. But what about corporate law? What role do we play here? Our role is vast, ranging from no

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2 See the Table of Contents for a list of contributors.

3 The conference is organised by the International Union of Notaries (UINL), a non-governmental organisation aiming to promote, coordinate and develop the function and activities of notaries throughout the world. It assures their dignity and independence in order to provide a better service to people and society in general.

involvement to active involvement, including advising on structures and restructuring. This is what this publication focuses on.

## **2.1 Corporate law definition**

Corporate law covers a wide range of legal entities, including public-law legal entities, private-law legal entities, foundations, partnerships, trusts, funds for joint account and other legal arrangements. Of course, legal entities play an important role in international trade. And the notary often has an essential role in this.

But if we try to break a definition down, corporate law can be thought of as a type of law that "puts order" into things. If we think of traffic, we think of cars and stoplights, rights of way, buses, and in the Netherlands, lots of bikes coming at you from every angle. An expert has to figure out how to put order in the flow of traffic so that society can, quite literally, run as smoothly as possible.

Law really is about how we put order into social traffic. We have created corporate law to enable the government – as well as corporates – to participate in international trade. Notaries put order into specific transactions, such as transferring real estate or incorporating a legal entity. Notaries have an important role in creating and keeping order in society.

An individual acquires rights and obligations based on local law. At the same time, a legal entity may be an independent bearer of rights and obligations, just like an individual. This concept of legal identity has been created by law and has consequences when it comes to international trade.

So where does the notary come in? At any – or every – stage. Starting with the incorporation of a legal entity, all the way until a legal entity ceases to exist. Let's look in more detail at the role notaries play.

### **2.1.1 Incorporation**

At the time of incorporation, a notary can play a relevant role in especially three areas. First, the notary discusses the purpose of incorporation with the founders and managing directors, including the proposed collaboration with others. At this stage, it is important for a notary to address matters such as the governance structure; the financing of the entity; permits required for the type of business; and specific legislation which may affect wording in the articles of association. In many instances, specific legislation has been developed in the healthcare, housing and education sectors. Notaries have to take this into account.

The Netherlands, for example, has seen the development of corporate governance codes for capital companies, with detailed rules on matters such as compensation and conflicts of interest. Although the codes are classified as soft law, companies have to comply with them in practice. The notary will advise on the best legal form of the entity to be incorporated.