

Duly noted

Summary of the NBA public management letter for the notarial profession

December 2019


NBA

Introduction

Overview

The civil-law notary plays an important role in society. He provides legal certainty and legal protection by recording the agreements and legal acts of persons or parties in official deeds. The Royal Notarial Association (Koninklijke Notariële Beroepsorganisatie, KNB) divides these deeds into four areas: real estate, family law (and law regarding private individuals), corporate law and general law. According to the KNB, a total of 1,688,000 notarial deeds were executed in 2018. This is 10,000 more than in 2017 and over 50,000 more than in the crisis year 2013. Approximately half concerned the real estate sector. Family law practice accounted for one third, while the rest included corporate law practice and general practice.

Money flows are often linked to the deeds executed by civil-law notaries (e.g. when buying and selling real estate). It is for this purpose that a civil-law notary retains one or more third-party accounts with a bank. In this respect, he acts as a kind of payment office. Funds held in a third-party account fall outside the civil-law notary's assets and are safeguarded in the event of his bankruptcy. The balance of these funds minus the obligations to third parties is referred to as the notary's custodianship. On average, several billions of euros are parked each and every day on all notarial third-party cash accounts in the Netherlands. In this context, the civil-law notary also acts as a gatekeeper under the Money Laundering and Terrorist Financing (Prevention) Act (Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft).

There have been some shifts in the sector since the release of the tariffs in 1999. On the one hand there is competition in terms of prices and limited service in the field of the most commonly executed deeds, while on the other hand there is a need for sound advice in family and

corporate law practice. As a civil-law notary is appointed by the government and must provide his own income, he is also an entrepreneur. The annual turnover in the sector is approximately 800 million euros, with a total employment of 11,000 FTEs. Nevertheless, the number of civil-law notaries and notarial firms has been declining for years. However, the number of civil-law notaries who are employees rather than entrepreneurs is increasing. The decline in the number of firms therefore seems to be not only the effect of mergers and acquisitions, considering that the number of one-man firms that are closing their doors is also increasing.

Regulation

The notarial profession is regulated by legislation and regulations: the Act on the Civil-Law Notary's Profession (Wet op het notarisambt, Wna), the Decree on the Civil-Law Notary's Profession (Besluit op het notarisambt, Bna) and the Regulation on the Civil-Law Notary's Profession (Regeling op het notarisambt, Rna). This forms the basis for the additional regulations of the KNB. Each notarial firm undergoes a peer review once every three years. Disciplinary proceedings are referred to four notarial chambers: one for each district or jurisdiction in the Netherlands. The formal supervision of the notarial profession is carried out by the Financial Supervision Office (Bureau Financieel Toezicht, BFT). The supervision is integral in nature: it takes not only the notary's financial situation into consideration but also his integrity and quality. If this concerns financial supervision the BFT uses standardised financial data provided by the notary.

According to the Rna, a civil-law notary is obliged to provide the annual accounts of his firm with an auditor's report. Only if a firm is small enough will an review report suffice. A statement regarding the civil-law notary's private assets, income and personal companies

must be accompanied by a compilation report from an accountant or tax adviser. In addition to this, the civil-law notary must submit a questionnaire each year and the accountant is required to issue a report of factual findings regarding various administrative requirements from the Rna. Finally, he must provide interim information on a quarterly basis.

Developments

Since the release of the rates for the notarial profession in 1999, two trends emerged. One concerns the dichotomy between production offices and consultancy firms, the other the increase in the number of specialised firms. Bulk firms are highly standardised, particularly in the case in the real estate sector, with an emphasis on low prices and high volumes. This phenomenon also occurs in the practice of family law, where consumers can have standardised deeds produced via internet sites. On the other hand, there are firms that opt for customisation and specialisation, with an emphasis on comprehensive advice. Finally, in the practice of corporate, there are firms that offer subscriptions to a contract database.

Specialisation can also focus on a particular area of law, such as estate planning or IT. In addition to this, there are firms that enter into interdisciplinary partnerships (e.g. with lawyers) or which focus on international law. At international firms and networks, the civil-law notary is often part of the overall legal advisory team and acts as a party advisor. This is a different role than his role as an independent and impartial advisor when drawing up deeds.

In addition to the increasing digitalisation of notarial services and the need for cheap standardised documents, the need for specialised advice will increase. For companies, the law is becoming more complex and international in nature, while in the private sector family relationships and cohabitation forms are becoming more complex. Cross-border transactions and complex family situations require tailored advice. The role of the civil-law notary will therefore not disappear, but will take on a different character, with more emphasis on advising than on registration.

Small firms that do not focus on specialisation or economies of scale but focus mainly on real estate practice instead will be hard hit. The costs of automation and maintaining an office are high, while margins are under pressure. They will have to join forces to continue to safeguard continued innovation and future investments. The number of network organisations is expected to increase, with an emphasis on knowledge sharing and cooperation.

NBA public management letter

Succession is a point of attention at small notary firms in particular, partly in view of the regional function they often fulfil. This may compromise the social accessibility of the notarial profession. This is the most important message of the NBA public management letter with the title *'Duly Noted'*.

The PML focuses on four signals:

1. The landscape is changing in regard of notarial firms
2. Insight into business economics is a basic precondition
3. Supervision can become more contemporary in nature
4. Specific sector knowledge is necessary for accountants

Due to the changing landscape, smaller firms in particular need to start thinking about succession in good time. Although the civil-law notary is a legal expert par excellence, he must also have the necessary financial expertise; not only to be able to function as an entrepreneur, but also to fulfil his gatekeeper role on the basis of the Wwft. Supervision in the sector could be modernised if the BFT were to take the next step in its development, in consultation with the KNB. If the accountant is to perform well in his role as an accounted and trusted advisor for the SME sector, he must have thorough knowledge of the sector.

A recommendation has been formulated for each signal in the report. These recommendations have been highlighted below.

RECOMMENDATION 1: Think about your prospects for the future in good time

Civil-Law Notaries

- Think at least five years ahead with regard to succession and draw up a long-term plan for this. When recruiting junior civil-law notaries, also pay attention to their suitability and willingness to succeed when the time comes. Investigate the possibilities of partnerships and realise that obtaining a well-balanced workforce takes a lot of time.
- Put the firm's internal organisation in order, including staffing, housing, automation and a quality system. Optimise the firm's financial performance.

KNB

- Conduct a study into the effects of the decline in the number of civil-law notaries and notarial firms on the quality and accessibility of the notarial profession jointly with the BFT.

RECOMMENDATION 2: Ensure basic knowledge of financial and non-financial topics

Civil-Law Notaries

- Ensure adequate knowledge of business economics to be able to ask accountants, tax advisers and valuation experts critical questions. Enrol in further training courses and ensure that the lifelong learning plan pays attention to financial and non-financial topics such as digitisation, fraud prevention and culture and behaviour.
- Devote enough time and attention to the firm's annual accounts and reports to the BFT. Ask the firm's accountant about this and, if necessary, have him explain exactly how the reports should be interpreted. Ensure that there are no gaps in understanding the firm's own financial statements and financial position, both business and private.

Legislators and the KNB

- Pay sufficient attention in the statutory training requirements for civil-law notaries concerning subjects with a business and financial background.
- Enable interdisciplinary cooperation between civil-law notaries and accountants. In this way, the gatekeeper role of the accountant and civil-law notary can be brought together.
- Investigate whether the continuing education programme for civil-law notaries offers sufficient courses on financial and non-financial topics and, if necessary, firms should develop courses of their own.

RECOMMENDATION 3: Modernise supervision of the sector

BFT

- Reorganise the digital delivery to the BFT. Consider an adjustment of the delivery times or make delivery more flexible.

BFT and KNB

- Investigate how the codes of conduct for accountants in the event of non-compliance with legislation and regulations (NOCLAR) can be a tool in the possible introduction of an obligation for accountants to report a negative custody position or other financial problems to the BFT.
- Further explore the possibilities of horizontal monitoring, with an emphasis on the quality of the administrative organisation and internal control.
- Seek cooperation with other actors and gatekeepers in the field of the Wwft, including government agencies and banks.

BFT, KNB and NBA

- Organise structural consultation between the KNB, BFT, NBA and accountants from the sector.

RECOMMENDATION 4: Invest in specific sector knowledge

BFT

- When choosing an accountant, determine whether he has sufficient experience in the sector and has more than one firm in his portfolio. Ask him for references if necessary.

Accountants

- Invest in knowledge about the sector and make provisions for further training at regular intervals. In the event of a limited client portfolio in the sector, consider whether maintaining it would still be justified.
- One-man firms should pay extra attention to succession. Discuss this topic with the civil-law notary in good time and draw up a plan for topics on which advice can be provided.

BFT, KNB and NBA

- Consider the possibility of imposing quality requirements on auditors who have or are considering notarial firms as clients in their portfolios. Ensure that the reviewers of accountancy firms also have the necessary knowledge of the sector.

Sharing knowledge

In the NBA Sharing Knowledge policy programme the expertise of accountants is collectively applied to identify risks early in social sectors or relevant themes. In doing so, the emphasis is on governance, operations, reporting and auditing. Accountants share their findings and signals anonymously in order to maintain client confidentiality. The NBA Identification Board then gauges the signals from a social perspective and applies a social assessment. The result of this process is a so-called public management letter (PML), an open letter or a discussion report.

The PML '*Duly Noted*' was the 23rd topic to be selected by the Identification Board. It is based on the knowledge of our members working in the sector, supplemented by desk research. The BFT and the KNB shared their comments during the compilation of this PML.

More information

If you are interested in this project, please contact our project manager Michèl Admiraal RA at NBA in Amsterdam (m.admiraal@nba.nl).

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