**Otto-Friedrich-Universität Bamberg**

**Notarial Record**

For the purpose of

**Obligation**

pursuant to section 1 of the act pertaining to the obligations of persons without civil servant status of 2 March 1974 (Federal Law Gazette I p. 547), the following person appeared today before the signatory:

Ms/Mr …, born … , hired as an employee.

The appearer was obligated to the diligent fulfilment of his/her duties. He/she was notified of the contents of the following provisions of the Criminal Code:

Section 133, Paragraph 3 Destruction of materials under official safekeeping

Section 201, Paragraph 3 Violation of the privacy of the spoken word

Section 203, Paragraphs 2, 4, 5 Violation of private secrets

Section 204 Exploitation of the secrets of another

Sections 331, 332 Taking bribes and incentives

Section 353 b Breach of official secrets and special duties of confidentiality

Section 358 Ancillary measures

Section 355 Violation of the tax secret

The appearer was alerted to the fact that, due to his/her obligation, the aforementioned provisions are to be applied to his/her employment.

He/She declares that he/she is henceforth aware of the content of the mentioned provisions. Having been read this statement, he/she signs it as an indication of authorisation and simultaneously confirms receipt of copies of this notarial record as well as the “Extract from the Criminal Code” and “Instruction on Employees’ Official Obligations pursuant to the State Employee Salary Scheme (TV-L)” forms.

Bamberg,

Date: Signature:

**Otto-Friedrich-Universität Bamberg**

**Notarial Record of the swearing-in**

**based on Article 187 of the Constitution of the Free State of Bavaria**

Today, following instruction on official obligations and the significance of the oath based on Article 187 of the constitution of the Free State of Bavaria, the employee, XXX, born XXX, swore the following oath (while raising the right hand)by repeating the words:

**“I pledge loyalty to the constitution of the Free State of Bavaria,**

**so help me God.”**

This is certified by signature:

Bamberg,

………………………………………………….. ………………………………………………….

**Extract from the Criminal Code of the Federal Republic of Germany**

**as amended and promulgated on 13 November 1998**

**(Federal Law Gazette I p. 3322)**

The following English-language translation of these materials was provided to the German Federal Ministry of Justice by Prof. Dr. Michael Bohlander and is intended solely as a convenience to the non-German-reading public. Any discrepancies or differences that may arise in translations of the official German versions of these materials are not binding and have no legal effect for compliance or enforcement purposes. (The book version of the core text was published by Hart Publishing Ltd.; 16C Worcester Place, Oxford, OX12JW, UK at http://www.hartpub.co.uk/books/details.asp?isbn=9781841138312.)

Section 93: **Definition of state secret**

(1) State secrets are facts, objects or knowledge which are only accessible to a limited category of persons and must be kept secret from foreign powers in order to avert a danger of serious prejudice to the external security of the Federal Republic of Germany.

(2) Facts which constitute violations of the independent, democratic constitutional order or of international arms control agreements, kept secret from the treaty partners of the Federal Republic of Germany, are not state secrets.

Section 133: **Destruction of materials under official safekeeping**

(1) Whosoever destroys, damages or removes from official access documents or other chattels in official safekeeping or which have been officially placed in his or another’s safekeeping, shall be liable to imprisonment not exceeding two years or a fine.

(2) The same shall apply to documents or other chattels in the official safekeeping of a church or another religious association under public law or which have been officially placed by them in the safekeeping of the offender.

(3) Whosoever commits the offence in relation to an object which has been entrusted to or made accessible to him as a public official or a person entrusted with special public service functions shall be liable to imprisonment not exceeding five years or a fine.

Section 201: **Violation of the privacy of the spoken word**

(1) Whosoever unlawfully

1.  makes an audio recording of the privately spoken words of another; or

2.  uses, or makes a recording thus produced accessible to a third party,

shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever unlawfully

1.  overhears with an eavesdropping device the privately spoken words of another not intended for his attention; or

2.  publicly communicates, verbatim or the essential content of, the privately spoken words of another recorded pursuant to subsection (1) No 1 above or overheard pursuant to subsection (2) No 1 above. shall incur the same penalty. The offence under the 1st sentence No 2 above, shall only entail liability if the public communication may interfere with the legitimate interests of another. It is not unlawful if the public communication was made for the purpose of safeguarding overriding public interests.

(3) Whosoever, as a public official or a person entrusted with special public service functions violates the privacy of the spoken word (subsections (1) and (2) above) shall be liable to imprisonment not exceeding five years or a fine.

(4) ….

(5) ….

Section 203: **Violation of private secrets**

(1) ….

(2) Whosoever unlawfully discloses a secret of another, in particular, a secret which belongs to the sphere of personal privacy or a business or trade secret, which was confided to or otherwise made known to him in his capacity as a

1.  public official;

2.  person entrusted with special public service functions;

 who exercises duties or powers under the law on staff employment representation;

4.  member of an investigative committee working for a legislative body of the Federation or a state, another committee or council which is not itself part of the legislative body, or as an assistant for such a committee or council;

5.  publicly appointed expert who is formally obliged by law to conscientiously fulfil his duties, or

6.  person who is formally obliged by law to conscientiously fulfil his duty of confidentiality in the course of scientific research projects,

shall incur the same penalty. Particular statements about personal or material relationships of another which have been collected for public administration purposes shall be deemed to be equivalent to a secret within the meaning of the 1st sentence above; the 1st sentence above shall not apply to the extent that such particular statements are made known to other public authorities or other agencies for public administration purposes unless the law forbids it.

(3) ….

(4) Subsections (1) to (3) above shall also apply if the offender unlawfully discloses the secret of another person after the death of that person.

(5) If the offender acts for material gain or with the intent of enriching himself or another or of harming another the penalty shall be imprisonment not exceeding two years or a fine.

Section 204: **Exploitation of the secrets of another**

(1) Whosoever unlawfully exploits the secret of another, in particular a business or trade secret, which he is obliged to keep secret pursuant to section 203, shall be liable to imprisonment not exceeding two years or a fine.

(2) Section 203(4) shall apply mutatis mutandis.

Section 331: **Taking bribes**

(1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

Section 332: **Taking bribes meant as an incentive to violating one’s official duties**

(1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.

(3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to

1.  violate his duties by the act; or

2.  to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 353 b: **Breach of official secrets and special duties of confidentiality**

(1) Whosoever unlawfully discloses a secret which has been confided or become known to him in his capacity as

1.  a public official;

2.  a person entrusted with special public service functions; or

3.  a person who exercises duties or powers under the laws on staff representation

and thereby causes a danger to important public interests, shall be liable to imprisonment not exceeding five years or a fine. If by the offence the offender has negligently caused a danger to important public interests he shall be liable to imprisonment not exceeding one year or a fine.

(2) Whosoever other than in cases under subsection (1) above unlawfully allows an object or information to come to the attention of another or makes it publicly known

1.  which he is obliged to keep secret on the basis of a resolution of a legislative body of the Federation or a state or one of their committees; or

2. which he has been formally put under an obligation to keep secret by another official agency under notice of criminal liability for a violation of the duty of secrecy,

and thereby causes a danger to important public interests shall be liable to imprisonment not exceeding three years or a fine.

(3) The attempt shall be punishable.

(4) The offence may only be prosecuted upon authorisation. The authorisation shall be granted

1.  by the president of the legislative body

(a)  in cases under subsection (1) above if the secret became known to the offender during his service in or for a legislative body of the Federation or a state;

(b)  in cases under subsection (2) No 1 above;

2.  by the highest Federal public authority:

(a)  in cases under subsection (1) above if the secret became known to the offender during his service in or for a public authority or in another official agency of the Federation or for such an agency;

(b)  in cases under subsection (2) No 2 above if the offender was under put under obligation by an official agency of the Federation;

3.  by the highest state public authority in all other cases under subsections (1) and (2) No 2 above.

Section 355: **Violation of the tax secret**

(1) Whosoever unlawfully discloses or uses

1.  circumstances of another which became known to him as a public official

(a)  in an administrative proceeding or a judicial proceeding in tax matters;

(b)  in a criminal proceeding because of a tax offence or in a proceeding to impose a summary fine because of a summary tax offence;

(c)  on another occasion through a communication by a revenue authority or through the statutorily prescribed submission of a tax-assessment notice or a certificate concerning the findings made at the time of taxation; or

2.  the business or trade secret of another that became known to him as a public official in one of the proceedings listed under No 1 above

shall be liable to imprisonment not exceeding two years or a fine.

(2) The following shall be equivalent to a public official within the meaning of subsection (1) above:

1.  persons entrusted with special public service functions;

2.  officially consulted experts; and

3.  those who hold offices in churches and other religious associations under public law.

(3) The offence may only be prosecuted upon request of the official superior or the victim. In the case of offences by officially consulted experts the head of the public authority whose proceeding has been affected shall be entitled to file a request apart from the victim.

Section 358: **Ancillary measures**

In addition to a sentence of imprisonment of at least six months for an offence under section 332, section 335, section 339, section 340, section 343, section 344, section 345(1) and (3), section 348, sections 352 to 353b(1), section 355 and section 357 the court may deprive the person of the capacity to hold public office (section 45(2)).

**Instruction on Employees’ Official Obligations pursuant to the State Employee Salary Scheme (*TV-L*) and the Continued Remuneration Act**

The following English-language translation of these materials is intended solely as a convenience to the non-German-reading public. Any discrepancies or differences that may arise in translations of the official German versions of these materials are not binding and have no legal effect for compliance or enforcement purposes.

Today, the employee XXXX, born XXXXX, received detailed instruction on his/her official duties, and particularly on the following regulations:

**Extract from the State Employee Salary Scheme (*TV-L*) and the**

**Continued Remuneration Act**

Section 3, Paragraph 1 as pertaining to Section 40, No. 2 TV-L: General Conditions of Employment

The owed services stipulated in the employment contract are to be diligently and duly performed in compliance with the institution’s objectives, and particularly with those specifically pertaining to research, teaching and advanced training. Employees must, in every aspect of their conduct, avow themselves to the free democratic constitutional structure as defined by the Basic Law of the Federal Republic of Germany.

Section 3, Paragraph 2 TV-L: Professional Discretion

Employees are to maintain secrecy in matters whose confidentiality is mandated by law or designated by the employer. This also applies following the termination of the employment contract.

Section 3, Paragraph 3 TV-L: Rewards and Gifts

Employees may not accept from third parties any rewards, gifts, premiums or other perquisites with regard to their professional activities. Exceptions may only be made with the consent of the employer. Should employees be offered such perquisites, they are to report this to their employer forthwith.

Section 3, Paragraph 4 as pertaining to Section 40, No. 2 TV-L: Secondary Employment

Prior to beginning secondary employment, and with ample advanced notice, employees must provide employers with written notification of the proposed activity. The employer may prohibit secondary employment or may impose conditions if this activity would potentially interfere with the fulfilment of the employee’s legally stipulated obligations or the employer’s legitimate interests. A disclosure obligation for secondary employment in civil service, in accordance with regulations applying to employers, may be imposed.

Section 3, Paragraph 7 TV-L: Liability

Employees’ liability for damages is stipulated by the respective regulations applicable to civil servants of each individual federal state.

Section 4, Paragraph 1 TV-L: Employee Transfer and Delegation

Employees may be transferred or delegated based on official or managerial factors. Should employees be transferred or delegated for a projected period of more than three months to a department or site located outside of their hitherto assigned place of work, they must receive advanced notice thereof.

Section 5 Continued Remuneration Act: Disclosure Requirement and Obligation to Provide Supporting Documentation

(1) The employee is obligated to promptly notify employers of inability to work and the anticipated length thereof. Should the inability to work persist for longer than three calendar days, the employee must provide a medical certificate stating the existence of the inability and its anticipated length no later than the following workday. The employer is authorized to request that the medical certificate be provided earlier. Should the inability to work persist for longer than the period of time indicated in the certificate, the employee is obligated to provide a new medical certificate. If the employee is insured by a statutory health insurance fund, the medical certificate must include an endorsement by the attending physician stating that a certificate indicating the inability to work, including information on diagnostic findings and the anticipated time until returning to work, will be sent to the health insurance provider immediately.

(2) […]

Section 6 Continued Remuneration Act: Subrogation with Third Party Liability

(1) In the event that the employee can, based on statutory provisions, make a claim against a third party for indemnity for earnings lost caused by the inability to work, this claim is devolved to the employer, insofar as the employer, according to this law, continued to pay the employee remuneration and to cede the hereto apportionable, employer-borne contributions to the Federal Employment Agency, the employer’s share of contributions to social security and to long-term care insurance, as well as to institutions for supplamentary old-age and survivors’ benefits.

(2) The employee must promptly supply the employer with those declarations required for the enforcement of the indemnity claim.

(3) The subrogation, pursuant to Paragraph 1, cannot be enforced to the disadvantage of the employee.

Section 7 Continued Remuneration Act: Employer’s Right to Deny Remuneration

(1) The employer is authorized to deny continued remuneration to the employee

1. so long as the employee does not provide the medical certificate required of him/her pursuant to Section 5, Paragraph 1 […]

2. if the employee prevents the transfer of an indemnity claim against a third party to the employer (Section 6).

(2) Paragraph 1 does not apply if the employee is not accountable for the breach of his/her incumbent obligations.

**The employer has additionally been informed that a violation of Section 3 Paragraph 2 and Paragraph 3 TV-L and of the relevant provisions of the Federal Republic of Germany’s Criminal Code as amended and promulgated on 13 November 1998 (Federal Law Gazette I p. 1) can in certain circumstances result in termination without notice and can also lead to civil and criminal prosecution.**