

The logo for Sectigo, featuring a stylized green 'S' followed by the word 'ECTIGO' in white, all in a bold, sans-serif font.

SECTIGO

CA/B Forum

F2F 49, Bratislava

20th February 2020



Jurisdiction Of Incorporation of Private Organizations

Definitions and Expectations

Registering a company (GmbH) in Germany.

As Arno told us earlier this week, to register a GmbH in Germany you go to your local courthouse.

I looked up the company **Autohaus Spathelf GmbH**

Baden-Württemberg [District court Stuttgart] HRB 103055

In what context is HRB 103055 Unique?

@

Uniqueness of HRB 103055

If I go to <https://www.online-handelsregister.de/suche-erweitert> and search for HRB 103055, I find 8 companies, each in a different place.

Autohaus Spathelf GmbH Stuttgart • HRB 103055	INTERDISTRI LTD. Niederlassung Deutschland Hamburg • HRB 103055
eSyncd UG (haftungsbeschränkt) Frankfurt am Main • HRB 103055	kuon Handelsvertretung Limited Berlin (Charlottenburg) • HRB 103055
GBP Gesellschaft für Büropersonal mbH Mannheim • HRB 103055	Nymphenburg Immobilien Aktiengesellschaft München • HRB 103055
H + H Unternehmensberatungs-GmbH Jena • HRB 103055	WL Immobilien UG (haftungsbeschränkt) Saarbrücken • HRB 103055

I am not here to say that there is anything wrong with the registration of German companies!

I acknowledge that the previous slide reflects reality.

However..

We were working on the values we should put into the JurisdictionOfIncorporation fields in the subject of EV certificates.

We asked our legal counsel for their understanding of 'Jurisdiction of Incorporation' in the EV Guidelines.

They told us “'Jurisdiction of Incorporation' is not a legal term of art—it's an EV Guidelines definition”.



Undismayed, we at Sectigo put our heads together and tried to understand what it actually meant, and this is what we came up with.

from the definition of “Jurisdiction of Incorporation” in the EV Guidelines, we interpreted the phrase

“the country and (where applicable) the state or province or locality where the organization’s legal existence was established by a filing with (or an act of) an appropriate government agency or entity (e.g., where it was incorporated).”

to mean the state or province or locality whose laws enable the formation of the Private Organization.

We also came up with an example..

E.g. if a GmbH is registered at the local court (Amtsgericht) of Würzburg in Germany, that doesn't make its Jurisdiction of Incorporation Würzburg Germany because it's not a company organized under the laws of Würzburg Germany. It's Jurisdiction of Incorporation is the Federal Republic of Germany, because it is a company organized under the laws of the Federal Republic of Germany. Perhaps its Jurisdiction of Registration is Würzburg Germany, or its Incorporating Agency is the Amtsgericht of Würzburg Germany.

That answer pleased me because it was consistent, for Germany at least, with the majority of our previous practice.

But is it right?

Definitions in the EV Guidelines

Jurisdiction of Incorporation: In the context of a Private Organization, the country and (where applicable) the state or province or locality where the organization's legal existence was established by a filing with (or an act of) an appropriate government agency or entity (e.g., where it was incorporated).

Jurisdiction of Registration: In the case of a Business Entity, blah blah.

Jurisdiction of Registration is not defined for Private Organizations.

Definitions, continued

Incorporating Agency: In the context of a Private Organization, the government agency in the Jurisdiction of Incorporation under whose authority the legal existence of the entity is registered (e.g., the government agency that issues certificates of formation or incorporation).

Government Agency: In the context of a Private Organization, the government agency in the Jurisdiction of Incorporation under whose authority the legal existence of Private Organizations is established (e.g., the government agency that issued the Certificate of Incorporation).

Note that the definition of Government Agency uses the words 'government agency'.

Definitions, continued

Incorporating Agency: In the context of a Private Organization, the government agency in the Jurisdiction of Incorporation under whose authority the legal existence of the entity is registered (e.g., the government agency that issues certificates of formation or incorporation).

Private Organization: A non-governmental legal entity (whether ownership interests are privately held or publicly traded) whose existence was created by a filing with (or an act of) the Incorporating Agency or equivalent in its Jurisdiction of Incorporation.

Registration Number: The unique number assigned to a Private Organization by the Incorporating Agency in such entity's Jurisdiction of Incorporation.

Definitions continued

Registration Number: The unique number assigned to a Private Organization by the Incorporating Agency in such entity's Jurisdiction of Incorporation.

This looks like a nice concrete definition. At least it implies a useful thing.

It implies that the Incorporating Agency assigns a unique number.

Seeds of doubt

So for my candidate subject of *Autohaus Spathelf GmbH*, the **Incorporating Agency** can't be a single entity at the country level for Germany, because my search on the earlier slide shows 8 matches for that number in different states.

It could be unique at the State level

i.e. one of

Baden-Wurttemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rheinland-Pfalz, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia

Doubts on doubts

Or it could be at the court-house level. In Baden-Württemberg the courts are..

Amtsgericht Bühl

Amtsgericht Gengenbach

Amtsgericht Mannheim

Amtsgericht Böblingen

Amtsgericht Stuttgart - Bad Cannstatt

(etc)

A state sounds like it could be a Government Agency, but a court-house does not. (this is really weak, but I've got to pick a straw-man)

The Incorporating Agency must therefore be the State.

In my example case, the **Incorporating Agency** is the State of Baden-Württemberg.

But what is the Jurisdiction of Incorporation??

Back to the definition..

Jurisdiction of Incorporation: In the context of a Private Organization, the country and (where applicable) the state or province or locality where the organization's legal existence was established by a filing with (or an act of) an appropriate government agency or entity (e.g., where it was incorporated).

If I file documents electronically, they don't go to the courthouse, so the courthouse is a red herring here. It is just a point of access to the Incorporating Agency.

But if I did go to the courthouse to register my company, then the locality of the courthouse fulfills the definition of Jurisdiction of Incorporation because it is where I went to register.

But what is the Jurisdiction of Incorporation??

Back to the definition..

Jurisdiction of Incorporation: In the context of a Private Organization, the country and (where applicable) the state or province **or locality** where the organization's legal existence **was established by a filing with** (or an act of) an appropriate government agency or entity (e.g., where it was incorporated).

Voices off

And now a colleague chimed in with ..

[I'm not sure this is true. Just because it is the location that you are depositing your registration documents, does that make it the "appropriate government agency" specified in the above definition of Jurisdiction of Incorporation? Maybe, but if all they do is forward them on to somewhere else, I'd say not, else one might just as well say the local post office where one drops the documents for mailing fits the bill as well.]

Fortunately, the definition of the subject:Jol fields now help us.

subject:jurisdictionLocalityName

subject:jurisdictionStateOrProvinceName

subject:jurisdictionCountryName

Contents: These fields **MUST NOT** contain information that is not relevant to the level of the Incorporating Agency ~~or Registration Agency~~. For example, the Jurisdiction of Incorporation for an Incorporating Agency ~~or Jurisdiction of Registration for a Registration Agency~~ that operates at the country level **MUST** include the country information but **MUST NOT** include the state or province or locality information. Similarly, **the jurisdiction for the applicable Incorporating Agency ~~or Registration Agency~~ at the state or province level **MUST** include both country and state or province information, but **MUST NOT** include locality information.**

A result!

So the subject:Jol fields must be

subject:jurisdictionLocalityName=DE

subject:jurisdictionStateOrProvinceName=Baden-Württemberg

I think we have arrived.

Does everyone agree?

My “helpful” colleague says ‘Maybe, but..

EVG Section 9.2.5 under Contents of subject:serialNumber states:

For Private Organizations, this field **MUST** contain the Registration (or similar) Number assigned to the Subject by the Incorporating or ~~Registration~~ Agency in its Jurisdiction of Incorporation or ~~Registration~~, as appropriate. If the Jurisdiction of Incorporation or ~~Registration~~ does not provide a Registration Number, then the date of Incorporation or ~~Registration~~ **SHALL** be entered into this field in any one of the common date formats.

An argument **could** be made that Germany simply does not assign Registration Numbers as they are defined in the EVG, because that number is **NOT** unique, so the appropriate thing to do would be to enter the Incorporation/Registration date in this field, and since your conclusion relies upon the definition of Registration Number we’re still in a bit of a quandary.’

Conclusion

Let's not be wrong, but if we are wrong, let's all be wrong together!

Q: Why do dozens of EV CAs all have to work this out for themselves?

A: They don't!

This is why we must share our **Incorporating Agency** data!

Hereseey

What if the CA/B Forum published a list?

We can only do practically do that after we have gathered the existing
Incorporating Agency data

THE END