RICS Valuation – Global Standards 2017 jurisdiction guide: Germany

RICS jurisdiction guide
1st edition, May 2019

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Published by the Royal Institution of Chartered Surveyors (RICS)
Parliament Square
London
SW1P 3AD
www.rics.org

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ISBN 978 1 78321 335 1

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RICS jurisdiction guides

Since its first publication in 1976, the RICS Valuation – Global Standards 2017, generally known as the ‘Red Book’, has set standards for property valuation that are designed to ensure consistency, objectivity and transparency in the valuation process. The primary aim of these standards has always been to sustain public confidence and trust in a valuation undertaken by an RICS member or a valuer working for an RICS-regulated firm.

Over the past 40 years the Red Book has become global in its application, reflecting the growing internationalisation of the property market and its clients’ requirement for worldwide consistency of standards. A Red Book-compliant valuation is consistent with the International Valuation Standards (IVS) and it is augmented in a growing number of markets by national supplements, which provide guidance designed to ensure that a Red Book-compliant valuation also meets local legal requirements, regulations and practice.

The global Red Book and, where they apply, the national supplements are written primarily for valuers. By contrast, jurisdiction guides will be of use especially to property owners and professionals who are involved in the valuation process, either by commissioning a valuation or by providing advice in relation to its outcome. Owners and their advisers do not usually need to know the full detail of the valuation process and the regulations that govern it (which are set out in the Red Book), but their understanding of the outcome of the valuation is likely to benefit from a better understanding of the key factors that will influence a valuer, and thus the value of the property.

These factors include:

- legislation governing the holding and valuation of real estate
- ownership structures
- lease terms
- planning regulations and development control
- taxation affecting real estate and
- valuation regulations, standards and the application of the Red Book.

These factors will vary significantly between one country and another. Jurisdiction guides therefore aim to examine each factor in its local context and to highlight those that are likely to have a significant impact on the valuation of a property located in the country concerned.

It is important to emphasise that jurisdiction guides are designed to provide a short overview of what in many cases and countries is a complex situation. They have been prepared by RICS and based on information from a variety of sources. The content of this jurisdiction guide is for general guidance only, and the reader is advised not to act on it without consulting an appropriately qualified and experienced professional.
Document status defined

The following table shows the categories of RICS professional content and their definitions.

**Publications status**

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<thead>
<tr>
<th>Type of document</th>
<th>Definition</th>
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<tr>
<td><em>RICS Rules of Conduct for Members and RICS Rules of Conduct for Firms</em></td>
<td>These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.</td>
</tr>
<tr>
<td>International standard</td>
<td>High-level standard developed in collaboration with other relevant bodies.</td>
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<tr>
<td>RICS professional statement [PS]</td>
<td>Mandatory requirements for RICS members and regulated firms.</td>
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<tr>
<td>RICS guidance note [GN]</td>
<td>A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.</td>
</tr>
<tr>
<td>RICS code of practice [CoP]</td>
<td>A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.</td>
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<tr>
<td>RICS jurisdiction guide [JG]</td>
<td>This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies, as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.</td>
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1 Background

Germany has a mature property market that attracts both local and international property investment, reflecting its position as a leading world economy and a G6 member of the EU. Its investment market was ranked fifth in the world in the MSCI Real Estate Market Size survey 2017.

The market is categorised in the JLL Global Real Estate Transparency Index 2018 as ‘highly transparent’ and ranked eighth of the 100 markets surveyed.
2 Legislation

2.1 Principal laws governing real estate

The following laws govern real estate in Germany:

- The Federal Building Code (Baugesetzbuch – BauGB) and the Federal Land Utilisation Ordinance (Baunutzungsverordnung – BauNVO) govern urban development planning, setting the pattern for local planning law.
- The Civil Code (Bürgerliches Gesetzbuch – BGB) sets standard terms for leases.
- The Real Estate Valuation Regulation (Immobilienwertermittlungsverordnung – ImmoWertV) provides detailed guidance on valuation methods and principles: specifically, Ertragswertrichtlinie (EW-RL) refers to income value; Sachwertrichtlinie (SW-RL) refers to reinstatement value; Vergleichswertrichtlinie (VW-RL) refers to comparison value; and Bodenrichtwertrichtlinie (BRW-RL) refers to land value.
- The Pfandbrief Act (Pfandbriefgesetz), in conjunction with the regulation on the Determination of Mortgage Lending Values (MLV) of Property (Beleihungswertermittlungsverordnung – BelWertV) sets out the principles of valuation to be applied when valuing for German mortgage banks (Hypothekenbanken).

2.2 Types of ownership

There are four types of property ownership in Germany:

- Eigentum – absolute ownership, which can be divided into:
  a Alleineigentum – sole ownership
  b Bruchteilseigentum – tenancy in common and
  c Gesamthandseigentum – joint tenancy.
- Wohnungseigentum – condominium ownership, which is absolute ownership of a self-contained unit in a building, with proportional ownership of common parts and installations.
- Erbbaurechte – heritable building rights, which consist of an alienable and inheritable right to own a building (but not the land on which it stands).
- Occupational leases (see sections 2.5 and 2.6).

2.3 Registration

All property in Germany must be registered.

All plots of land are surveyed, and details are entered on cadastral maps (Liegenschaftskataster). The land registry (Grundbuch) lists cadastral references, any restricted ownership rights, legal encumbrances, etc. Mortgages, property charges and rights (easements, usufructs, etc.) must also be listed.

Land registers for each district are held at the district court.
2.4 Planning control

There are two types of zoning plan (Bauleitpläne), both of which are the responsibility of the local authorities. The land use plan (Flächennutzungsplan) provides an overview of how the land within the local authority’s area is to be used, but it does not refer to individual plots and is not legally binding. Detailed local development plans (Bebauungsplan), which are legally binding, set out compulsory regulations on the development and use of individual plots, based on the principles in the land use plan. The type and size of permitted structures is controlled in this way.

Further detailed legislation exists in relation to planning control during the period when plans are being drawn up, for urban renewal measures, for preservation orders, etc.

Building regulation law (Bauordnungsrecht) determines the design and mode of construction in order to meet the requirements of planning law. A building permit (Baugenehmigung) is required before construction begins.

2.5 Commercial leases

The Civil Code (BGB) sets standard terms for leases, though parties are free to enter into contracts with additional provisions, provided these do not conflict with the Civil Code or other laws. Typical terms are as follows:

- **Term:** five- or ten-year terms are typical, with an option to renew for a further five years. Trade-related properties (e.g. hotels) usually have longer leases. Shorter leases (one to three years) can be agreed for offices by tenants requiring greater flexibility.
- **Breaks:** these are rarely permitted during the term.
- **Rent:** this is payable monthly in advance.
- **Rent escalation:** indexation is common for leases of ten or more years, usually in line with the consumer price index. Fixed increases at set intervals are sometimes agreed. Regular reviews to market rent are rare. Shopping centre rents often include a turnover element.
- **Statutory rent control:** none.
- **Maintenance, operating expenses and repair:** roof and structure (Dach und Fach) is usually the landlord’s responsibility, with the tenant responsible for internal repairs and the cost of insurance. Property tax is usually borne by the tenant.
- **Assignment and subletting:** this is permitted, subject to the landlord’s approval.
- **Termination:** either party has a statutory right to terminate a lease longer than 30 years after 30 years have elapsed. Commercial leases cannot usually be terminated during a fixed term.

2.6 Residential leases

Residential lettings are subject to significant control through federal and state law. This tends to favour the tenant.

The lease period is commonly open-ended for unfurnished accommodation. In limited circumstances (usually if the tenant is in default or the landlord requires the premises for owner-occupation), the lease can be terminated by formal notice from the landlord.
The tenant can give three months’ notice to end the lease. For furnished premises, the maximum lease term is two years.

Rent increases can be via fixed steps, or subject to local market changes (ortsübliche Vergleichsmiete) or after landlord’s refurbishment. In some cases, they are subject to restriction.

The German Regulation on the Establishment of Operating Costs (Betriebskostenverordnung – BetrKV) sets out regulations affecting the operating costs of residential property.

2.7 Property measurement

*International Property Measurement Standards* (IPMS) for Office Buildings, Residential Buildings and Industrial Buildings were published in 2014, 2016 and 2018 respectively. RICS members must adopt IPMS in line with the RICS professional statement *RICS property measurement* (2nd edition). RICS members are expected to advise their client or employer on the benefits of using IPMS, unless there is a significant reason for departure. It is accepted that in some circumstances IPMS may not be suitable. If IPMS are not to be used, RICS members must document the reasons for departure.

IPMS for other asset types will be published in due course. In the interim all RICS members must follow *RICS property measurement* (2nd edition) Section 1 Application of the professional statement. In some instances other measurement standards can be used, such as the RICS guidance note *Code of measuring practice* (6th edition), providing the reason for departure is stated.

In Germany, no single code of measuring practice exists for commercial buildings, but the code of practice established by the Society of Property Researchers (Gesellschaft für Immobilienwirtschaftliche Forschung – GIF) is widely used. This is based on German standard DIN 277. It should be noted that measurements undertaken in accordance with this code will result in different areas to those calculated under IPMS or the RICS code.

All floor areas are expressed in square metres.
3 Taxation

3.1 Value-added tax (VAT)

VAT is charged on rent, service charges, design fees and construction costs for commercial property, except in the case of businesses exempt from VAT (e.g. doctors and banks). Generally, the sale and purchase of real estate is VAT exempt.

3.2 Real estate transfer tax (RETT)

RETT is payable by the purchaser, based on the purchase price plus any other buyer’s obligations. Individual states set and amend RETT rates. RETT may not be payable if acquisition is via shares in the company owning the property, or via the transfer of shares in a partnership.

Both parties in a transaction are jointly liable for RETT. It is usual for the buyer to pay the tax.

3.3 Tax on rental income and capital gains

Tax treatment of rental income depends on whether the property is considered to be used to generate a business income or is an investment generating rental income. If the former, tax is payable on rental income and capital gains; if the latter, capital gains can be tax-free if the investment is held for more than ten years. Specified costs of maintenance, management and an allowance for depreciation may be offset against rental income in assessing tax liability.

3.4 Real property tax (Grundsteuer)

Real property tax is a local tax levied on all developed and undeveloped real property. It is based on a specific tax value, which usually is a fraction of the market value, and it is payable by the owner of the property but often recovered from tenants.
4 Regulation and standards

4.1 Regulation of property professionals

Real estate valuation professionals are not subject to state regulation in Germany, but a well-established professional structure exists. Local German organisations representing professional valuers are listed in Appendix A.

RICS has been active in Germany since 1993 and has over 1,700 members in the country. RICS was established in 1868 in London and is now the largest international regulator of property professionals, with 125,000 members worldwide. RICS valuers must be registered and are subject to regulatory monitoring.

4.2 German national valuation standards

Real estate valuation in Germany is subject to a relatively high degree of regulation. National valuation regulations are defined in the German ordinance on the Principles for Determination of the Market Values for Property (ImmoWertV) 2010. In addition, the Regulation on the Determination of Mortgage Lending Values of Property under the Mortgage Bonds Act (BelWertV) includes specific regulations that apply in the case of valuations undertaken for mortgage purposes for a Hypothekenbank. Such valuations must be in accordance with the Pfandbrief Act (Pfandbriefgesetz).

One of the main bases of value is market value (Verkehrswert). Section 194 of BauGB defines Verkehrswert as:

‘the price which would be realisable at the time of the valuation through normal business operations in accordance with the legal circumstances and the actual characteristics, other qualities and the location of the property or any other valuation object, irrespective of unusual or personal circumstances.’

In practice, a valuation amount reported using this definition will usually be the same as one reported under the IVS or RICS definition of market value.

Valuation methods used to arrive at Verkehrswert are laid down in the ImmoWertV and, for mortgage lending, the BelWertV.

Valuations for mortgage lending purposes are regulated by the Pfandbrief Act (Pfandbriefgesetz). This requires a specific basis of value known as Mortgage Lending Value (MLV) (Beleihungswert). The valuer is required to consider long-term, sustainable characteristics of the property and normal market conditions, ignoring speculative aspects. MLV may not exceed the market value (Verkehrswert) and is intended to ensure stability over an extended period. Valuers undertaking this type of work must have a qualification issued by the HypZert GmbH.

It is important to recognise that the figure reported under the MLV will not be the same as Verkehrswert, and it will differ from market value as defined in the Red Book.

Local committees of valuation experts are established in cities and larger towns in accordance with sections 192–199 of BauGB. Membership of the committees comprises local real estate experts, architects, engineers, bankers, estate agents,
tax office employees and other professionals, all providing an honorary service. Their purpose is to ensure the transparency and stability of the market by publishing data on approximate values per plot (land plus, if relevant, building) in their area, as well as publishing reports on the local market. Reports are based on information on all sale prices in the committee’s area, which must be reported as a legal requirement by the notary dealing with the sale. Information on approximate plot values can be requested from the local committee of valuation experts’ office.

4.3 International standards

- **International Valuation Standards (IVS)** – published by the International Valuation Standards Council (IVSC), which comprises about 100 member organisations dedicated to setting generic global standards for valuation practice and valuation professionals. RICS is a member of IVSC.

- **RICS Valuation – Global Standards 2017 (the Red Book)** – the Red Book sets out global valuation standards for valuations undertaken by RICS members and regulated firms. It adopts and applies the IVS and imposes certain additional requirements with particular reference to ethics, competency, objectivity and disclosures.

- **European Valuation Standards (EVS, the Blue Book)** – published by the European Group of Valuers’ Associations (TEGoVA), an umbrella organisation of European national valuers associations whose objective is to promote and harmonise European valuation standards.
5 Application of the RICS Valuation – Global Standards 2017 in Germany

5.1 User’s perspective

Global standards

• The Red Book is written to ensure that valuation assignments undertaken by RICS members and regulated firms (see PS 1 sections 1 and 2) are fully in accordance with International Valuation Standards (IVS).

• The Red Book complements the IVS by providing detailed guidance and specific requirements regarding the practical implementation of IVS.

• All valuations provided in writing by RICS members and regulated firms must comply with the requirements of the Red Book. Surveyors must be suitably trained and have appropriate qualifications and adequate experience for the task.

• Valuers must be independent, objective and transparent in their approach.

• Adoption of Red Book global standards ensures consistency of approach and aids understanding of the valuation process and the value reported.

• A Red Book-compliant valuation must provide clarity regarding terms of engagement, basis of value (including any assumptions or material considerations taken into account), and reporting.

National supplements

National supplements of the global Red Book are published by RICS in a growing number of countries to ensure compliance with local legal requirements, regulation and practice.

5.2 Red Book – implementation in Germany

5.2.1 Red Book translation

An official German translation of the Red Book is available, and can be downloaded from the RICS website.

5.2.2 Red Book application in the German context

The Red Book is written from an international perspective, in accordance with the IVS. It expressly recognises (in PS 1 section 4) that in individual jurisdictions, compliance with specific statutory, regulatory or other authoritative requirements is necessary, and doing so does not preclude a valuation from being declared as performed in accordance with the Red Book.

Valuations of property in Germany must comply with German national regulations in ImmoWertV and with other specific requirements; for example, valuations to determine MLV must additionally comply with the BelWertV.
A valuation undertaken by an RICS member or a valuer working for an RICS regulated firm who has the necessary experience in the market must comply with the Red Book. Such a valuation will also accord with the IVS. Valuations compliant with the Red Book can also comply with relevant German valuation regulations.

5.2.3 The Red Book national supplement for Germany

The German national supplement for the Red Book, Application of the RICS Valuation Professional Standards in Germany, provides clear and detailed guidance designed to ensure that a Red Book-compliant valuation of a property in Germany accords with relevant national legislation.

A summary of the content is set out below. For further details, reference can be made to the original document.

- a Date of publication – September 2015
- b Document status – RICS guidance note
- c Introduction – defines the document’s purpose and context
- d Definitions – Verkehrswert, Beleihungswert, valuation date, quality date and condition are defined
- e German legislation and the application of the Red Book – this is the main content of the guidance note. It lists all Red Book standards and where relevant, provides commentary as to how these can be interpreted in the German context.

Note: As the German national supplement predates the 2017 edition of the Red Book, it is due to be updated to take account of changes in this edition.
Appendix A: Professional organisations representing property valuers in Germany
Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

Americas

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