

GERMANY

<p>1 Area of Jurisdiction</p> <p>a) Firm</p> <p>b) Contact</p>	<p>Germany – Berlin (German Property Law is identical throughout Germany unless indicated otherwise.)</p> <p>SES EULITZ SCHRADER</p> <p>Daniel Wendland</p> <p>Daniel.Wendland@ses-legal.de</p> <p>+49 30 315757-0/ +49 30 315757-99</p>
<p>2 What are the Categories of Legal Estate in your Jurisdiction</p>	<p>The <i>Bürgerliches Gesetzbuch</i> (German Civil Code) lists the following rights to property:</p> <ol style="list-style-type: none">1. <i>Eigentum</i> – full ownership2. <i>Wohnungseigentum</i> – condominium3. <i>Erbbaurecht</i> – hereditary building right
<p>3a Personnel Involved</p> <p>(i.e. Notary, Lawyer, Other)</p>	<p>a.) Notary</p> <p>A Notary’s services are required by law for every property transaction in Germany. The Notary will make sure that the title to property is good and marketable by researching the land register. He will provide a well-balanced contract that will secure both parties’ interests in a transaction and explain the legal implications and consequences of the contract even to an inexperienced party. The Notary will also supervise and support the exchange of performances under the contract and take care that the newly acquired rights are registered.</p> <p>b.) Lawyer</p> <p>A Lawyer will represent either of the parties in preparing the necessary documents for a transaction. He may also draft a contract, but the notary will review it to see if it is fairly balanced. A Lawyer’s advice in relation to the transaction may</p>

	<p>be more extensive than the Notary's if he knows his client's situation better than a notary would. While a Lawyer's services are not required by law in a property transaction, it is common that the parties will be assisted by Lawyers in larger transactions</p> <p>c.) Other</p> <p>Realtors, usually selling agents, market property but have no legal role in a transaction.</p>
<p>3b If a Notarial System Applies</p> <p>(i) Does the Notary Act for Both Parties</p> <p>(ii) Would Independent Advice also be Required</p> <p>If the Notary is not main property contact would you please confirm their details</p>	<p>(i) Yes. A Notary will always act for both parties. He is bound to impartiality by law.</p> <p>(ii) Independent advice is not required. However, it is common that parties are assisted by Lawyers in larger transactions.</p>
<p>3c Other Systems</p> <p>Please outline the main personnel/professional involvements</p>	<p>Not applicable</p>
<p>3d Anti money laundering requirements if applicable (Notification and Identification Requirements exist)</p>	<p>Yes, Notification and Identification Requirements apply in accordance with the current EU directive.</p>
<p>4a What Planning/Zoning requirements apply</p>	<p>A variety of restrictions may apply under national and regional laws as well as under municipal rules and regulations. Details should be thoroughly researched in the due diligence process.</p>
<p>4b Are there any incentives in this area</p>	<p>None</p>
<p>5 Finance</p> <p>(i) At what stage of the contractual process is a deposit required (If at all)</p> <p>(ii) What percentage of the transaction</p>	<p>(i) There is no requirement for a deposit by law. Usually, a property transaction will be designed to protect both parties' rights without a need for a deposit.</p>

<p>would a buyer be expected to pay by way of deposit</p> <p>(iii) Is there any ceiling on the amount of mortgage borrowed in relation to the price paid for the property</p> <p>(iv) What constitutes a mortgageable interest</p>	<p>(ii) Not applicable</p> <p>(iii) Not by law. This is subject to the Lender's discretion.</p> <p>(iv) All rights mentioned in Section 2 are mortgageable.</p>
<p>6 Tax</p> <p>(i) Does Land transaction attract a statutory payment to Government</p> <p>(ii) If so, what if any are the Thresholds</p> <p>(iii) Who is responsible for paying such Tax (if any)</p>	<p>(i) A Real Estate Transfer Tax is levied on the value of the transaction. The rate varies locally and goes up to 4,5 % in Berlin. No transaction can be closed before this tax has been paid.</p> <p>(ii) There is no threshold applicable.</p> <p>(iii) The Buyer is responsible for paying the Tax. In case the Buyer fails to pay, the Seller is liable as well..</p>
<p>7 Registration</p> <p>(i) Is there Central Registration of Land Transaction</p> <p>(ii) If so what body keeps the register and what are the charges (if any) are involved.</p>	<p>(i) No. Land transactions are registered locally by hundreds of land registers in charge of all properties within their region.</p> <p>(ii) The land registers are kept by the Local Courts. Charges vary according to the value of the property and the type of transaction.</p>
<p>8 Constraints on Property Ownership</p> <p>(i) What (if any) are the regulations covering foreign ownership of property in your jurisdiction</p> <p>(ii) Is the property allowed to pass on death</p>	<p>(i) There no special regulations covering foreign ownership of property in Germany.</p> <p>(ii) Yes, upon the death of the owner, the property of the real estate passes on to his legal heirs. If the</p>

<p>(iii) Although always advisable, is it a Legal requirement that a Will is made in the country of purchase</p> <p>(iv) What are the implications with regard to taxation on inheritance</p>	<p>testator orders in a testament, that takes priority opposite to the heredity by law. Without testament the legal heredity is decisive.</p> <p>(iii) No. A Will in Germany is not required, but advisable indeed.</p> <p>(iv) Inheritance tax is levied depending on the degree of kinship and the value of the property.</p>
<p>COMMERIAL PROPERTY</p>	
<p>9 For Commercial Land Transaction please list the main differences (if any) from the above process</p>	<p>None</p>
<p>10 Are there any specific financial structures required in the purchase of commercial property</p>	<p>None</p>
<p>11 On New Builds what are the requirements in terms of financial recourse or collateral warranty</p>	<p>None</p>
<p>12 Are there any restrictions on inward investments</p>	<p>None</p>
<p>13 What (if any) are the Tax obligations on exit from the development</p>	<p>A profit between purchase and selling price will be taxed if the property has not been held for at least 10 years (Speculative Gains Tax).</p>
<p>14 What (if any) are the Tax incentives for overseas companies</p>	<p>There are no special tax incentives for overseas companies. Everybody is eligible for tax incentives for certain investments, e.g. in Eastern Germany.</p>