

NEW DEAL? THE INCOMING GERMAN GOVERNMENT'S COALITION AGREEMENT AND ITS LEGAL IMPLICATIONS FOR THE REAL ESTATE SECTOR

The likely new German government coalition between the Social Democratic Party (SPD), the Greens (Bündnis 90/Die Grünen) and the pro-business Free Democratic Party (FDP) presented its coalition agreement for the upcoming legislative period (2021-2025) on 24 November 2021. It sets out a number of initiatives relating to the construction and property sectors, including residential construction projects and the introduction of a new payment arrangement for heating costs in the rental sector ("*Teilwarmmiete*"), as well as further changes to the recently overhauled statutory framework for real estate transfer tax. The new coalition also plans to encourage digitalisation across the board in order to help effectively implement these strategies.

The intention is also to create a new ministry for construction and housing, likely to be controlled by the centre-left SPD, to help meet the targets set out in the coalition agreement.

RESIDENTIAL HOUSING DEVELOPMENT

Recognising that having somewhere to live is a basic human need, the new coalition hopes to make housing more affordable, climate-friendly, sustainable and innovative, with better disabled access. The ambitious aim of building 400,000 new homes a year, including 100,000 homes built with public funding, is a key part of this programme. Financing will continue to be provided in the form of central government social housing subsidies, with plans in place to increase the available budget. The coalition also intends to create an alliance of key stakeholders to tackle the issue of affordable housing.

Initial thoughts

The surge in construction costs resulting mainly from pandemic-related supply chain problems and the significant investment required to meet climate neutrality requirements means that it will be difficult to meet the targets set out in the coalition agreement. The aim is to incentivise and rely on market forces

Key issues

- Residential housing development
- Rent (new heating costs scheme)
- Real estate transfer tax (share deals)
- Digitalisation and other issues

rather than putting up barriers, but the coalition agreement fails to provide much detail on how the various measures might be implemented. The government is not really in a position to launch its own housebuilding scheme via the Federal Agency for Public Property (BImA) either. It also remains to be seen how the wide-ranging investment plans will be made affordable when the government essentially only intends to help tenants.

RENT (NEW HEATING COSTS SCHEME)

Alongside a substantial housebuilding programme, including a significant amount of publicly funded construction, the coalition hopes to support tenants facing rising energy costs by introducing a new heating payment arrangement for the rental sector ("*Teilwärmiete*"). This essentially involves landlords being required to let properties at a price which includes a basic level of heating. Tenants are then only required to pay for any additional heating costs. The concept is also meant to incentivise landlords to ensure that the properties they let are energy efficient, which provides clear environmental benefits. The new coalition hopes to apply this model, which is already used in a number of other countries, to help it meet its climate targets.

The sections of the coalition agreement relating to rent control and the protection of tenant interests are as expected. The plan is to review and extend existing provisions. The application of a qualified rent index is due to become compulsory for all local authorities with 100,000 or more residents and the current tenancy law situation is set to be reviewed, particularly as regards the provisions on payments during the statutory grace period.

Initial thoughts

It is certainly a commendable aim to create a situation which aligns the interests of tenants and landlords in terms of energy efficiency. The plans to require landlords to provide a basic level of heating should not mean that they only receive a flat-rate payment. This has the potential of exposing them to the risk of price rises or the actual level of tenant consumption without them being able to pass a share of the costs for energy efficiency investments on to their tenants. It will be interesting to see whether a solution can be found which takes the interests of both sides into account without creating more red tape. Real estate investors are unlikely to be impressed by any further restrictions on their ability to increase rents.

REAL ESTATE TRANSFER TAX (SHARE DEALS)

In the same way as its predecessor did, the new coalition has set out its intention to introduce a more flexible real estate transfer tax regime. This is a direct continuation of the aims set out in the 2018 grand coalition agreement involving Angela Merkel's centre-right party. One element entails introducing a tax-free allowance to make it easier for people to buy residential property for their own use. The new coalition also hopes to help ensure that "reciprocal financing" is available by making it more difficult to acquire property via share deals, with one of the key aspects being to close any existing tax loopholes. It therefore seems likely that the restrictions imposed under the 2021 reform of the real estate transfer tax regime will be extended.

Initial thoughts

It is striking that there are yet again plans to make share deals less attractive while they are still intended to act as a source of funding. The envisaged "reciprocal financing" already exists in view of the fact that benefits for buying

a home were due to be introduced to offset the most recent changes in the law making it harder to buy property via share deals which took effect on 1 July 2021. But this fell by the wayside during the legislative process in the previous legislative period.

It seems like this section has essentially been copied one-for-one from the 2018 coalition agreement. The new coalition agreement also fails to provide any details of the tax loopholes which still exist and how they might be eliminated. A blanket rejection of share deals is not really helpful for anyone and a more measured approach needs to be taken.

DIGITALISATION AND OTHER ISSUES

In addition to the initiatives outlined above, the new coalition also hopes to push digitalisation across the board, from planning and approval procedures to the technology required by public authorities.

The aim is to reduce residential development costs and speed up the construction process, which will also require public authorities and courts to hire more staff and upgrade their IT systems.

There are also plans to reform the Ordinance on Fees for Architects and Engineers (HOAI).

Finally, the new coalition plans to review the issue of the extent to which the Federal Administrative Court ruling of 9 November 2021 on the rejection of the municipal right of first refusal in conservation areas in the case of share deals should be corrected from a legislative standpoint, contrary to the established practice of the Berlin authorities.

Initial thoughts

The objective behind digitalisation and the benefits it can bring are recognised by all the coalition parties, although the new government certainly has a lot of work ahead of it if it wants to implement these ambitious plans effectively.

CONTACTS

Dr. Gerold M. Jaeger
Partner

T +49 211 4355 5059
E gerold.jaeger
@cliffordchance.com

Dr. Fabian Böhm
Partner

T +49 69 7199 1361
E fabian.boehm
@cliffordchance.com

Markus Böhn
Partner and Notary

T +49 69 7199 1379
E markus.boehn
@cliffordchance.com

Dennis Blechinger
Partner

T +49 89 21632 8370
E dennis.blechinger
@cliffordchance.com

Dr. Kristina Jaeger
Partner

T +49 69 7199 1369
E kristina.jaeger
@cliffordchance.com

Dr. Christian Keilich
Partner, Head of Real
Estate Germany

T +49 69 7199 1053
E christian.keilich
@cliffordchance.com

Dr. Klaus Minuth
Partner and Notary

T +49 69 7199 1591
E klaus.minuth
@cliffordchance.com

Thomas Reischauer
Partner and Notary

T +49 69 7199 1527
E thomas.reischauer
@cliffordchance.com

**Reinhard Scheer-
Hennings**
Partner

T +49 211 4355 5794
E reinhard.scheer-
hennings
@cliffordchance.com

Dr. Philipp Stoecker
Partner

T +49 69 7199 1389
E philipp.stoecker
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you would like to know more about the subjects covered in this publication or our services, please contact the authors or your usual contact at Clifford Chance.

www.cliffordchance.com

Clifford Chance, Junghofstraße 14, 60311
Frankfurt am Main

© Clifford Chance 2021

Clifford Chance Partnerschaft mit
beschränkter Berufshaftung von
Rechtsanwälten, Steuerberatern und Solicitors
· Sitz: Frankfurt am Main · AG Frankfurt am
Main PR 2669

Regulatory information pursuant to Sec. 5
TMG and 2, 3 DL-InfoV:

www.cliffordchance.com/deuregulatory

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Delhi •
Dubai • Düsseldorf • Frankfurt • Hong Kong •
Istanbul • London • Luxembourg • Madrid •
Milan • Moscow • Munich • Newcastle • New
York • Paris • Perth • Prague • Rome • São
Paulo • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.