

Opening an Office in Germany? Beware the Pitfalls

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Although the U.S. and Germany share many similarities when it comes to completing a corporate real estate transaction, the differences are critically important, and if ignored, can turn a relocation within or expansion into the largest economy in Europe into an unpleasant experience.

Germany's real estate market has changed dramatically in the past decade, and the international influx of foreign companies also has notably improved corporate real estate practices. Nonetheless, specific particularities remain that make leasing practices a challenging undertaking: transparency, conflict of interest and Written Form Requirement.

Transparency

For years, the most common complaint from overseas investors and their advisors surfaces soon after they start analyzing the German real estate market: lack of transparency.

Foreign concern is justified because Germany's real estate market is probably the least transparent property market in Europe. The major multinational real estate advisors prepare and issue market reports every quarter, often with contradictory information. In the U.S. commercial real estate market, data availability and transparency are considerably higher than in the Federal Republic of Germany.

More importantly, the data in the U.S. is readily available and considerably more reliable. Partly due to the higher turnover rate in the U.S. market, it also is common practice in the U.S.--and other European markets—to publish market data of commercial sales.

Conversely, German market participants unfortunately are more inclined toward discretion and secrecy. It is customary for German corporate real estate investors to agree to keep transactional data confidential between the parties. The solution to this difficult problem is actually quite simple: An experienced and well-connected ITRA affiliate can access and frequently supply information that is not publicly available in print media or on the Web.

Conflict of Interest

Once a foreign investor or advisor has completed his or her research, it's time to select a local commercial real estate representative, but often that is not easy in Germany because the broker can act for parties on both sides of the transactions. Vendors and owners often inform Brokers that they can be expected to be remunerated by the potential buyer or tenant or vice versa. This can--and often does--lead to a conflict of interest that applies considerable strain on the relationship with the client.

The dilemma is crystal clear: due to the conflict of interest, the broker cannot actively influence the negotiation process to the benefit of both parties with the crucial point being that the broker violates the trust of the client with his or her activities. But if the broker acts in an unauthorized and unannounced manner, he or she may lose a commission through a forfeiture claim. To avoid the risk of experiencing these situations, it is important to make sure that the German commercial real estate representative has a clear contract with you, the tenant, and is sitting only on your side of the table.

That's why ITRA representation in a country like Germany can be so valuable. As our name--International Tenant Representative Alliance--implies, we are advocates for the tenant and do not negotiate from both sides of the table. Therefore, Berendes Consulting Group, an ITRA affiliate, will work on behalf of a client as a partner without conflict of interest and with total objectivity and advocacy for the client. American companies expect this kind of representation and are relieved when educated at the beginning of the process that the broker will not be double dealing at the negotiation table.

Written Form Requirement

Successfully completing a transaction in Germany is further complicated by a controversial regulation mandated by the German Federal Court of Justice in 2003 that causes migraine headaches for virtually everyone in the German corporate real estate industry.

The ruling states that a lease agreement can be terminated before its contractual end if the Written Form Requirement is improperly completed. Essentially, the Written Lease Requirement means that all provisions of the lease must be included in one document, and each page of the document must be individually signed by an authorized representative of the tenant leasing the space.

But that's only part of the process, and it's critical for all those considering lease agreements in Germany to know that there is a time limitation of 10 days that must be honored between the time the offer is made and acceptance (signature) of the agreement.

Finally, it should be noted that oral agreements between the parties create horrible problems for the transaction. Each oral agreement is considered an amendment to the agreement and leads to non-compliance of the Written Form Agreement, which allows either party to terminate the agreement.

Without question, the Written Form Agreement is a lawyer's dream and a broker's nightmare. Therefore, it is absolutely essential that a legal advisor specializing in German commercial real estate law be brought in to oversee the transaction to make sure it is properly done. In the long run, legal assistance will prevent unwanted, last-minute surprises and save time as well as money.

Conclusion

There are several major obstacles to completing a transaction in Germany that must be acknowledged in the early phases of relocation or expansion. But if a client is based in the U.S., the Berendes Consulting Group—a recent ITRA affiliate—can provide the same exceptional quality and service expected in your local marketplace, as well as provide the right team to manage the technical and cultural nuances of successfully completing a transaction in Germany while avoiding the confusion and frustration often associated with overseas relocation or expansion.