

## GERMAN LAW NEWSFLASH – November 2019

Dear reader,

This time we present you a short overview over Berlin's plans to introduce a 5-year rent cover during this year. We hope that it meets your interest. Feedback is as always welcome.

Best regards,  
Thomas & Team

### Berlin plans to freeze rents for the next 5 years

#### How it used to be

As a central metropole in Europe Berlin saw an increase of rents during the last decade. Still reaching a general limit of 9, 6 € per sqm it was not as strong as in other German cities such as München (18 €) or Stuttgart (14 €).

Thereby landlords had mainly three options to increase the rents: modernizations, an adaption towards the rent index in Berlin which has just been amended in 2019 and setting up a new rent contract after the end of the old one.

In order to stop an increasing rent level by using those ways, there have been several actions by the Berlin state so far.

To do so the German federal state also enabled the single states such as Berlin to limit an increase to up to 10 % of the former rent in case of new lettings (*Mietpreisbremse*). Berlin took that chance, but generally the *Mietpreisbremse* had limited effect on rents in Berlin due to a lack of enforcement.

Additionally, Berlin tried to increase the number of newly constructed flats. In reality, however, the number of those is actually decreasing during this year.

#### What is new

Now the government of Berlin published a new possible action: a so called rent cover (*Mietendeckel*), which has been the center of controversial discussions. The details of this idea are not clear yet, but the main facts that have been made publicly available till now are as follows:

1. There shall be a vote for the rent cover in the Berlin parliament in the beginning of 2020
2. Still the rent cover shall have a retrospective



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- effectiveness beginning on the 18. June 2019
3. The rents shall stay at a certain level for 5 years (18. June 2019 till 18. June 2024)
  4. There shall be a given rent level depending inter alia on first occupancy, features and location. In any case it shall not be higher than 9,80 € per sqm.
  5. There shall be an option to decrease the rent as follows
    - a. If it is a running contract and the current rent is higher than 120 % of the set rent level, one has the chance to decrease the rent to 120 % of that level
    - b. If it is a new contract one is only allowed to demand the rent covered by the old contract and limited by the set rent level
  6. There shall be several exceptions such as e.g.
    - a. for newly constructed flats finished in/after 2014
    - b. for modernizations
    - c. for cases where the economic preservation of the flat is not guaranteed applying the fixed rent level (e.g. for landlords that are dependent on the rent in order to pay their credit)

## What does it mean for the future

So far only core aspects of the *Mietendeckel* have been published and it still has to pass the Berlin parliament in January 2020. Therefore, the exact effects are hard to be foreseen.

Legally, the question arose whether it is in accordance with the federal as well as Berlin's constitution to implement a rent cover. From a constitutional point of view there are many questions which have been discussed in many expert reports.

In general, it seems to be possible for Berlin to enact a rent cover in some form. The question is as always, whether it will be in accordance with the constitution in its concrete form. It may be a violation of e.g. the guaranty of property in Art. 14 of the basic law if the location and the economic preservation of a flat are not sufficiently taken into consideration. Still this depends on the final draft of the new law. Many parties already declared their intent to take this questions to court, so that there will be a time of legal

uncertainty.

Economically, the rent cover will not help to construct new flats and therefore will only increase the demand but not the supply on the market. Still Berlin has enacted programs to open up more grounds for the construction of flats and is now especially trying to emphasize the usage of attics (*Dachgeschosse*) and the reduction of bureaucracy. From the governments perspective a rent cover is not constructing new flats, but it may supplement the programs for the construction of new flats as it hinders a further rent increase until the supply has been increased to fit the demand.

It is further submitted that possible investors will be frightened to enter a market with frozen rents. Construction companies and craftsmen have already indicated their sales and employment to go down. It remains to be seen, how much of this will be realized. It is hoped, that the focus will now return to joint efforts for an increase of the number of new flats and the provision of more building permits.

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