Country-Specific Legislation and Practice

Country Chapter

Austria

Introduction

One of the guiding principles of TEGoVA is to promote consistency of standard definitions of value and approaches to valuation trans-Europe. The publication of European Valuation Standards (EVS) provides the state, investors, the financial industry, valuers and their clients with a common benchmark which can be consistently applied, irrespective of the location of a real estate asset.

Whereas harmonisation of valuation standards enable recognised bases of valuation to be reported, the preparation and publication of a valuation must also respect client need, national legislation and custom. Customary differences, particularly in respect of valuation methodology, may result from the requirements of statute or regulation.

This Country Chapter illustrates differences that currently exist across Europe. The Country Chapters are not intended to provide definitive advice. The text that follows has been provided by TEGoVA Member Associations (TMAs) to outline country-specific legislation and practice.

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Country specific chapter on property valuation in Austria

by

ARE

Austrian Association of Real Estate Experts

The country specific chapter reflect the specificities of the national real estate market and the respective principles of the valuation methodology. It provides an overview about the valuation profession in Austria.

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1. REAL ESTATE MARKET

1.1. Real estate market in its aggregate - macroeconomic context

The usage of Austria's total size of about 83,879 km² can be broken down as follows:

- 13 % Buildings and improved land, bodies of water, barren land, other areas
- 43 % Forest
- 10 % Grass land
- 34 % Agricultural land

With a population of about 2.4 million, the Vienna area is of prime importance not only within the Austrian society, also with regard to the real estate market. Due to the historical ties of the former monarchy, Vienna still serves as a hub for real estate investments in CEE and SEE countries. Its dominant role is reflected by the fact that Austrians have been involved in about 30 % of all investments in this area.

By international comparison the Austrian real estate market is considered as a low-risk market in terms of volatility. This fact is also reflected by the comparably low initial yields in most segments.

Despite the fact that there are now numerous data providers, on-line portals and regular market reports, Austria is still lagging behind its German neighbour with regard to the transparency of market data.

As the market is regionally segmented and dominated by local players, only few international investors are perceived outside Vienna. If at all, their activities are usually limited to large retail areas, office buildings, occasionally to hotels and logistics premises as well.

Austria's entire private real estate assets amount to about € 880 billion, the average real estate value being about € 250,000 per household. As many as 41 % of private households have no real estate possessions at all and only 22 % have a second property in addition to their primary residence. Primary residences account for about 52 % of the total asset value, second residences for 28 %.

According to the last census dated May 15, 2001, there were 3.86 million apartments and 2.05 million buildings in Austria. Three quarters of all buildings are one or two-family homes and every tenth building is an apartment building with three or more apartments. The share of non-residential buildings was 14 %.

One and two-family homes are largely owned by private individuals, who also own 54 % of the flats in apartment buildings, while the public sector holds over 16 %, cooperatives and non-profit organizations 21 %, and other legal bodies (in particular private companies) 9 % of the flats. The distribution of owners is equally spread over all types of buildings, with the exception of community buildings (e.g. senior residences, student hostels) and non-residential buildings, such as office and cultural buildings and industrial plants; 27 % of community buildings are owned by the public sector and 28 % by other legal bodies, which also own almost 24 % of the non-residential buildings.

1.2. Structure/s of the real estate market and its participants

The Austrian real estate market can be divided into a market for freehold and leasehold properties, and a market for investment properties. The breakdown of the whole market differs regionally. It is only in the Vienna region where there is an investment market with adequate transparency, market depth and liquidity by international standards.

Traditionally, the Austrian property market is characterized by a low owner-occupancy rate and a strong rental segment. With a 56 % owner-occupancy rate, Austria ranks in the middle among European countries. The social housing market is characterized by subsidies and strict legal regulations and dominated by cooperatives and non-profit organizations.

Real estate as an own asset class has become increasingly important during the recent years. The sector benefited greatly from the boom in Eastern Europe and Austria's close ties to this region which date back to the Austro-Hungarian Empire.

Contrary to Germany, there has never been a boom of open real estate funds, which became permissible only in 2003, after the Real Estate Investment Fund Act had gone into effect. Rather, Austria experienced a strong growth in the field of real estate corporations which had been established earlier and were largely financed by private investors. During the booming years, Austria's real estate corporations were among the largest in Europe. It was during the economic crisis - which had curbed the short-term growth expectations for the CEE/SEE countries - that these corporations were heavily affected. In a period of increased insecurity, investors then focused on low-risk segments, accepting initial yields below 2.5 % in good (historical) apartment buildings in the first district.

1.3. Relevant legislation and regulatory requirements

Substantial regulations for the property markets are laid down in the provincial building regulations which include planning codes and regional development principles.

In some areas there are still restrictions on the purchase of second homes. This has led to a new designation, i.e., holiday residences. Foreigners may acquire such holiday residences even in the absence of a primary residence in Austria. A primary residence, in turn, may always be established by European nationals.

The acquisition of farms / parts of farms is also partly regulated, e.g., the Land Transfer Commission in Tyrol has to determine whether the prospective buyer qualifies for the purchase of a farm. In the past, such determination proved to be a difficult and time-consuming process. The EU Commission has sued the Austrian government at the European Court, as this model favours farmers through granting preemptive rights which other individuals are not entitled to.

The legal definition of the market value and the general framework for valuation is laid down in the Property Valuation Act (Liegenschaftsbewertungsgesetz-LBG). Compared to other countries like Germany, the LBG is fairly brief but largely corresponds to the German system. Further technical provisions are provided in the ÖNROM B 1802-1 standard (valuations in general) and the ÖNORM B 1802-2 standard on DCF valuations. The assessment of the lending value of a property is regulated by the Austrian Mortgage Act (Hypothekengesetz).

The Austrian valuation profession is characterized by two types of real estate experts. The first group are accredited court experts, which are appointed by court upon passing pertinent exams and providing specific evidence. The second and more recent group of real estate experts are certified Valuers, such as MRICS and REV. Often Valuers are licensed for court valuations and are also active in the non-regulated private valuation segment.

The ownership of property in Austria is ensured by a title registration at the local court. The property register (Grundbuch) is a public record where the owners of properties, type and location of the properties, as well as all rights and obligations including encumbrances are registered. The cadastre includes the location and cartographic details as well as further information for each parcel of land. Land register and cadastral plans are available online.

Property sale contracts are only valid if recorded by a notary. The Austrian property tax regime is twofold. A property transfer tax has to be paid by the purchaser before ownership is recorded. The rate is 3.5 % of the sales price. Furthermore, an annual property tax (Grundsteuer) has to be paid by the property owner to the local municipality.

The applicable VAT rate depends on the type of service and ranges between 0 % and 20 %. A sales transaction is exempted from the VAT subject to certain criteria. If the vendor executes its right to charge 20 % on the sale, the purchaser is entitled to deduct the VAT input taxes from its VAT tax burden. This option is also applicable if properties are endowed as gifts.

Another important factor is the Austrian Tenancy Act (Mietrechtsgesetz - MRG) which puts lease agreements for apartments under tight control regarding maximum rents, rent increases, notice periods, etc. and strongly favours tenants' rights.

Written lease agreements and lease renewals are subject to taxation pursuant to Sec. 33 of the Fees Act (Gebührengesetz). The lessor is obliged to calculate and collect the fee and to forward it to the tax authority.

A positive factor is the high professional level required to obtain a business license as an agent, developer or building manager. Due to the legal requirements, these professions require the evidence of specific qualifications, which has a positive overall influence on the quality of the business.

1.4. Market for residental property

The market for residential properties can be divided into newly built and existing freehold and leasehold apartments and residential building land. In urban areas, multi-storey residential buildings predominate while in rural areas detached single family houses are more common.

In many regions, such as Burgenland, the housing market is supply-driven, while only a few urban agglomerations in the western federal states like Tyrol and Salzburg and of course Vienna are characterized by a stronger demand-driven market. In total, there are about 3.5 million flats, approximately 1.355 million thereof are in urban agglomerations. The stock of living space amounts to more than 360 million sqm, equalling approximately 43 sqm per person.

In 2010, the purchase price for an average, detached single family house in Austria amounted to € 350,000. The average purchase price for a freehold apartment with two bedrooms was € 150,000. Of course, prices vary to a great extend between regions.

The predominant part of the Austrian population lives in multiple tenant buildings. The home ownership rate for residential purposes remains constantly at 56 %. In urban areas, the home ownership rate is lower than in rural areas.

Many multi-tenant buildings are owned by cooperatives and only few by institutional investors. With a balance sheet total of over € 35 billion and an annual building volume of € 2.4 billion, the cooperatives are a significant commercial factor in Austria, securing employment for about 45,000 people in the building trades and related businesses. The cooperatives operate under special regulations and are not profit-oriented. As rents are subject to stringent regulations, governmental subsidies and grants play a major role in this sector. While these subsidies distort the market on the one hand, they also enable the middle class to acquire ownership on the other. This is particularly significant in some local areas, e.g. in the Tyrolean capital Innsbruck, were the price for a new flat was as high as € 4,000/sqm.

The ownership structure of apartments is as follows:

- 2.90 mill. are owned by private individuals
- 0.35 mill. by the public sector
- 0.42 mill. by cooperatives
- 0,22 mill. by other legal entities

In the last few years there has been a trend toward *Vorsorgewohnungen*, i.e., investment properties designed and purchased to supplement the state pensions at a later stage. In view of the ageing population there is also an overall trend toward flats which match the requirements of older people.

Traditionally there are also buildings owned by state-owned companies, such as *BUWOG* (Bauen und Wohnen Gesellschaft mbH), however, these buildings have partly been sold to previous tenants or institutional investors.

Due to rent controls, the rental market is heavily distorted. This leads to the fact that the rent in good apartments may be as low as € 3/sqm per month in certain buildings. In those buildings where rent control does not apply, the rentals range within normal market rates. Rentals normally account for 30 % of the household income.

1.5. Market for commercial properties

The commercial property market is characterized by a significant number of specialized participants. In recent years, the market has become more and more international and the approach to commercial real estate increasingly followed economic principles. Due to the financial crisis, the all-time high of institutional trans-boundary sales which accounted for 60 % of all transactions has not been reached again. Traditionally, German investors play the foremost role among foreign players. Residents and owners of properties are often no longer the same. The most important segments of the commercial property market in Austria are office, retail, hotel and increasingly logistical properties.

The office market is concentrated in Vienna, for Austrian investors also in the regional capitals (Salzburg, Graz, Linz, Innsbruck etc.). A majority of the office real estate is meanwhile held by institutional investors, such as listed real estate companies, closed and open ended funds, pension funds, insurance companies, banks and high net worth individuals as well as family offices (both often structured as foundations for tax reasons). The stock of office space in the Greater Vienna area is at about 11 million sqm and relates to about 850,000 people employed.

The retail market in city centres is increasingly characterised by an accumulation of international chain stores. Shopping malls are more and more located in the centre of medium-sized and large cities. Smaller municipalities often become increasingly unattractive for shopping facilities. Supermarkets are frequently located in busy locations outside the city centre and situated in standardized buildings.

International investors are invested particularly in the field of shopping centres, specialty markets and Viennese high-street addresses. Austria ranks among the top five in Europe regarding retail space and has consequently reached market saturation. Thus the market is characterized by increasing competition and declining productivity per sqm.

The logistics sector benefits from the strong export orientation of Austria’s industry and its business relations with CEE/SEE. Logistics properties are concentrated at busy, central locations near sea and inland ports, at the junctions or motorways and railway stations as well as in close distances to production plants. Of great importance are also freight villages.

As a tourism nation Austria boasts of a well-established hotel sector in the cities and many resorts in holiday areas. The cities are dominated by international chains, but also private and institutional investors show significant interest in this segment, in particular also with regard to hotel management agreements. The tourist areas outside the cities are dominated by regional players, even in the case of large facilities, as these properties are often owned and operated by the same families.

1.6. Other real estate markets

An increasing part of the real estate market is characterized by the setting-up of special vehicles in order to develop and maintain facilities for public infrastructure. Of importance are public private partnerships. This cooperation often helps to develop large real estate projects. In Austria, the technical infrastructure is almost exclusively operated and financed by public institutions. Last year the highways were privatized to ASFINAG. So, only a few technical infrastructural facilities are in public ownership and maintained. One of the most important real estate companies, the Federal Real Estate Company (Bundesimmobiliengesellschaft – BIG) is also state-owned.

Due to the high importance of nature to Austrians and the high share of forest coverage, forestry plays a significant role in Austria. However, as in other countries, yields are very low in this segment. The market is dominated by private (family) foundations, the Federal Republic (Österreichische Bundesforste AG) and the Church.

1.7. Main customer groups requesting valuation services

The main customer groups requesting valuation services in Austria are:

- Banks (for lending purposes)
- Real estate funds and especially listed real estate companies (valuation for transactions & regular revaluation purposes)
- Other real estate investors (private & institutional, domestic & international)
- Auditors / accountants often acting for third parties (valuation for accounting purposes etc.)
- Courts for foreclosure sales
- Public authorities for taxation & land management purposes (e.g. capital transfer tax,
- land tax) and state-owned companies for performance measurement and accounting
- Real estate users

1.8. Real Estate Finance / Mortgage Lendening

Besides savings institutions, which account for € 21 billion mortgages, and commercial banks/ listed banks, whose mortgage volume is € 28 billion, also cooperative banks (€ 14 billion for *Volksbanken* and € 27 billion for *Raiffeisen*) are important providers of residential property financing. Provincial mortgage banks (€ 13 billion) and building and loan associations (€ 15 billion) are also major players.

Most commercial banks have their own development and investment vehicles and are very active in the real estate market, providing both equity and loans.

Real estate finance in Austria is characterized by a high level of product diversity with varying interest rate, amortization and loan-to-value schemes. A variable interest rate based on the 3-6-9 month benchmarks is common. In the past, a number of private homes were financed through foreign currency loans, which has led to heavy burdens on private households during the crisis. Therefore, variable interest rate agreements with caps are now increasingly replacing this type of financing.

Repayment of mortgage loans can be agreed in different ways. An initial repayment of 1 % of the principal is common. A conventional way is also a straight-line monthly/yearly repayment scheme covering both, interest and principal, the so-called annuity loans. Recently, more flexible solutions have been introduced. Many credit institutions now offer the opportunity to change the maturity during the term of the loan. In many cases, the right of early repayment is agreed, especially in the case of fixed interest rate agreements.

The third important parameter to characterize real estate finance is the loan-to-value ratio (LTV). In Austria, LTVs between 70 % and 80 % of the Mortgage Lending Value are common. For institutional investors other common covenants like the debt-service-coverage ratio (DSCR) are well known.

For the financing of commercial properties banks offer an even higher multitude of instruments, corresponding to those which are commonly available in the international finance business.

1.9. Real Estate Capital Markets / Mortgage Funding

Depending on the type of bank and business strategy, the traditional funding of mortgage loans through deposits is more and more replaced by refinancing on capital markets. Banks fund their business through the issue of different kinds of bonds, stocks or asset securitization. Typical for the Austrian market is the refinancing through *Pfandbriefe*, which are debenture bonds issued by a credit institution and which are subject to the Mortgage Bond Act (Pfandbriefgesetz). The aim of the law is to protect investors through mortgages on cover assets (i.e. by cover pools). In the event of an issuer's insolvency, creditors enjoy a preferential right regarding the access to the proceeds from the cover assets. The total nominal value of *Pfandbriefe* in circulation must be covered by mortgages equalling the same amount or more and yielding the same or higher interest revenues. Financial institutions must satisfy stringent requirements in order to receive a license to issue these bonds.

A further opportunity for refinancing are mortgage-backed securities. As MBSs are not standardized, their market is less transparent. In Austria, funding of residential and commercial mortgage loans through MBSs or other real-estate-backed securities is still negligible in terms of volume.

2. PROPERTY VALUATION

The principles for assessing the market value of a property are laid down in Austria's Federal Property Valuation Act (LBG), which has been in force since 1 July 1992.

Sec 1 (1) *of this federal law applies to the valuation of properties, parts of properties and superstructures in the sense of Sec 435 of the Austrian Civil Code (ABGB), as well as to any rights and encumbrances related to properties, parts of properties and superstructures which are the subject of court proceedings.*

Sec 1 (2) *of this federal law also applies to the valuation of those objects mentioned in Sec (1) which are the subject of federal administrative proceedings, provided that the decree whose issuance is based on federal administrative regulations shall cease to be effective upon its reference to the courts, unless provided otherwise in pertinent administrative regulations.*

2.1. Definition of Values

There are different types of property value in Austria. The market value is the basis for decisions on real estate transactions between sellers and buyers. It is defined in the LBG and generally applies to valuations required in court proceedings. There are namely two values: Market Value and the Fair Value, which actually represent the same value at a given value date; however, the term *Market Value* is the more frequently used term internationally.[1]

A distinction has to be made between the Market Value (which is identical to the Fair Value) and the so-called Non Market Value.

2.1.1. Market Value

The Market Value of a property is defined in Sec 2 of the LBG as follows:

Sec 2 (1) LBG: *Unless provided otherwise by law or legal transaction, the market value of an object has to be calculated.*

Sec 2 (2) LBG: *The market value is the sales price which is normally achievable in an orderly business transaction.*

Sec 2 (3) LBG: *The calculation of the market value must not take into account any special or sentimental values which an individual person may attach to the object.*

Pursuant to the LBG provisions, the market value may be derived from the cost value, income value or comparative value; however, also other methods of calculation are permissible, provided they are in accordance with the current state-of-the-art. The Austrian standard ÖNORM B 1802 on the calculation of property valuations also includes definitions of valuation terms.

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1 S. Bienert & M. Funk – Property Valuation in Austria (*Immobilienbewertung in Österreich*)

2.1.2. Non-Market Values[2]

2.1.2.1. Lending Value in Accordance with the Austrian Banking Act (BWG)

The lending value is an independent value; it is not identical to the market / fair value which pertains to a specific value date. Rather, the lending value is based on a risk assumption and serves as a risk management tool for credit institutions, while also fulfilling the requirements laid down by the Financial Market Authority.

The lending value is defined in the Austrian Banking Act (BWG) and is almost identical to the definition of the lending value in the TEGoVA EVS 2009:

Sec 103 Z 10 l f bb BWG: *The lending value is calculated by a Valuer upon careful consideration of the future marketability of a property in view of its long-term sustainable characteristics, normal and local market conditions, as well as the property's current and appropriate alternative use. The assessment of the lending value shall not take into account any speculative elements and must be presented in a clear and transparent way.*

2.1.2.2. Sales Value in Accordance with the Mortgage Banking Act (HypBG)

Sec 12 HypBG: *The mortgage value of the property may not exceed the property's sales value, which in turn shall be determined carefully and prudently; only the long-term, sustainable attributes of the object shall be taken into account, as well as the long-term, sustainable income which can be generated through its orderly operation by any owner.*

2.1.2.3. Price

The price of an object lies between the differing values expected by the buyer and the seller. The final, actual price depends on the negotiating position of the respective parties and on other subjective factors, all of which reflect the current market situation. The price achieved is a fact which can be verified, and may be used as a basis for the sales comparison approach.

2.1.2.4. Subjective Value

Different commercial entities will attach different values to a property. Therefore, the amount any given individual is willing to pay will normally deviate from both the market value as well as the actual, achieved value. Thus, a subjective value reflects a specific (potential) investor's expectation of the achievable sales price.

2.1.2.5. Utility Value in the Residential Apartment Ownership Act (WEG)

The so-called Utility Value was introduced by the Residential Apartment Ownership Act in 1975. On the one hand, it measures and identifies the share in the overall property which is

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2 S. Bienert & M. Funk – Property Valuation in Austria (*Immobilienbewertung in Österreich*)

required to acquire ownership of a particular residential apartment, whilst on the other it is used to allocate the pro-rated service and maintenance expenses for the building to the individual owners.

Through establishing the utility value, the legislator does not institute the usable area as a key for allocating the property-related expenses, but only imposes it as a basis for evaluating the different possibilities for using the respective apartment. Such a utility value in the Austrian sense is not known in Germany or other countries.

Sec 2 (8) WEG: *The utility value is a measure used to determine the value of a common hold apartment (condominium) in relation to the other apartments of the property. It is derived from the usable area of an apartment, adjusted by means of surcharges or discounts to reflect those criteria which may have a positive or negative impact on its value.*

2.1.2.6. Forced Sales and Liquidation Value

The forced sales value is identical with the definition of the market value; however, it takes into account the factor that the time period available for the sale does not allow for adequate advertising and offering on the market, which would be necessary in order to achieve the best possible price on the market. Another point is the fact that the seller may be forced to sell.

2.1.2.7. Fair Value in the Sense of International Accounting Standards (IAS)

With regard to the monetary value, the fair value as referred to in the IAS is normally identical with the market value.

2.1.2.8. Company Value

The company value is determined on the exclusive premise of financial goals and is based on the cash value of the net revenues accrued by the company's owners. This value principally derives from the net income that is anticipated from continued operations of the company into the future and the disposal of those assets that are not necessary for its operation. In the event of the total liquidation of the company, and given that the cash value of the net income exceeds the going-concern value, the liquidation value shall be considered to be the company value.

2.1.2.9. Book Value

The book value is the value displayed in the balance sheet, the annual financial statements, or in other documentation at a given date or the balance sheet date. It equals the value of the individual assets and liabilities as accounted for and may not necessarily reflect the actual, realistic value of the company.

The book value is defined in the Austrian Commercial Code (UGB):

Sec 203 (1) UGB: *Assets must be recognized at acquisition or production costs, less depreciation in accordance with Sec 204 UGB.*

Sec 204 UGB: *The acquisition or production costs of those assets whose useful life is limited shall be depreciated following a schedule where the costs are spread over the expected (useful) economic life of the asset.*

In the event that a permanent reduction in an asset's value is expectable, regardless of whether its useful life is limited, its carrying value must be impaired to reflect the lower fair value as of the balance sheet date; in this process, the possibilities of utilizing the asset in the company shall be considered.

2.1.2.10. Insurable Value

The insurable value is essentially focused on the production costs, and is calculated using the cost method; however, without taking into account the value of the land. It is a basis for insurance agreements and policies.

The insurable value relates to the value of the insured interest[3], and should represent the full and actual value of the insured object at the time it is damaged or lost, thus preventing its underinsurance. The insurable value normally equals the reproduction cost or the new replacement cost. Only in the event that - due to wear and tear - the present value of the object or building is lower than 40 % of the new value, shall the time value be calculated. With regard to buildings which are to be demolished, only the achievable sales price of the building shall be applicable.

2.1.2.11. Taxable Value

The taxable value is clearly distinguished from the actual market value. The taxable value (*Einheitswert* in Austria) - is used to assess the property tax. Valuers are rarely, if at all, requested to determine such a value, as pertinent valuation methods are based on the current regulations and guidelines issued by the tax authorities.

Taxable value is assessed for agricultural land and forests, as well as other land, together with properties which are held by companies. Taxable value provides the uniform basis for assessing property tax, property acquisition tax, inheritance and gift tax (the latter two of which were abolished on 31 July 2008). Furthermore, it is used to assess other levies and fees, such as social security contributions on agricultural income.

2.2. Valuation Methods

The choice of valuation method, or combinations thereof, is laid down in the Austrian Property Valuation Act (LBG) as follows:

[3] Sec 51 of Insurance Contract Act (Versicherungsvertragsgesetz)

Sec 3 (1) LBG: *The methods used for valuation must conform to the current state-of-the- art. In particular, the most relevant methods are: the sales comparison approach (§ 4), the income value approach (§ 5) and the cost method (§ 6).*

Sec 3 (2) LBG: *If deemed required in order to fully account for all circumstances which are relevant for assessing a value, several methods shall be employed in the valuation.*

2.2.1. Calculation of the Market Value

The fair value must be determined, i.e., the sales price of an object which is normally achievable in an orderly business transaction[4]. The calculated value shall take into account any and all market circumstances known at the valuation date.

The value is determined by the price which is normally achievable in an orderly business transaction. In their assessment, Valuers must take into account all actual, legal and economic circumstances which may influence the price. Any extraordinary circumstances or personal interests are to be disregarded.

The provision of adequate marketing activities - primarily an appropriately long marketing period and a certain degree of publicity - are a precondition for achieving an appraised value. In order to achieve sufficient publicity it is necessary to exploit the full range of marketing opportunities, the costs of which are, however, not to be included in the value assessment.

2.2.1.1. Standard Methods

Sales Comparison Method

The structure of the sales comparison method is stipulated in Sec 4 LBG and Sec 10 LBG:

Sec 4 (1) LBG: *When using the sales comparison method, the value of an object shall be assessed by comparing the object with the actually achieved purchase prices for comparable objects (comparative value). Comparable objects are those which essentially correspond to the valued object in terms of those aspects which may influence the value. Deviating properties or a changed market situation shall be considered to the extent they increase or decrease the value. Adequate adjustments (mark-ups /mark-downs) are to be made.*

Sec 4 (2) LBG: *The comparison is to be based on those sales prices which were achieved in orderly business transactions in comparable areas in the recent past. If the prices were agreed upon prior to, or after the valuation date, the respective value shall be increased or decreased to reflect the price fluctuations in orderly business transactions in the specific area.*

Sec 4 (3) LBG: *Those sales prices which were assumedly reached due to unusual circumstances or the personal situation of the parties to the contract, may only be used for comparison if such circumstances or situations can be assessed in value and an adequate adjustment of sales prices can be made.*

4 Sec 2 (2) LBG

Sec 10 (1) LBG: *When using the sales comparison method, the objects which were used for comparison must be cited, their value criteria must be described and their sales prices listed. Any mark-ups or -downs (Sec 4 (1)), revaluations or devaluations (Sec 4(2)) or other sales price adjustments (Sec 4 (3)) must be explained.*

Income Capitalization Method

The structure of the income capitalization method is stipulated in Sec 5 and Sec 10 LBG:

Sec 5 (1) LBG: *When using the income capitalization method, the value of an object is to be assessed by capitalizing the achieved or anticipated net yield at a reasonable interest rate over the expected useful life of the property (income value).*

Sec 5 (2) LBG: *The basis for calculation is the gross yield actually generated through operating the object. The net yield is then calculated by subtracting the actual operating, management and maintenance costs, as well as the depreciation, unless the later has already been taken into account during the capitalization process. When computing the net yield, the default risk and potential liquidation costs and revenues have to be accounted for.*

Sec 5 (3) 3 LBG: *In the event that the actually achieved yields are not quantifiable due to the lack of records, or that they deviate from those yields which are achievable through an orderly operation of the object, then the calculable long-term sustainable yields that could have been achieved through orderly operation, minus those expenses that would have been incurred during such operation, shall instead be used. The yields of comparable objects or generally recognized statistical data shall be specifically used for such a purpose.*

Sec 5 (4) LBG: *The interest rate for assessing the income capitalization value is based on the interest on capital normally achievable for objects of that kind.*

Sec 10 (2) LBG: *The choice of any interest rate used in capitalizing income should be substantiated.*

Depreciated Replacement Cost

The structure of Depreciated Replacement Cost is stipulated in Sec 6 LBG:

Sec 6 (1) LBG: *When using the Depreciated Replacement Cost, the value of an object is assessed by aggregating the value of the land with the replacement value of the building less deduction of physical deterioration and (where applicable) the value of other accessories (cost value).*

Sec 6 (2) LBG: *The land value shall usually be calculated by comparing the land with purchase prices for comparable unimproved properties; any changes in value that may result from an improvement to the valuation property or its connection with other properties, shall be taken into account separately.*

Sec 6 (3) LBG: *The replacement value equals the total value of all building structures on the land. It is generally based on construction costs, less technical and economic depreciation /*

obsolescence. Other changes in value or circumstances which may influence the value, such as the location of the property, restrictions in terms of public law or building regulations, together with any substantial deviations from the usual building costs, shall be considered separately.

DCF Method

Since the coming into force of the Austrian standard ÖNORM B-1802-2 on 1 December 2008, DCF methodology has been recognized as a standard method, although it had been used by Valuers for certain valuations even before that date.

2.2.1.2. Non-standardized Methods

The methods described below are not defined by law; they are used to calculate the market value and may be used subsidiary to, and - in the sense of Sec 3 (1) LBG - in the event that standardized methods in the sense of item 2.2.1. may not appear reasonable.

In addition to the standardized methods listed explicitly in the LBG, other methods may therefore be used, if required, to the extent they meet the current state-of-the-art.

Residual Value Approach

The residual value approach is used, in particular, to appraise land with or without buildings which are facing redevelopment.

Profits Method

The profits method is a very special income value assessment, primarily for properties which are used by their owners, or for leased agricultural or other commercial areas; such properties are characteristically operator-managed real estate.

When assessing the value, the central question is the profit which can be generated from operating the property. When using the profits method, the Valuer determines the sustainably attainable annual revenues (income) from the operation of the property, applying economically reasonable and feasible lease rates. As a next step, the lessor’s operating costs are subtracted to calculate the annual net yield, in much the same way as in a classical income value method. Then the net yield is capitalized over the anticipated remaining life of the property. The result is the market value based on the land yield value.

2.2.2. Calculation of Non Market Values

For details please refer to item 2.1.2.

3. VALUATION IN AUSTRIA

3.1. Legal Basis[5]

Rules and regulations for the work as a Valuer cannot be found in a special domain of law, but they originate from various fields of law, especially the codes of civil and criminal procedure, administrative procedure law, the civil law and the material criminal law.

The work as a Valuer, thus, denominating him- or herself as such, does not require any special licence, trading authorization, etc., nor does it involve an exam to give proof of the relevant expert knowledge. It is, however, illegal (therefore, prosecutable based on civil or criminal law) to refer to "accredited court experts", if legal requirements for such denomination are not met. The professional denomination "expert" is not protected by law; however, misleading use will be prosecuted.

3.2. Accreditations

3.2.1. Accredited court experts

Accredited court experts are persons, who have to pass a special accreditation procedure to be registered in the list of court experts http://www.sdgliste.justiz.gv.at maintained by the presidents of the respective Provincial Courts.

The Federal Law for Accredited Court Experts and Sworn Interpreters (Sachverständigen- und Dolmetschergesetz – SDG) provides for accreditation by means of the certification of persons including a quality assurance exam to ensure that only highly qualified, reliable experts of high integrity have access to give witness before Courts.

3.2.1.1. Prerequisites for registration in the list

Section II of the SDG stipulates as follows:

Prerequisites for registration in the list of accredited court experts and sworn interpreters
Article 2.

(1) Accredited court experts are to be registered in the electronic list of the accredited court experts and sworn interpreters (list of court experts and sworn interpreters) by the presidents of the Provincial Courts (Article 3) in their function as accreditation bodies.

(2) To be registered in the list of accredited experts and sworn interpreters for a special domain, the following requirements have to be met:

1. Requirements to the applicant

a) Expert knowledge on and understanding of the most important rules and regulations of the procedural law, the work as a Valuer, fact finding and on how to elaborate a conclusive and clearly understandable appraisal;

[5] Source: Bienert Funk (Publisher), Immobilienbewertung Österreich; Edition ÖVI 2009, 2. Edition

b) ten years of professional experience as a senior executive, preferably in the domain in question or a related field immediately prior to registration; five years of professional experience if the applicant has a university degree, or other recognized vocational academic certification relevant to this profession;
c) Full legal capacity;
d) Physical and psychical aptitude;
e) Trustworthiness,
f) Have Austrian citizenship or of any other member state of the European Union or of contractual partners of the European Economic Area or the Swiss Confederation;
g) Be a resident of the Province or practise as a Valuer in the Province of the Court where application is submitted, and
h) Sound financial conditions;
i) take out liability insurance according to Article 2a;
1a. they have to dispose of the equipment necessary for appraisal in the respective special domain;
2. There is a need for accredited court experts in the corresponding special domain of the applicant.

Article 2a.

(1) Before registration in the list of accredited court experts and sworn interpreters, applicants are obliged to prove to the responsible President of the Province Court (Article 3) that they maintain a professional indemnity insurance sufficient to cover all claims which may arise from their work as an accredited Valuer obtained by any insurance company authorized for coverage in Austria. Applicants shall maintain the insurance throughout their registration in the list and give prove on the valid insurance policy upon request.
(2) Minimum coverage shall be € 400,000 per insured event.
(3) Exclusion or limitation in time of the liability by the insurance company is not permissible.
(4) Insurance companies are obliged to notify the respective President of the Provincial Court (Article 3) as included in the list unsolicited and without delay from each and every change of circumstances which is a termination, limitation or modification of insurance cover or may be deemed as such and they have to provide information about above mentioned circumstances upon request.

3.2.1.2. Limitation of registration

Section II of the SDG stipulates as follows:

Limitation of registration
Article 6.

(1) Registration in the list for accredited court experts and sworn interpreters is initially concluded for a limited term of five calendar years following registration for the respective domain and may be extended for a periods of five years upon request (re-accreditation).
(2) Application for re-accreditation shall be submitted at the latest three months prior to expiry of the period but not earlier than one year (Article 4, paragraph 1, sentence 1). Registration of accredited court experts shall remain in force exceeding the

registration period, until decision on the due time of application for renewal is taken. Re-accreditation may take place if the applicant continues to meet the requirements as stipulated in Section 2, paragraph 2, except of clause 1 lit. b and clause 2, and Section 2a. Applicants are not entitled to re-accreditation.

(3) The application has to include expert reports for court procedures with file numbers and the respective Court, carried out as of start of registration; in case of frequent consultation, reports from a significant period of time immediately prior to reapplication have to be included. Moreover, the application has to comprise reference to continuing professional development and training. If skills and qualifications of the applicant were unknown to the decision making body, the application shall include copies of the request for collection of samples submitted to heads of court departments, who have or had been assigned for the handling of court procedures lead by the applicant, to give a written statement on the appropriate qualification, in particular whether the facts have been ascertained correctly, whether the expert report has been delivered in time and, whether conclusions drawn are clear and cogent, and whether expert reports are well structured, unless applicants have been consulted repeatedly in court procedures, hence, being known to the decision making body. The decision making body has to verify qualification of the applicant on the basis of submitted reports and the proof on continuing professional development. During this verification the decision making body may carry out further investigation and it may request an expert opinion of the Commission (Article 4a) or a statement of a qualified member of this Commission.

3.2.2. Certification of persons according to ISO/IEC 17024

3.2.2.1. General remarks to the certification of persons[6]

On 23 June, 1989 the Joint European Committee for Standardization (CEN / CENELEC) with its Central Secretariat in Brussels published the European standard EN 45013 “General Criteria for Certification Bodies Operating Certification of Personnel”. This standard (at present superseded by ISO / IEC 17024) was intended to create confidence in certification bodies certifying personnel within the member states of the European Union. The intended harmonization of exams and certifications within the European Union should be the basis for mutual recognition of certifications in the member countries.

For this purpose the standard establishes general criteria for the certification of personnel. These criteria have to be fulfilled by certification bodies in the member states if they want to be acknowledged as a competent and reliable authority for certification of personnel at national and European level.

The terms “certification” and “accreditation” are crucial in certification procedures. Certification is a measure carried out by impartial third parties confirming that adequate confidence can be set in a duly specified service (the work as an accredited court expert) as it is carried out in accordance with a standard. Hence, certification means that the certificate documents that the accredited court expert meets determined prerequisites on training and requirements. However, said standard certifies the certification body and not the individual accredited court expert.

6 Source: Bienert Funk (Publisher), Immobilienbewertung Österreich; Edition ÖVI 2009, 2. Edition

Accreditation bodies, on the other hand, verify whether particular certification bodies fulfil the requirements. In Austria the Federal Ministry of Economy and Work (new: Federal Ministry of Economy, Family and Youth) is the accreditation body responsible. This accreditation acknowledges that the respective certification body is able to carry out determined tasks.

At present, there is only one accredited certification body in Austria for certification of persons working as property Valuers in accordance with the standard. This is the ImmoZert GmbH in Vienna.

3.2.2.2. Tasks and objectives of the ImmoZert GmbH[7]

Main task of the ImmoZert GmbH is to maintain professional competence of property Valuers for appraisal of property at European high-quality level by fulfilling requirements of the certification scheme developed by ImmoZert (as per 23 February, 2009). The certification procedure comprises putting into practice the essential textual and technical parts of the international standard ISO/IEC 17024. This serves as a prerequisite for proving that the expert can verify professional competence in a certification carried out by ImmoZert and the general certification scheme according to the standard.

The result of a successfully completed certification is the certificate issued on the name of the corresponding expert. The certificate - issued by ImmoZert as an independent third party - confirms high quality standard of personal and professional skills of the expert, which on its turn creates confidence in the professional competence and ability to meet the demands of his tasks among clients and market participants. One of the principal tasks of ImmoZert is to support said confidence and to boost a widespread acceptance of the certificate. The certification body with its rules and procedures ensures that the certified experts fulfil the following quality criteria:

- high-levels of professional background and expertise
- continuous vocational training
- consistent application of methods and procedures for property appraisal
- professional attitude towards his or her work
- To meet the requirements of the code of conduct.

ImmoZert GmbH has been accredited by the Ministry for Economy and Work by means of the ordinance dated December 15, 2005 (Federal Law Gazette II 2005/422) upon request.

3.2.2.3. Certification procedure

The following procedure applies:

- **Application for certification and submission of expert's reports carried out** (to give proof of the work to date)
- **Processing of the application and assessment of expert reports** (carried out by the certification body)
- **Decision on admission to exam** (decision made by the examining board)

[7] Source: http://www.immozert.at

- **Written exam**
- **Oral exam**
- **Issuing of the certificate**
  (valid for 5 years)
- **Monitoring of the certificate owner**
  (Proof of vocational training and expert reports during period of validity)
- **Renewal of certificate**
  (expert talk prior to expiry of the certificate)

3.2.2.4. Prerequisites for certification

To be admitted to certification, the applicant has to fulfil certain requirements. In terms of educational background and professional practice, Valuers have to fulfil criteria of one of the four below stated groups:

Professional practice with specific vocational training
This comprises a specific, property related vocational training finished successfully.
Fields of professional education in particular may comprise:

- education in architecture, construction, surveying and property related fields
- real estate management and business administration
- loan and insurance management
- Commercial vocational training.

In this case applicants have to give proof of at least eight years of property related practical work in a leading position, with at least three years of experience in appraisal of properties.
Up to three years of training of a successfully completed vocational training in one of the above mentioned domains may be credited to the period for property related practical work, especially after successful completion of a course in a domain specific training institution.
Moreover, excellent knowledge of spoken and written German is required.

Graduates
If the applicant has a degree of an officially recognized university, a vocational college or a Fachhochschule (university of applied sciences) in a field related domain, such as architecture, civil engineering, economics or law, he or she has to give proof of at least five years of property related practical work in a leading position, with at least three years of experience in appraisal of properties.
Moreover, excellent knowledge of spoken and written German is required.

Accredited court experts
Court experts accredited according to the provisions of the Federal Act as of 19 February, 1975 on accredited court experts and sworn interpreters (SDG), Fed. Law Gazette No. 137/1975 as amended, accredited court experts of professional group 94, expert fields 94.10, 94.15, 94.17, 94.20, 94.23, 94.30, 94.35, 94.65 and 94.80 (according to the list of accredited court experts and sworn interpreters as of 11 July, 2008), whereby the period of practical work after ending the education of 5 years and after obtaining a degree of a university, Fachhochschule or a technical university - specialization in real estate management or a period of 10 years of practical work without above mentioned graduation can be proved.
Moreover, excellent knowledge of spoken and written German is required.

Chartered Surveyor

- Member of the Royal Institution of Chartered Surveyors
- Professional Associate of the Royal Institution of Chartered Surveyors (ARICS) or
- Fellow of the Royal Institution of Chartered Surveyors (FRICS)

a n d

- excellent knowledge of spoken and written German
- at least five years of practical work appraising properties before applying for certification.

3.2.2.5. Proof of practical work

"Property related practical work in leading position" may comprise working in the following fields:

- an office of experts dealing with property valuation
- at authorities specialized in valuation
- in loan and insurance management
- in accounting firms or as an economic adviser
- at real estate companies, for real estate funds, etc.
- at a property or real estate management firm
- at a civil engineering office (architect or construction engineering)
- as a real estate agent, property developer project developer or
- in the construction industry.

The following documents shall be submitted together with the application documents to give proof of practical work:

- For employees: An attestation on practical work in the field of property management issued by the employer
- If the applicant is self-employed, he has to give credible proof of relevant activities.

3.2.2.6. Authorization of certification

Moreover, applicants have to submit 3 expert reports assessing the market value of a property coming from the following fields as a prerequisite for authorization to certification exams:

- one-family homes, semi-detached houses or condos or undeveloped properties,
- residential properties
- commercial properties or properties of mixed use.

At least one of the expert reports has to deal with properties which include encumbrances or similar rights (such as rights of residence, easements, recurrent charges on real estate, and the right to construct) or encumbrances under public and private law or similar rights.

- The applicant shall submit his or her expert reports in an anonymous way (by blackening all personal data). As an alternative to blackening explicit written consent of the person affected may be submitted together with the report.

- The expert reports submitted may not be older than five years. They form the prerequisite to be accepted for certification exams (expert reports have to be evaluated prior to the written exam).
- The examination board has to verify whether the reports submitted are suitable.
- Each expert report which does not meet the requirements with regard to structure, form and content, has to be replaced by another expert report (after request by the certification body) for the same kind of property which on its turn will be evaluated according to the above mentioned procedure.
- In case of methodical mistakes in various expert reports the examination board may resolve to request submission of a corresponding expert report.
- If after this repeated evaluation the requirements on expert reports still are not met, the prerequisites for admission to the exam are not fulfilled, i.e. admission to the exam is denied giving the reasons for non-admission.

3.2.2.7. Certification exam

Written exam
During the written exam the applicant shall show that he or she is able to solve problems from a subject matter with limited resources in a restricted time applying the common methods.

The exam is structured in the following way:
Part I: Valuation of residential properties, and / or commercial properties or properties of mixed use applying standardized or non-standardized procedures and methods. For this purpose the applicant is given a verbal description of a property, further details (maps or diagrams, etc.) where applicable and an expert report form. Maximum duration of the exam: 3 hours.

Part II: Plausibility check of difficult expert reports containing errors according to given specifications. Maximum duration of the exam: 1.5 hours.
Part III: Answering of individual questions deriving from various topics included in the examination material, whereas one third of the questions may be asked via multiple choice test. For this purpose the applicant is given about 15 to 30 individual questions (divided into special domains and difficulty level of the examination material). Maximum duration of the exam: 2.5 hours.

The exam is evaluated by the examination board. The applicant has successfully passed the written exam if he or she reaches at least 50% of the corresponding maximum score of each of the three parts, having an average score of the total of the three parts of at least 70% of maximum score. The certification body will then inform the applicant about passing or failing of the written exam, and admission to the oral exam, if applicable.

Oral exam
The applicant has to pass the written exam before being admitted to the oral exam. The oral exam will be carried out by an examination board consisting of 3 persons (minimum two persons - in this case the decision of the chairperson will prevail). Representatives of the certification body (for example other examiners) may also be present.

The exam is not publicly accessible. However, when approved by the examination board, observers may attend the exam.

The exam may be carried out as an individual exam or a group exam with a maximum of three applicants.

Maximum duration of the oral exam shall not exceed 35 minutes in case of individual exams and 65 or 90 minutes in case of group exams with two or three applicants, respectively. Duration of the exam may be extended or shortened by 5 minutes.

Special fields of the exam are based on the examination material provided by the certification body. The questions shall be taken from different fields included in the examination material. The oral exam will be passed if the applicant reaches a scoring of at least 70% of the total maximum scoring.

Passing the exam, repetition of the exam
A certification exam has been passed if the written **and** the oral exam have been passed with the minimum score required.

The applicant has failed if his or her performance during the written exam was insufficient (in this case the applicant will not be admitted to the oral exam). If the applicant fails to pass the written exam, he or she can repeat the exam not earlier than 6 months after the first exam or at the corresponding date appointed.

If the applicant fails to pass the oral exam, he or she can repeat the exam not earlier than 3 months after the first exam (there might be exceptions from this rule provided that the certification body disposes of free capacities for further exams), whereby the written exam will be eligible for approval of the whole exam. The oral exam may be repeated once. The applicant has to repeat the oral exam not later than 18 months after the first exam, otherwise the positive result of the written exam will be declared forfeit.

A maximum of two repetitions of the whole exam is permissible within five years.

3.2.2.8. Monitoring

Once the certificate is issued, the person certified is subject to continuous monitoring by ImmoZert. He or she has to continuously update his or her qualifications and give proof of continuous professional development. In addition to this, the certification body will request to submit expert reports to verify whether the required quality standards are met.

The certified Valuer has to give proof of the attendance of at least 15 course days of professional training or of own publications and lectures given within the period of validity of the certificate. The required content of this vocational training has to be related with the work as a Valuer of properties.

Moreover, he or she has to submit three expert reports prepared by themselves upon request of the certification body; personal data included in the reports have to be blackened for privacy reasons. During validity of the certificate, the certification body will request up to two times from the Valuer to submit expert reports which will be examined by the examination board according to minimum requirements for certification. The expert reports submitted have to be evaluated and considered to be suitable. If the certified Valuer does not comply with above mentioned requirements, corrective measures will be prompted. This may lead to an additional audit on site.

3.2.2.9. Renewal of certificate

Recertification leads to a renewal of the certificate, extending its validity. Condition sine qua non for a recertification is the positive result of continuous monitoring of the certified Valuer, that is to say he has to give proof of the training measures required per year, the expert reports submitted have to be approved and, where applicable, the interim audit has to be concluded successfully.

Application for recertification has to be submitted at least six months prior to expiry of the certificate. Thereupon, the certification body sets a date for an expert talk with the certified Valuer to receive evidence that his or her expertise is state of the art and in line with the domain certified. Main content of the expert talk will include the most recent innovations in the respective certification domain in correspondence with the examination material and the expert reports submitted.