INSIGHT

Schedule of Services
Asset Management in Germany

Third updated edition (2026)

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Preliminary Remarks

The Royal Institution of Chartered Surveyors (RICS)

RICS promotes and establishes the highest professional qualifications and standards in the fields of property development and management, construction and infrastructure. Our name represents professional practice based on these standards, creating confidence in the markets we serve.

118,000 property professionals worldwide are accredited by RICS, and all individuals and firms registered with us are subject to our quality assurance requirements. Their expertise ranges from valuation and commercial property practice, through property finance and investment, project management, planning and development, to construction cost management and facilities management.

RICS Germany

RICS has been active in Germany since 1994 and today has around 2,200 full members, including numerous prominent and highly committed figures in the German property industry.

As a global professional body, the Royal Institution of Chartered Surveyors (RICS) is committed to the highest professional and ethical standards in the property, construction and infrastructure sectors. Its work focuses on professionalism, integrity, transparency and trust, as well as the continuous development of internationally recognised standards and qualifications.

In Germany, RICS also sees itself as a platform for professional exchange and dialogue. It brings together members, market participants and decision-makers, promotes knowledge transfer and professional development, and contributes its international expertise to discussions about the future of the property industry. In this way, RICS aims to contribute to transparent and reliable markets and to responsible and sustainable development of the built environment.

Professional Group Asset Management

RICS Germany established the Professional Group Asset Management (PGAM) in July 2010. One of the working group's principal objectives is to make a practical contribution by defining qualified asset management services for providers and clients. The PGAM's core programme includes preparing a schedule of asset management services suitable for day-to-day practice and, building on this, developing a performance-based fee and remuneration system. The members of the PGAM are listed in Section 8.

Content and structure of this document

This document sets out services which, in RICS Germany's view, should be competently provided by real estate asset management companies operating in the German property markets, whether as a service for third parties or under another arrangement, for example, in-house.

The Schedule of Services was first published in May 2012. This third revision incorporates updates reflecting changed market conditions. Sustainability is particularly noteworthy in this regard: ESG issues affect the entire property life cycle and all key value creation processes associated with a property investment.

In practice, this can be seen in investment strategies aimed at achieving ESG objectives and, in particular, portfolio and property strategies geared towards implementing measures and upgrading existing assets in line with specific ESG objectives.

In this revised Schedule of Services, ESG is incorporated into the individual modules. ESG is centrally embedded in the Strategy module as part of the investment, portfolio and property strategy and the development of an ESG strategy or roadmap. In the other modules, ESG considerations are incorporated into the various service components. A separate module has therefore not been included.

RICS Germany also provides recommendations on the fundamental types and models of remuneration for asset management services. Although these primarily relate to remuneration arrangements between different contracting parties, they may also be applied by analogy to internal relationships, e.g., between cost centres within an organisation. In addition to presenting and recommending remuneration models, this information paper also contains empirical data and information on market-standard remuneration ranges.

A guest contribution by the law firms Freshfields Bruckhaus Deringer and Jones Day on legal aspects of asset management agreements completes the content.

For ease of use, the PDF version of the Schedule of Services includes internal electronic cross-references that allow rapid navigation between the table of contents and the individual chapters.

Notes on use

None of the recommendations, guidance or information contained in this document is intended to be exhaustive or binding, as task-specific services and individual solutions cannot be represented, or can only be represented inadequately. Arrangements must also be adapted, or separately differentiated, for example, where services are provided to group companies or affiliated companies.

As a general principle, RICS considers that qualified asset management companies should be capable of providing the majority of the services described themselves (in-house). Where subcontractors are commissioned to perform individual services, the asset manager is responsible for carefully selecting, managing and supervising the companies engaged. The asset manager nevertheless remains primarily responsible to the client for the contractual performance of all agreed services.

With regard both to the agreed services and the associated remuneration, it should be noted that individual modules and/or services may be selected from the Schedule of Services. This is explained in greater detail in the following sections.

In general, care should be taken to ensure that interfaces with adjacent areas of responsibility and service areas are adequately defined.

Definition of the term asset management

RICS Germany defines asset management as follows: 'Asset management is the responsible strategic and operational management of all measures affecting returns and risks at property, portfolio and corporate level throughout the entire life cycle of the property or properties.'

Distinction from other real estate management disciplines

The detailed presentation of key asset management services in the Schedule of Services also helps to distinguish them from complementary services such as property management or facility management within an integrated real estate management process.

General requirements / professional profile

A professional real estate asset manager is expected to have sound qualifications, expertise and experience in real estate asset management in order to meet the demanding requirements of the role, while observing sound commercial principles.

It is also assumed that a provider of real estate asset management services has a transparent, service-oriented organisational structure, including risk management and compliance functions, and maintains professional IT solutions for storing and processing client- and property-related data, in particular to ensure data security.

Asset management activities must take appropriate account of the applicable laws and regulatory requirements.

Chartered surveyors

A list of chartered surveyors working as asset managers in Germany can be found in the RICS Germany membership directory.

In addition to their general and technical professional competencies, chartered surveyors are required to observe high professional and ethical standards in their professional practice on the basis of mandatory rules of conduct.

Miscellaneous

For the sake of clarity, it should be noted that the term ‘advice’ as used herein does not refer to regulated advisory services requiring permission, authorisation, admission or approval under the German Legal Services Act or Tax Advisory Act.

Content prepared by third parties does not represent the opinion of RICS and cannot under any circumstances replace individual advice to contracting parties; it should instead be understood as general, non-binding guidance.

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List of services

The services are divided into 21 modules which a client may select and commission (see diagram on the following page).

All modules are generally arranged so that they build on one another. Modules that ordinarily form part of the core scope of asset management services are designated as **'Core Modules'**. These are Modules 1, 4a, 4b, 5, 7, 9, 11, 12, 13 and 17.

These ten 'Core Modules' are intended to constitute an economically meaningful package of services which will generally be provided as a whole.

The remaining modules are referred to as **'Supplementary Modules'**, which may be agreed upon in addition where required by particular tasks and service requirements.

Within the modules, individual services are divided into the categories **'Core Service'** and **'Additional Service'**. 'Core Services' are understood to mean those services which will generally be provided and commissioned as a whole where the relevant module is commissioned.

'Additional Services' are all further services that do not qualify as 'Core Services' and which may be commissioned separately depending on the strategy, structure and requirements.

A further distinction is made between the **'asset'** (property) and **'portfolio'** levels (aggregation of properties and/or the level of a property holding company). Services directly relating to a property are allocated to the asset level. Individual services may apply at both asset and portfolio level. Services allocated solely to the portfolio level are those which are generally performed exclusively at that level.

Structure of the asset management services
in the List of Services

The following diagram illustrates the division of services into modules and, within those modules, into Core and Additional Services.

For the sake of clarity, the specific application of the modular system is explained below:

- As a general rule, all Core Modules, together with the Core Services they contain, are provided; the Core Services under the Core Modules are remunerated on a uniform basis (base remuneration).
- Depending on the assignment, Supplementary Modules together with their Core Services may be agreed; these Core Services under the Supplementary Modules result in an adjustment to the base remuneration or are remunerated separately.
- Additional Services may be requested under commissioned modules; their remuneration is generally determined by adjusting the base remuneration or the additional remuneration for the Supplementary Modules.

Core Services

Core Modules

Module 1: Strategy
Module 4a: Business Plan and Budget
Module 4b: Controlling
Module 5: Reporting
Module 7: Data and Document Management
Module 9: Selection and Management of Service Providers
Module 11: Property and Tenant Management
Module 12: Receivables Management
Module 13: Liquidity Management
Module 17: Letting

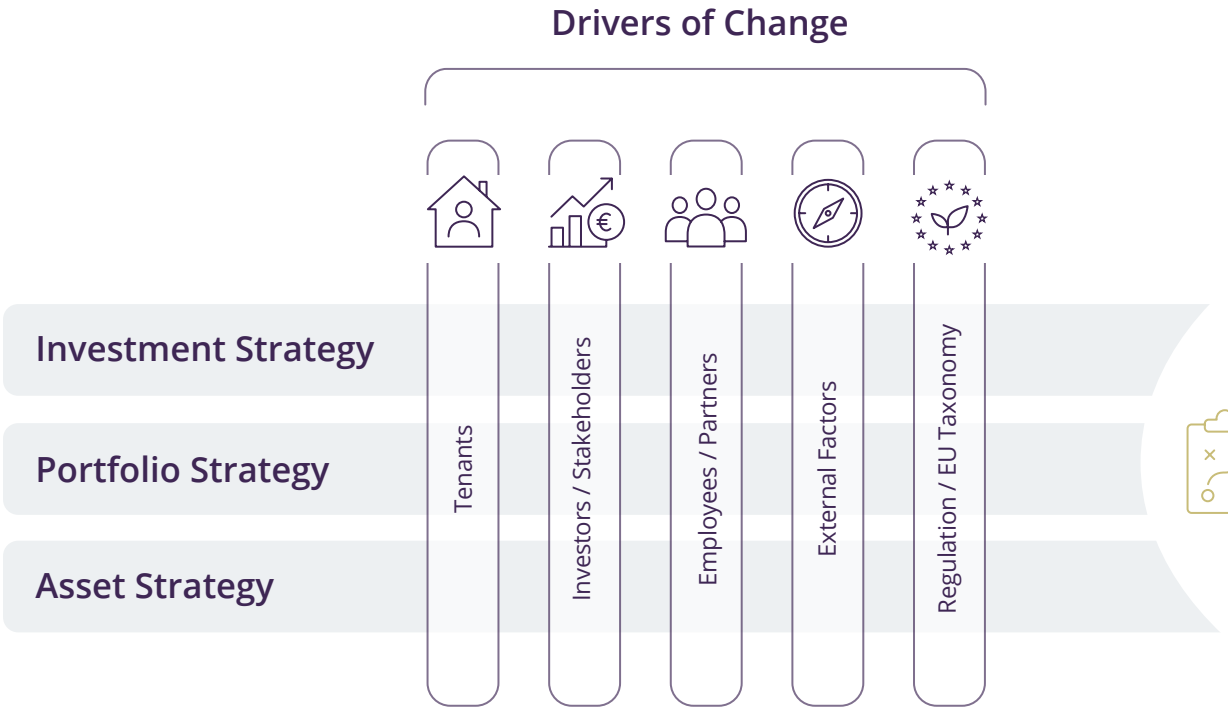
Supplementary Modules

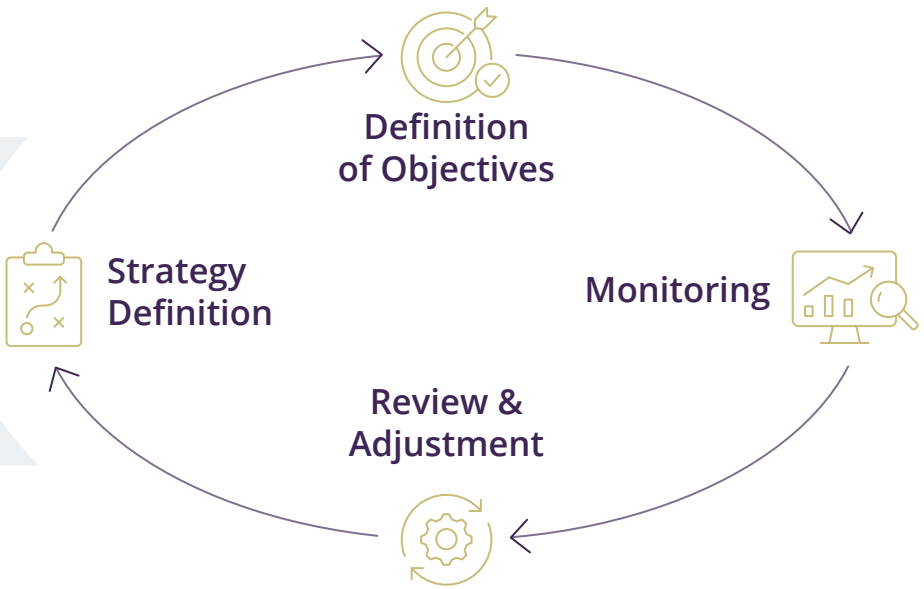
Module 2: Acquisition
Module 3: Financing
Module 6: Research
Module 8a: Risk Management
Module 8b: Compliance
Module 10: Corporate Management
Module 14: Accounting
Module 15: Construction Management
Module 16: Refurbishment and Project Development
Module 18: Property Valuation
Module 19: Sale

Core Module

Module 1: Strategy

The 'Strategy' Core Module covers the formulation of the key principles governing investment policy (investment strategy) and the necessary derivation of investment criteria based on the client's objectives. As part of the strategy definition, a portfolio strategy and individual asset strategy should be formulated on the basis of the investment strategy. Planning, preparation and implementation take place at both portfolio and asset level. The dynamic market environment demonstrates that numerous factors influence strategy definition:





Core Module

Module 1: Strategy

Sustainability is one example of a topic that affects all levels of the strategy process, ultimately feeding into the individual asset strategy and the specific positioning of the asset. The same applies to changes in tenant and investor demand, the influence of stakeholders and collaboration with partners and employees. All of these factors may necessitate adjustments to the strategy.

In practice, this process may be initiated when assessing alternative courses of action and conducting economic analyses relating to the property portfolio or an individual asset. A change in key parameters may require a partial or fundamental departure from the original strategy.

Against this background, the service components of the Strategy module are divided into the four stages of the strategy process referred to above and, in the next step, provide for the derivation of suitable, measurable objectives at portfolio and asset level.

Service		Asset	Portfolio	Core Service	Additional Service
a	Strategy definition at investment, portfolio and individual asset level and in relation to sustainability	■	■	■	
b	Derivation and definition of specific, measurable objectives: - Asset-specific objectives - Portfolio objectives - Sustainability objectives - Digitalisation objectives	■	■	■	
c	Ongoing monitoring and assessment of performance	■	■	■	
d	Review and dynamic adjustment of the strategy and objectives	■	■	■	

Module 2: Acquisition

The 'Acquisition' Supplementary Module covers services related to the acquisition of assets via an asset deal or share deal.

This includes the organisation and implementation both of sourcing and of a systematic acquisition review (due diligence, including ESG assessment), as well as support with the completion of the purchase agreement, including tracking claims and obligations.

Service		Asset	Portfolio	Core Service	Additional Service
a	Definition of the acquisition profile in consultation with the client	■	■	■	
b	Market analysis and active search for assets, with or without a broker	■	■	■	
c	Preliminary review and preparation of investment opportunities	■	■	■	
d	Organisation of the actual acquisition process, including assembling and managing the internal and external project team	■	■	■	
e	Selection and management of external due diligence service providers, e.g., for legal, tax, technical, environmental and sustainability matters	■	■	■	
f	Preparation and maintenance of acquisition calculations	■	■	■	
g	Preparation of decision papers and presentation to decision-making bodies	■	■	■	
h	Support with purchase agreement negotiations in relation to pricing, the purchase agreement and other relevant documents	■	■	■	
i	Conducting purchase agreement negotiations	■	■		■
j	Completion of the purchase agreement, including tracking warranties and obligations arising from it	■	■	■	
k	Notification of the change of ownership to all contractual counterparties	■	■	■	
l	Documentation of the decision-making process, completion of the purchase agreement and the data room	■	■	■	

Module 3: Financing

The 'Financing' Supplementary Module covers services required to ensure secure and robust financing of investments (at both asset and corporate level), taking into account the client's requirements regarding the capital, financing and, where applicable, fund structure, both during the investment period and over the expected holding period of individual assets or portfolios.

In addition to arranging and implementing financing, this also includes ongoing monitoring and control of loan and credit agreements.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Preparation of a financing plan	■	■	■	
b	Participation in defining the capital and financing structure	■	■	■	
c	Conducting tender and selection procedures	■	■		■
d	Conducting contract negotiations (term sheet, loan agreement, provision of security)	■	■	■	
e	Formulating recommended courses of action and decision papers regarding the results of negotiations	■	■	■	
f	Documentation of the agreements reached and review of due dates, compliance with terms & conditions and payments	■	■	■	
g	Reporting to the lender, including covenant reports	■	■	■	
h	Compliance with statutory provisions and requirements governing the raising of debt capital, e.g., under the German Investment Code (KAGB)		■	■	
i	Monitoring the financing market with regard to interest rate developments and deriving possible courses of action		■	■	

Core Module

Module 4a:
Business Plan and Budget

The 'Business Plan and Budget' Core Module covers services related to the detailed planning and presentation of cash flows and other relevant performance indicators. Planning takes place in accordance with the asset and portfolio strategies and in close consultation with the client. Budgets are developed from the business plan and are subject to approval by the client.

Note: Matters arising from sustainability objectives (ESG), as well as matters relating to operator liability, etc., are reflected in the business plan and budget in accordance with the strategy selected.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Preparation and regular updating of the business plan in accordance with the client's requirements	■	■	■	
b	Preparation and coordination of budgets and obtaining approvals for them on the basis of the business plan (generally for a one-year or multi-year period)	■	■	■	
c	Preparation, review and further processing of data and information provided, including in coordination with external service providers involved in the planning process	■	■	■	
d	Explanation of business plans and budgets to the client	■	■	■	
e	Development and implementation of approval procedures	■	■		■

Core Module

Module 4b: Controlling

The 'Controlling' Core Module covers services that involve ongoing monitoring of key performance indicators and identification of variances, analyses of the reasons for those variances and, ideally, recommended courses of action derived from them. Variances are identified by comparing, on the one hand, the business plan and approved budgets and, on the other, the current key figures reported.

Note: Matters arising from sustainability objectives (ESG), like other matters, are monitored as part of controlling.

Service		Asset	Portfolio	Core Service	Additional Service
a	Ongoing monitoring by comparing planned figures from the business plan and budgets against actual figures from reporting	■	■	■	
b	Preparation of a forecast (expected outcome) on the basis of identified variances and an update reflecting those variances	■	■	■	
c	Identification of the reasons for variances	■	■	■	
d	Coordination with internal and external parties involved (e.g., property management, accounting) when analysing variances	■	■	■	
e	Derivation of operational and strategy-related recommendations for action	■	■	■	
f	Participation in the preparation of quarterly / annual financial statements	■	■		■

Core Module

Module 5: Reporting

Module 5: 'Reporting' covers services related to quantitative and qualitative reporting on information relevant from a financial or other perspective. Reporting may be carried out at both asset and portfolio level.

Depending on the intended recipients, reporting may contain different information. The content relevant to management, as well as the format and frequency of reporting, should be defined together with the client in the context of the portfolio and asset strategy.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Agreement on the content, scope and frequency of the reporting to be provided, including definition of the key performance indicators	■	■	■	
b	Periodic preparation of property sector KPI reports, in each case also showing trends, e.g., in relation to: - Rental income (total and in EUR/m²) - Outstanding receivables (absolute and relative) - Expenditure (CapEx, OpEx, TI/UTC, other) - Liquidity - Vacancy (in m² and as a delta in EUR) - WA(U)LT - Tenant list	■	■	■	
c	Preparation, as required, of reports on qualitative topics such as: - Letting - Tenant retention / turnover - Rent increases - Rent security deposits - Insurance and insured losses - Pending or threatened litigation - Key service and supply agreements	■	■	■	
d	Preparation, as required, of reports on sustainability-related aspects such as: - Consumption and emissions data (e.g., CO_2, electricity, water) - Regulatory criteria (e.g., SFDR or the EU Taxonomy Regulation) - Non-regulatory / other criteria - Relevant certifications	■	■		■
e	Other reporting, e.g.: - Duty of care reporting (where a DoC agreement is disclosed)	■	■		■

Module 6:
Research

The 'Research' Supplementary Module is intended primarily to support the portfolio and asset management strategy. Its principal components are the procurement, provision and analysis of rental and investment market data. Regulatory requirements, sustainability criteria and other statutory requirements are also identified and analysed.

The information obtained serves as a basis for economic assessments, analyses and benchmarks relating to individual assets and/or portfolios, on the basis of which specific recommendations for action can be formulated.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Benchmarking of the managed portfolio with regard to tenants, assets and locations	■		■	
b	Conducting market, location, competitor, SWOT and sustainability analyses	■			■
c	Tenant assessment, including the collection of third-party information (e.g., credit checks, revenue, annual financial statements)	■			■
d	Collection and preparation of comparable rents and sale prices	■		■	
e	Procurement, analysis and provision of qualitative and quantitative third-party data for special analyses	■	■		■
f	Compilation of proprietary datasets through observation of tenants, assets, micro- and macro-locations and the overall market	■	■		■
g	Analysis and further processing of data as a basis for developing asset and portfolio strategies and identifying risks	■	■	■	
h	Identification of relevant trends and derivation of recommendations, including in relation to regulatory changes	■	■	■	

Core Module

Module 7:
Data and Document Management

The 'Data and Document Management' Core Module describes the services required to ensure the proper, secure and traceable collection, processing, storage and archiving of data and documents.

In view of the digital transformation of real estate management, this service module is becoming increasingly important. Statutory provisions must be complied with and the client's confidentiality requirements must be taken into account.

As a general principle, the handling of data and documents should follow the client's digitalisation strategy. See also the section entitled 'Digitalisation' below.

In this area, asset management generally operates within a system framework specified by the client. Additional conceptual and advisory services going beyond this may be agreed separately.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Inventory of existing data and documents using the existing systems, interfaces and access authorisation concepts	■	■	■	
b	Organisational advice regarding the systems, processes and interfaces used, as well as role and access authorisation concepts	■	■		■
c	Initial definition of the required data and documents	■	■	■	
d	Monitoring the exchange of data and documents and checking their plausibility, including with regard to timeliness, completeness and plausibility	■	■		■
e	Taking over and/or handing over data and documents relevant to asset management at the commencement and/or termination of the asset management mandate	■	■	■	
f	Regular review of the data and documents defined as necessary and implementation of any required adjustments in accordance with the client's instructions	■	■	■	

Note: Where client requirements entail costs for hardware, software or consultants, responsibility for those costs must be clarified on a case-by-case basis.

Module 8a:
Risk Management

The 'Risk Management' Supplementary Module covers services relating to the identification and management of risks, with the objective of limiting risk.

As part of risk management, it should also be ensured that risk-relevant key figures and matters, for example, those relating to receivables, are appropriately reflected in Reporting (Module 5).

Due to the complexity and multifaceted nature of the subject, the relevant services can only be presented in outline or by way of example in this Schedule of Services.

Some services, such as monitoring liquidity at corporate or portfolio level, are only possible if the asset management services extend to the relevant level. A clear contractual definition of the services to be provided and the levels to which they apply is therefore required.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Formulation and continuous adjustment of risk management requirements and principles	■	■	■	
b	Identification and initial assessment of material risks	■	■	■	
c	Development and coordination of a risk strategy	■	■	■	
d	Development and implementation of appropriate risk processes, including an interface with reporting	■	■	■	
e	Regular review of the effectiveness and appropriateness of the defined risk strategy and the processes implemented in connection with it, as well as implementation of any necessary adjustments	■	■	■	
f	Support for services performed by external auditors	■	■		■

Module 8b: Compliance

The 'Compliance' Supplementary Module covers monitoring of compliance with statutory provisions and regulatory standards, as well as fulfilment of other standards generally imposed by companies themselves. With regard to self-imposed standards, it should be agreed which of these standards must be observed before the asset management services are taken on.

The regulatory and statutory requirements applicable to a portfolio and/or the companies involved, as well as the client's requirements, may vary considerably and should therefore be agreed individually and specifically in advance.

In this respect, it should be noted that compliance with a range of regulatory standards generally has to be ensured by the property manager. In such cases, the asset manager is responsible for monitoring the property manager. There may therefore be overlaps with Module 9: Selection and Management of Service Providers.

As a general rule, matters covered by this Compliance module must also be taken into account in Module 8a: Risk Management.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Coordination of a compliance framework based on the mandatory compliance requirements (regulation) applicable to the portfolio and/or the companies involved. This also includes taking account of any additional requirements imposed by the client	■	■	■	
b	Implementation and regular adjustment of the compliance framework	■	■	■	
c	Conducting checks of service providers, suppliers and tenants as required by regulatory and other requirements	■		■	
d	Supporting the client in carrying out audits and reviews that go beyond regulatory requirements	■	■		■

Core Module

Module 9:
Selection and Management of Service Providers

The 'Selection and Management of Service Providers' Core Module covers the selection, appointment, management and supervision of external service providers in order to ensure the management and operation of the properties. These may include property, facility and project management services, as well as data processing, tax and legal advisory services, letting and marketing services, architectural and engineering services, insurance, and marketing and communications services (non-exhaustive list).

Given the high level of complexity, it is important to define interfaces clearly. This includes agreeing schedules of services, the nature and scope of the services and the arrangements for management and supervision.

The extent to which, in ongoing mandates, the appointment and management of additional external service providers as a result of new requirements should lead to an adjustment of remuneration, e.g., through a handling fee, should be agreed on a case-by-case basis.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Determination of service requirements, taking into account: i) asset class and asset and/or portfolio strategy; ii) definition of interfaces and responsibilities between the client and service provider; iii) documentation and reporting requirements (content, type and quality of data, as well as its scope, formats, standards and frequency of provision); iv) definition of necessary requirements relating to system prerequisites and IT applications	■	■	■	
b	Preparation of tenders: preparation of a market overview and preselection of service providers to be invited to tender	■	■	■	
c	Preparation of a schedule of services and definition of criteria for measuring, assessing and remunerating performance (with the assistance of a tendering agency/consultant where required)	■	■		■
d	Coordination with the client of the schedule of services and remuneration, as well as the procurement strategy, and conducting the tender process (with the assistance of a tendering agency/consultant where required)	■	■		■
e	Analysis and evaluation of tenders, conducting bidder discussions, preparation of an award recommendation, conducting negotiations through to readiness for signature, and conclusion of the contract	■	■		■
f	Implementation of the commissioned services, in particular with regard to interface management and the required technical system integration (data provision)	■	■		■

Core Module

Module 9:
Selection and Management of Service Providers

	Service	Asset	Portfolio	Core Service	Additional Service
g	Coordination of reporting arrangements with the service provider and any third parties involved	■	■	■	
h	Listing of existing service and third-party contracts	■	■	■	
i	Regular operational coordination with the service provider and conducting performance review meetings	■	■	■	
j	Monitoring services for compliance with contractual provisions	■	■	■	
k	Review and approval of service provider invoices	■	■	■	
l	Regular review of whether contractual documentation requires adjustment and renegotiation with regard to: i) objectives and scope of services and the associated requirements; ii) appropriateness of prices; iii) statutory or regulatory changes; iv) handling of performance deficiencies	■	■	■	

Module 10:
Corporate Management

The 'Corporate Management' Supplementary Module covers services for property holding companies down to the level of individual property companies. This includes the coordination of commercial, tax and legal tasks and issues. It may also include assuming responsibility for management under commercial law.

The module does not include any services requiring permission, authorisation, admission or approval under the German Legal Services Act or Tax Advisory Act.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Assumption of management responsibility under commercial law		■		■
b	Management of accounting activities		■	■	
c	Coordination of the preparation and audit of annual financial statements and tax returns		■	■	
d	Standardisation and continuous optimisation of the chart of accounts and interfaces with property and fund accounting		■	■	
e	Review and approval of invoices and initiation of payments		■	■	
f	Appointment and management of service providers such as financial accountants, lawyers, tax advisers and auditors		■	■	
g	Administration of bank accounts		■	■	
h	Monitoring payment transactions and liquidity		■	■	
i	Monitoring compliance with obligations under loan agreements		■	■	
j	Coordination and monitoring of tax matters at asset level, such as adjustments under Section 15a of the German VAT Act and corrections to the input VAT allocation key	■		■	
k	Preparation of going concern forecasts and restructuring plans		■		■
l	Coordination of corporate law matters, such as shareholder resolutions, entries in the commercial register and land register, and compliance with publication obligations		■	■	
m	Coordination of the enforcement of the company's legal claims against third parties		■	■	

Core Module

Module 11:
Property and Tenant Management

The 'Property and Tenant Management' Core Module covers services performed directly at the property and/or in interaction with tenants. These include, for example, periodic inspections of the properties and regular communication with tenants.

A presence at the property also serves a quality assurance function. The objectives are long-term preservation of the property's fabric and value and identification of opportunities for optimising sustainability.

Communication with tenants focuses on identifying tenant concerns and requirements. The objectives are to increase tenant satisfaction, maximise tenant retention and identify potential for increasing rental income.

For the sake of clarity, it should be noted that these services do not constitute property management services, although overlaps may naturally arise.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Regular property inspections regarding the condition of the property, ideally together with property and facility management	■		■	
b	Regular discussions with key existing commercial tenants, including regarding tenant satisfaction and tenant requirements	■		■	
c	Coordination of vacancy management	■		■	
d	Identification of potential and requirements (e.g., rent adjustment, space adjustment, fit-out adjustment, lease term adjustment, implementation, services)	■		■	
e	Direct extension of existing leases (without third parties)	■			■
f	Complaints and escalation management, including conducting meetings with tenants	■		■	
g	Identification, planning and implementation of asset-specific measures for repositioning in the market	■			■
h	Conducting tenant surveys regarding tenant satisfaction, etc.	■			■

Core Module

Module 12:
Receivables Management

The 'Receivables Management' Core Module covers services aimed at minimising receivables and default risks. A key element is the management of the relevant service processes.

Where key tenants or material arrears are concerned, any necessary negotiations with the tenant are generally conducted by the asset manager.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Design, implementation and management of receivables management processes involving all relevant parties, e.g., property management, lawyers, courts and bailiffs	■		■	
b	Regular monitoring of receivables balances (including apparent overpayments) and regular meetings with service providers	■		■	
c	Determination and implementation of appropriate measures	■		■	
d	Conducting negotiations on instalment payment or deferral agreements with key tenants, generally in conjunction with an amendment to the lease	■		■	
e	Advising the client on the initiation of court proceedings (legal action, enforcement)	■		■	
f	Pursuit of receivables relating to properties that have been sold, or receivables which for other reasons are no longer managed by the property manager	■			■

Core Module

Module 13:
Liquidity Management

The 'Liquidity Management' Core Module covers services aimed at ensuring solvency at asset and portfolio level, taking the business plan into account.

Core tasks include liquidity planning, ongoing recording and monitoring of cash inflows and outflows, drawing and use of liquidity, as well as analysis and reporting.

It should be noted that the asset manager can only provide support in this area unless Supplementary Module 10: 'Corporate Management' has also been commissioned.

In addition, the provision of a number of services depends on rights of access and instruction.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Documentation and monitoring of bank account authorisations, approval limits and other powers to ensure payment transactions can be carried out	■		■	
b	Preparation and regular adjustment of a liquidity plan	■		■	
c	Monitoring cash inflows and outflows	■		■	
d	Monitoring property management's compliance with liquidity planning	■		■	
e	Ensuring an appropriate level of liquidity by drawing down and repaying funds	■			■
f	Participation in raising equity and debt capital	■	■		■
g	Analysis and assessment of liquidity trends	■		■	

Module 14: Accounting

The 'Accounting' Supplementary Module covers the assumption and continuation of ongoing accounting at property holding company level (general ledger) in accordance with the principles of proper accounting and statutory requirements.

The subordinate property accounting function (subledgers) is generally handled by property management.

Accounting also includes management of ongoing payment transactions and preparation for and/or support with the preparation of annual financial statements.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Taking over the existing financial accounting function or establishing one for the first time		■	■	
b	Ongoing accounting and ensuring the proper recording of all business transactions in the general ledger (company level) and subledger (property accounting)		■	■	
c	Processing and documenting ongoing payment transactions		■	■	
d	Reviewing, recording and adjusting write-ups, depreciation/amortisation and/or value adjustments due to market changes, property-specific circumstances or statutory requirements	■	■	■	
e	Reviewing and recording or adjusting rental and other receivables (e.g., damages claims against third parties)	■	■	■	
f	Reviewing, recognising and adjusting provisions with regard to timing and amount		■	■	
g	Preparation of proper and complete separate annual financial statements for companies, including all year-end accounting entries and, where applicable, participation in the preparation of notes to the financial statements and management reports		■	■	
h	Preparation of additional separate interim financial statements for companies (e.g., quarterly financial statements)		■		■

Module 15: Construction Management

The 'Construction Management' Supplementary Module covers the management of design and construction disciplines in connection with construction measures aimed at maintaining or modernising existing properties, as well as tenant fit-outs.

The design disciplines include, in particular, architects, specialist engineers, project managers and other service providers. The aesthetic, energy-related, environmental and social requirements, particularly those arising from the client's ESG criteria, must also be taken into account.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Determination of the current structural and building law status and the applicable planning law	■		■	
b	Definition of the construction measure, procurement strategy and required documentation with the project participants	■		■	
c	Preparation of a budget and schedule with the aim of obtaining approval from the client	■		■	
d	Selection of design and implementation partners in preparation for a tender	■		■	
e	Tendering and award of the design and construction packages, as well as preparation and signing of construction contracts	■		■	
f	Coordination of the design and construction disciplines and of third parties affected by the measures, such as tenants and neighbours	■		■	
g	Taking out insurance cover for the construction measure and handling any claims	■			■
h	Ensuring proper performance of the design and construction packages and monitoring compliance with statutory and technical requirements	■			■
i	Ongoing monitoring of construction progress and budget compliance, as well as invoice review and approval	■			■
j	Arranging acceptance of the works and documenting acceptance	■			■
k	Review of the final account and ensuring retention of security amounts and provision of warranty guarantees	■			■
l	Preparation of a final report	■		■	
m	Management of warranty matters	■			■

Module 16:
Refurbishment and Project Development

The 'Refurbishment and Project Development' Supplementary Module covers services aimed at optimising value either through alterations or extensions to existing properties or through new development.

Planning, preparation and implementation should be carried out in accordance with the client's economic requirements and ESG criteria and in compliance with applicable legislation.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Agreement of objectives with the client and description of the key features of the project, particularly with regard to the use concept and economic viability	■		■	
b	Conducting a market and location analysis	■		■	
c	Development of the use concept and review of planning and building law, as well as existing certifications	■		■	
d	Project calculations covering both expenditure and income, including sensitivity analysis and return calculation, and preparation of a project schedule	■			■
e	Preparation and presentation of a decision paper for the client	■		■	
f	Selection and appointment of design disciplines following prior agreement of the scope of services and procurement concept	■		■	
g	Tendering and award of construction packages and other required services	■			■
h	Management and monitoring of the design and construction disciplines	■			■
i	Monitoring project costs and compliance with approved budgets, as well as invoice review and approval	■		■	

Module 16:
Refurbishment and Project Development

	Service	Asset	Portfolio	Core Service	Additional Service
j	Regular project reporting on construction progress with regard to costs, quality and deadlines	■		■	
k	Arranging acceptance of the works and documenting acceptance	■			■
l	Handover of leased premises to tenants	■		■	
m	Review of the final account and ensuring retention of security amounts and provision of warranty guarantees	■			■
n	Preparation of a final report	■		■	
o	Management of warranty matters	■			■

Core Module

Module 17: Letting

The 'Letting' Core Module covers services aimed at implementing lettings in accordance with the asset strategy.

For the purposes of this document, Additional Services are defined as services which, depending on the organisational structure (i.e., who is responsible for the activity), type of use (residential or commercial) and complexity (low or high letting complexity), may be performed either by the asset manager or by third parties, such as the property manager or a letting agent.

Whether a service is to be treated as a Core Service or an Additional Service should be determined during contract negotiations, with the remuneration agreed accordingly.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Analysis of market and property information for the development of a letting concept and economic assessment of alternative courses of action	■		■	
b	Preparation of a letting concept, including definition of the target group, determination of the required marketing measures and selection of letting partners	■		■	
c	Ensuring the legal and technical suitability of the property for letting, including coordination of appropriate measures	■			■
d	Agreement of terms, taking the business plan into account	■		■	
e	Compilation of contractual and property documentation for marketing purposes	■		■	
f	Appointment and management of letting partners and other points of contact, and establishment of letting reporting	■		■	
g	Identifying and approaching prospective tenants	■			■
h	Conducting viewings	■			■
i	Preparation of letting proposals and conducting negotiations	■			■
j	Preparation of decision papers for the client following completion of creditworthiness and KYC/AML checks	■			■
k	Preparation of contractual documentation, including external legal review where required, and conclusion of the lease	■			■
l	Coordination of implementation of the lease with regard to legal and technical matters	■		■	
m	Obtaining rent security deposits, handover of the leased premises and documentation	■			■

Module 18:
Property Valuation

The 'Property Valuation' Supplementary Module describes services relating to the preparation, commissioning, management and monitoring of property or portfolio valuations.

In RICS's view, the valuation itself should be carried out by independent third parties in order to avoid conflicts of interest. It is recommended that valuations be performed in accordance with generally accepted standards such as the RICS Red Book.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Determination of the purpose and date of the valuation in consultation with the client	■		■	
b	Definition and monitoring of compliance with valuation deadlines (e.g., requirements under loan agreements)	■		■	
c	Agreement of the valuation methodology and frequency with the client	■		■	
d	Selection and appointment of the valuer	■		■	
e	Compilation of the data and documents required for the valuation in consultation with the client	■		■	
f	Inspection of the property, including recording / assessment / documentation of its structural and technical condition	■			■
g	Plausibility review of the results and coordination with the client	■		■	
h	Preparation of alternative calculations based on different scenarios	■			■

Module 19:
Sale

The 'Sale' Supplementary Module covers services forming part of the sale process, including both activities up to conclusion of the contract and activities relating to completion of the contract, such as handovers and coordination of subsequent measures.

The scope and depth of services and the interfaces with external third parties should be agreed with the client in advance.

	Service	Asset	Portfolio	Core Service	Additional Service
a	Advice on the sales strategy and recommendations regarding preparatory measures for the sale	■	■	■	
b	Implementation of optimisation measures relating to the property in connection with the sale	■	■		■
c	Procurement and/or preparation of sales documentation, such as an information memorandum, NDA, LOI and SPA, as well as establishment and population of a sales data room	■	■		■
d	Selection, appointment and management of external parties involved	■	■	■	
e	Coordination of the parties involved in the sale process and preparation of sales reporting	■	■	■	
f	Commercial management of the sale process, including negotiations	■	■		■

3

Recommendations on Remuneration Principles

This section addresses types and models of remuneration used in practice and considered appropriate by RICS. It explains the characteristics and customary areas of application of the remuneration models.

The focus of the analysis is the **performance- and results-based base remuneration,** i.e., remuneration for asset management linked to the assets' performance (see Section 2). RICS assumes that all Core Modules, together with their Core Services, are always commissioned.

The following presentation and description of types and models of remuneration **does not claim to be exhaustive.** In individual cases, it may be appropriate to apply different models.

The extent to which additional effort arising from new requirements, such as regulatory requirements, or from managing interfaces in ongoing mandates should result in increased remuneration needs to be assessed on a case-by-case basis.

The results of an empirical survey of remuneration ranges agreed in the market can be found in Chapter 4.

3.1 Requirements for remuneration agreements

In RICS's view, agreements on remuneration for asset management services should, as a general principle, meet the following requirements:

Fairness
(the remuneration must be balanced)

Transparency
(the calculation must be understandable and transparent)

Predictability
(the amount and due date must be reasonably predictable)

Practicality
(the calculation must be workable in practice)

Incentives
(the remuneration should be performance-based)



When structuring remuneration for the asset manager, it should be borne in mind that the asset manager operates at a more entrepreneurial level than service providers at property management and facility management level, but at a less entrepreneurial level than portfolio management and fund management.

3.2 Remuneration models

This section presents the remuneration models fundamentally recommended for asset management services, based on pricing mechanisms commonly used in practice.

As a general principle, remuneration can be divided by type into fixed and variable remuneration. The different remuneration models ('RM') can be characterised by the reference basis selected in each case and classified as follows:

- Fixed fee (RM 1): Remuneration is agreed as a fixed amount
- Variable, based on time and effort (RM 2): Remuneration is based on documented time and effort, generally on the basis of hourly or daily rates
- Variable, results-based (RM 3–9): Remuneration is based on the result achieved

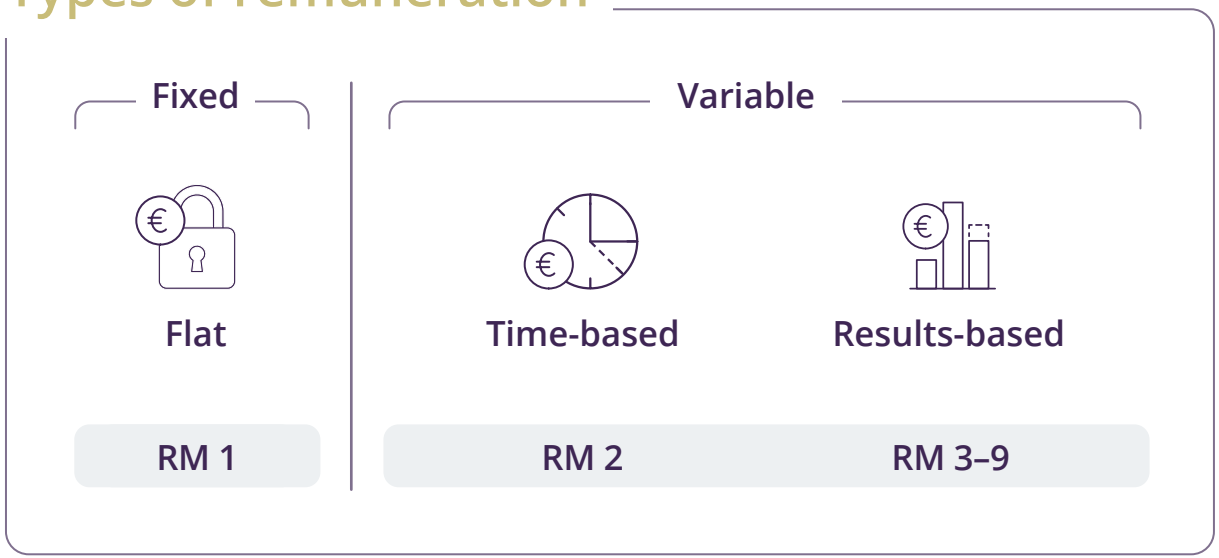
The actual remuneration model consists of the commissioned services and the particular characteristics of the assignment, which may be reflected in supplementary arrangements, e.g., for setup services, minimum remuneration or an additional performance fee. This is explained in Sections 3.3 et seq. below.

Across all remuneration models, the contract should specify how the commissioning, allocation of costs and management effort relating to third-party services are to be handled.

For all results-based remuneration, consideration should be given, in order to minimise the calculation effort, to calculating such remuneration only quarterly or half-yearly. In such cases, fixed monthly payments on account in an appropriate amount may be agreed.

The remuneration models, together with their characteristics and areas of application, are as follows:

Types of remuneration



Remuneration Model 1
Flat Fee

Type of remuneration
Flat fee

Calculation
None

Application
Supplementary Module 18

Fairness	Medium
Transparency	High
Predictability	High
Practicality	High
Incentives	None

Suitable for risk class
All

Comments
- May disadvantage one party if based on incorrect assumptions

Remuneration Model 2
Time-Based Remuneration

Type of remuneration
Time-based fee

Calculation
Time spent × billing rate

Application
Supplementary Modules
3, 6, 8a, 8b, 10 and 14

Fairness — Medium
Transparency — High
Predictability — Low
Practicality — High
Incentives — None

Suitable for risk class
All

Comments
- Difficult for the client to calculate the total amount in advance
- Predictability can be improved through a cap or a review clause

Remuneration Model 3
Net Contracted Rent (NCR)

Type of remuneration
Results-based

Calculation
Contracted net ‘cold’ rent (excl. service charge and ancillary cost prepayments) × percentage

Application
Core Services under the Core Modules

Fairness
High

Transparency
High

Predictability
Medium

Practicality
High

Incentives
Present

Suitable for risk class
All

Comments
- Rewards occupancy rate and rent level, but does not take arrears or operating costs into account
- Treatment of rent-free periods must be defined
- If used for opportunistic investments, consideration should be given to a minimum fee or a performance fee

Remuneration Model 4
Net Rental Income (NRI)

Type of remuneration
Results-based

Calculation
Net cold rent collected (actual) × percentage

Application
Core Services under the Core Modules

Fairness	High
Transparency	High
Predictability	Medium
Practicality	Medium
Incentives	Present

Suitable for risk class
Core to Value Add

Comments
- Rewards occupancy rate, rent level and low arrears, but does not take operating costs into account
- May result in fluctuations in remuneration

Remuneration Model 5
Net Operating Income (NOI)

Type of remuneration
Results-based

Calculation
Net cold rent collected less non-recoverable costs × percentage

Application
Core Services under the Core Modules

Fairness	High
Transparency	Medium
Predictability	Medium
Practicality	Low
Incentives	Present

Suitable for risk class
Core and Core Plus

Comments
- Rewards occupancy rate, rent level, low arrears and low operating costs
- May be subject to significant fluctuations due to non-recurring costs
- Risk of neglecting the property if excessive savings are made in its operation and management
- The costs to be deducted for calculation purposes must be defined precisely

Remuneration Model 6
Gross Asset Value (GAV)

Type of remuneration
Results-based

Calculation
Market value of the properties × percentage

Application
Core Services under the Core Modules

Fairness	Medium
Transparency	High
Predictability	Medium
Practicality	High
Incentives	Medium

Suitable for risk class
All

Comments
- Partly dependent on factors external to the property and not solely on the asset management activities

Remuneration Model 7
Contract Volume

Type of remuneration
Results-based

Calculation
Contract volume × factor

Application
Supplementary Modules 2 and 19 and Additional Services under Module 17

Fairness	Medium
Transparency	High
Predictability	Medium
Practicality	Medium
Incentives	Present

Suitable for risk class
All

Comments
- Generally used for letting, acquisition and sale
- One-off fee per transaction

Remuneration Model 8
Lease Surplus

Type of remuneration
Results-based

Calculation
Total net cold rent over the lease term less incentives and TI × factor

Application
Additional Service ‘Letting’ under Module 17

Fairness	High
Transparency	High
Predictability	Low
Practicality	Low
Incentives	Present

Suitable for risk class
All

Comments
- Used for the letting of commercial space
- One-off fee per transaction
- The calculation must be defined very precisely

Remuneration Model 9
Project Costs

Type of remuneration
Results-based

Calculation
Total net project costs including ancillary costs × percentage

Application
Supplementary Modules 15 and 16

Fairness	Medium
Transparency	High
Predictability	Medium
Practicality	Medium
Incentives	None

Suitable for risk class
All

Comments
- Provides no incentive to avoid costs
- One-off fee per transaction

3.3 Further remuneration arrangements

3.3.1 Setup fee

Before a new asset management mandate begins, preparatory activities are generally required. Services of a customary scope, such as preliminary meetings, site visits, etc., are not shown separately in the Schedule of Asset Management Services, as they are often regarded as an advance component of the agreed principal service and are therefore covered by the remuneration for the Core Services.

However, preliminary asset management services may also be required to an extent significantly exceeding the usual scope. Reasons for this may include inadequate management in the past, an unusually complex mandate structure, or deficient data and information.

In such cases, where setup services exceed the customary scope, additional remuneration is generally agreed, either as a flat fee or on a time-spent basis using agreed hourly or daily rates.

Third-party costs may either be passed through or subject to a surcharge for management ('handling fee'). It is then customary to agree on a cost cap, with the client to be informed before that cap is exceeded.

Where setup services are covered by ongoing remuneration, it is customary in the market, particularly where contract terms are variable and amortisation for the contractor is therefore uncertain, to agree a break-up fee. This becomes payable if the contract is terminated before the point at which the setup costs would have been amortised.

3.3.2 Performance fee (additional remuneration)

The guiding principle behind agreeing a performance fee is the 'alignment of interests', i.e., achieving a high degree of alignment between the interests of the owner and those of the asset manager in relation to certain priority objectives by introducing additional incentives.

Such performance-related fees generally become payable when agreed performance indicators are achieved or exceeded. It is important that achievement of the target and the asset manager's contribution to performance are clearly defined and measurable. Misaligned incentives should also be avoided.

The following are examples of performance fee models that are established in the market and, in RICS's view, are suitable for achieving an 'alignment of interests':

3.3.2.1 Achievement of property-specific performance indicators

Achievement of certain property-specific performance indicators, such as vacancy rate, development of rent arrears, rental income or distributions, may justify a performance fee in addition to the base remuneration.

The objective is generally to prioritise strategic objectives arising, for example, from the condition of the portfolio when it is taken over, the investment strategy or financing covenants.

3.3.2.2 Achievement of capital-market-specific performance indicators

This type of performance fee may be based on the performance of the portfolio or on the return achieved. In particular, where a target return is agreed, the calculation methodology must be defined very precisely.

Particular incentives are provided here for sale prices achieved on exit, which may also form an element of

remuneration payable at the end of the investment period.

Example: if a minimum sale price is exceeded (e.g., based on assumptions made at acquisition), the asset manager receives a share of the excess proceeds.

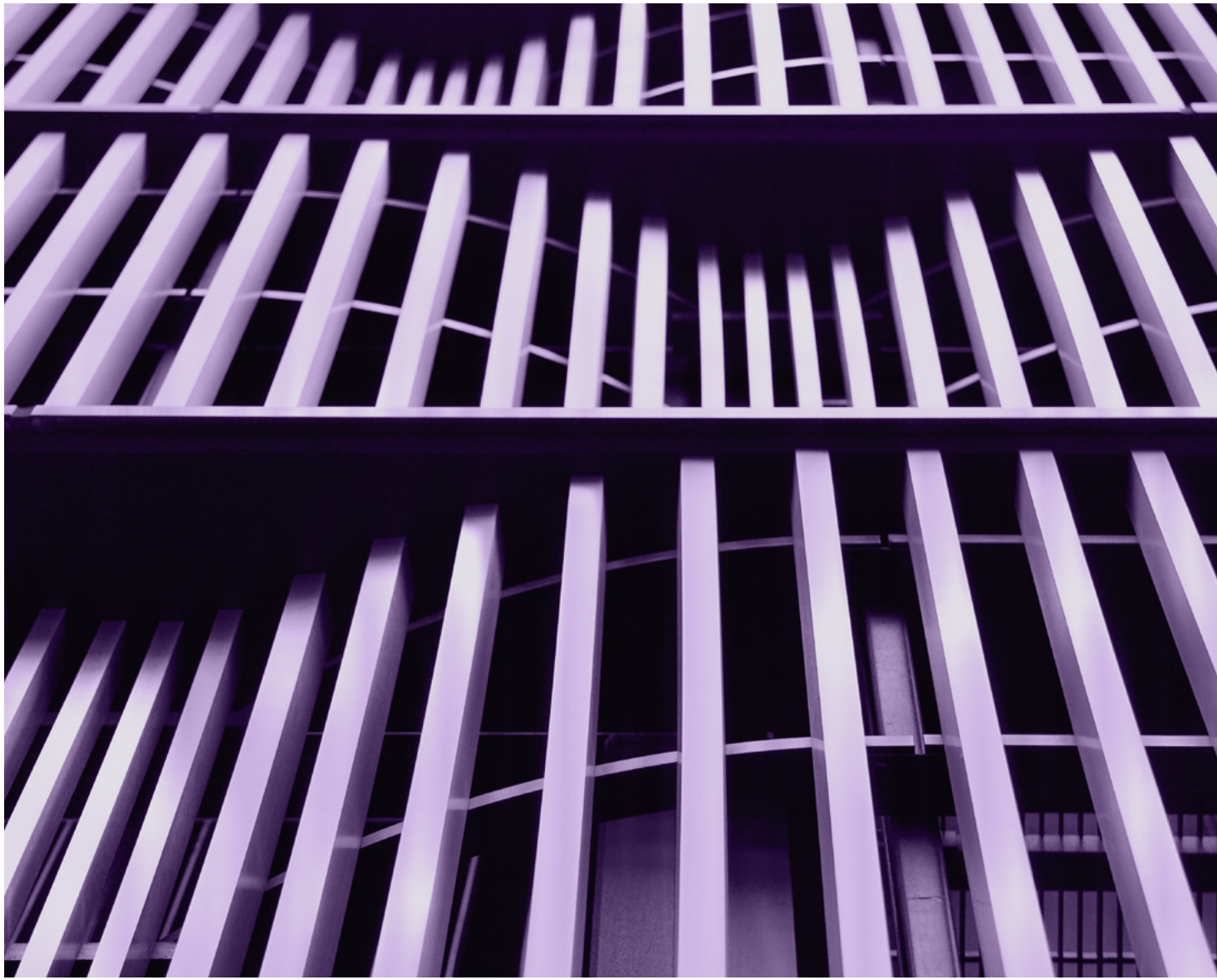
Note: In RICS's view, use of this model for acquisitions is not recommended.

3.3.3 Minimum remuneration

Minimum remuneration is a supplementary element of an overall remuneration model. It serves to protect the contractor where the base remuneration is results-based.

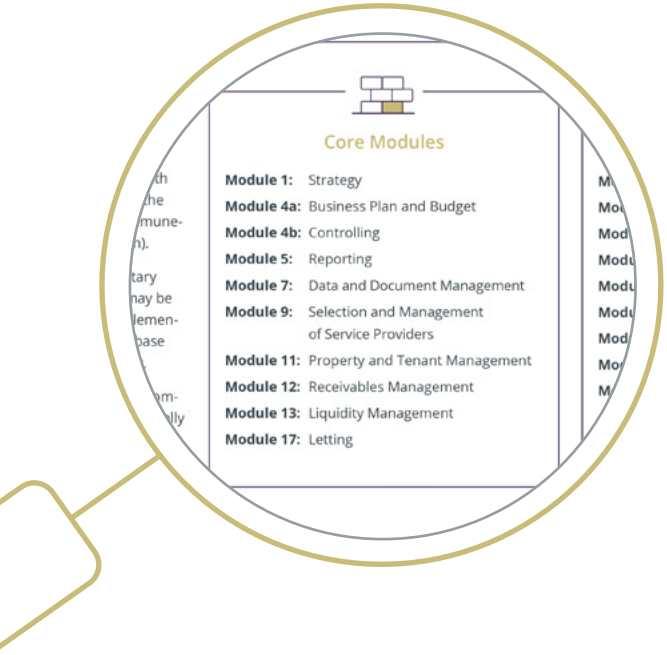
In the market, base remuneration is sometimes agreed for opportunistic or Value Add portfolios whose income and value performance is uncertain and dependent on requirements imposed by the client.

Minimum remuneration is often agreed in euros per (thousand) square metres of lettable area and is therefore a semi-flat-rate form of remuneration.



3.4 Recommended remuneration models

As explained in Chapter 2, RICS assumes that the Core Modules and the Core Services within them are always commissioned as part of an asset management mandate. These services should therefore be covered by base remuneration.



The commissioning of Supplementary Modules and Additional Services must be agreed upon separately and is also considered separately below.

3.4.1 Recommendations for base remuneration

As a general recommendation, the investment and portfolio strategy underlying the remuneration should be incorporated into the preamble to the contract so that any subsequent changes arising from altered circumstances are transparent and understandable to both parties.

For base remuneration, RICS generally recommends variable remuneration. For portfolios with less predictable income and value performance, a combination of minimum remuneration and variable remuneration can ensure that remuneration is both balanced and performance-orientated.

The 'minimum remuneration' component serves to limit risk for the asset manager where material conditions affecting commercial success, such as sufficient liquidity, lie outside its sphere of influence. Remuneration Model 1: Flat Fee is recommended for this minimum remuneration.

Variable remuneration provides a performance incentive for the asset manager and creates an alignment of interests between the client and the contractor.

For remuneration, RM 3: Net Contracted Rent (NCR), RM 4: Net Rental Income (NRI) and RM 5: Net Operating Income (NOI) are proposed as alternatives.

RM 3: Net Contracted Rent (NCR) and RM 4: Net Rental Income (NRI) are the models that most closely meet the desired remuneration principles.

RM 5: Net Operating Income carries the risk that the asset manager may place excessive emphasis on reducing non-recoverable costs, potentially resulting in inadequate maintenance; it is also more complex to administer.

RM 6: Gross Asset Value (GAV) has the disadvantage of being driven primarily by interest rate and market developments and to a lesser extent by management quality.

To reflect special requirements relating to individual properties or portfolios, it may be advisable to supplement base remuneration with a performance fee. For reasons of practicality and clarity of prioritisation, RICS recommends limiting additional incentives to one or two objectives and key performance indicators.

A prerequisite for the effective use of variable remuneration is always that the underlying basis can be measured quantitatively. This should be done using 'hard' metrics, i.e., key indicators that can be determined reliably and transparently. Overly complex calculation models should be avoided. RICS advises against taking account of difficult-to-measure 'soft' factors, such as owner or tenant satisfaction, because these indicators generally cannot be determined with sufficient reliability and transparency.

3.4.2 Remuneration of Supplementary Modules

For Supplementary Module 18: Property Valuation, remuneration under RM 1: Flat Fee is appropriate.

Supplementary Modules 3: Financing, 6: Research, 8a: Risk Management, 8b: Compliance, 10: Corporate Management and 14: Accounting are more suitable for remuneration under RM 2: Time-Based Remuneration, as the amount of work involved is difficult to estimate and there are no suitable metrics on which to base remuneration.

Supplementary Modules 2: Acquisition and 19: Sale are generally remunerated under RM 7: Contract Volume.

Note: With regard to acquisitions, it should be borne in mind that matters may be identified during an acquisition due diligence review that make the acquisition appear risky. If the asset manager were to draw the client's attention to such matters, it would risk losing purely results-based remuneration. This conflict of interest can be mitigated through a combination of a fixed fee where the transaction is aborted and results-based remuneration where it is completed.

For Supplementary Modules 15: Construction Management and 16: Refurbishment and Project Development, RM 9: Project Costs is generally agreed in the market, even though it provides no incentive to minimise project costs. Depending on the duration of the project, consideration should be given to payments on account.

The Additional Services relating to the execution of lettings (under Core Module 17: Letting) are generally remunerated under RM 7: Contract Volume or RM 8: Lease Surplus.

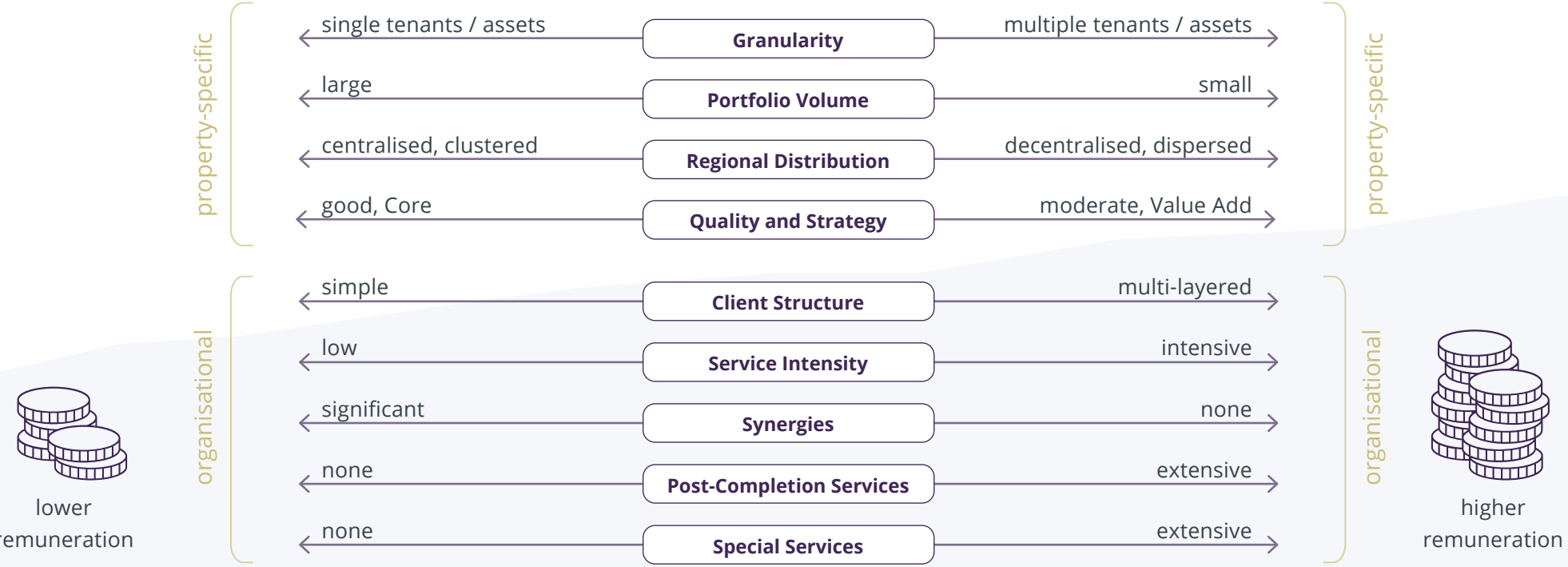
Any remuneration for other Additional Services must be considered on a case-by-case basis.

Possible models for base remuneration
(in conjunction with portfolio quality or investment strategy)

	Core	Core Plus	Value Add	Opportunistic
Minimum remuneration	No	Generally no	Generally yes	Yes
Variable remuneration	RM 3–6	RM 3–6	RM 3, 4, 6	RM 3, 6
Performance fee	Generally no	Generally yes	Yes	Yes

3.5 Factors influencing the level of remuneration

In general, the level of remuneration for asset management services depends on property-specific and organisational factors. These factors determine the nature and amount of work required and therefore also the number and necessary qualifications of the contractor's employees required to perform the services. Ultimately, these factors must be taken into account when calculating the resources required for asset management.



3.5.1 Property-specific factors

In addition to property use, portfolio quality and investment strategy, further property-specific factors affect the services required and the amount of work involved:

Granularity: How many occupiers do the individual properties have, and how is the portfolio segmented (number of individual properties)? The segmentation of a portfolio can vary considerably. Residential portfolios invariably have a large number of occupiers.

Portfolio volume: How large is the portfolio (value, floor area)? Due to the absence of economies of scale, portfolios with a small volume generally require more resources.

Regional distribution: How are the individual properties in the portfolio geographically distributed and how accessible are they? A high degree of geographical dispersion entails greater effort. Accessibility of the properties for the asset manager generally plays a less significant role for residential portfolios than for commercial portfolios.

3.5.2 Organisational factors

In addition to property-specific factors, the following organisational factors also affect the services and the amount of work involved:

Client structure: What is the organisational structure (e.g., private investor, family office, open-ended / closed-ended fund, REIT, etc.), legal form and registered office of the company? Multi-layered and/or international client structures entail greater effort, not least because of tax and regulatory requirements.

Service level: Is a high level of service intensity and extensive reporting in terms of both content and frequency required? High service levels require corresponding staffing and technical resources.

Other factors: Other possible factors include synergies with other portfolios (which tend to reduce the workload), agreed post-completion services (which tend to increase the workload) and special client requirements, such as multilingual capability, availability and the assignment of specified personnel.

3.6 Further information

In general, RICS recommends that factors affecting the amount of work involved be contractually documented in a preamble or service level agreement.

Payment arrangements and due dates should also be agreed, taking into account the implications for the business operations of both the contractor and the client.

The agreement of VAT clauses often requires the involvement of a tax adviser, even though asset management services are generally subject to German VAT.

It should also be specified for how long services are to continue being provided to the client following the sale of the property. A provision covering, for example, a transitional period of three months following transfer of possession would appear appropriate.

3.7 Travel and incidental costs and expenses

RICS generally understands travel costs to include transport costs, additional subsistence expenses, accommodation costs and incidental travel costs (parking / toll charges, CO_2 offsetting). Travel costs should be assessed before contract negotiations, taking into account portfolio-, property- and client-specific considerations.

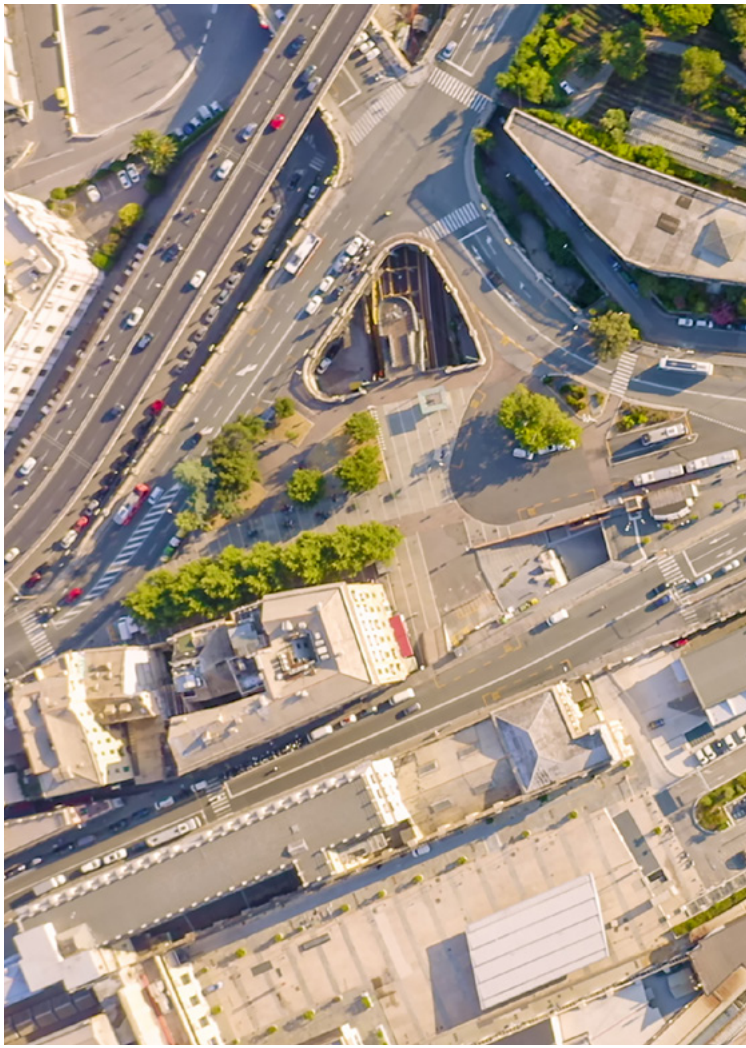
In particular, consideration should be given to the predominant use of the portfolio, the scope and depth of the services, the regional distribution of the assets, and the location of the client and service providers. For the reimbursement of travel costs, a flat-rate arrangement is recommended where the extent of travel is defined sufficiently clearly in the contract (for example, quarterly property inspections and regular meetings at the client's or service provider's premises).

Reimbursement against evidence of actual expenditure has not proved satisfactory in practice because of the administrative burden and potential for disputes. Where, at the client's request, travel exceeds the scope defined in the contract, it should be agreed in advance whether the travel costs are to be reimbursed against evidence on the basis of hourly rates or as a flat rate.

Incidental costs include, for example, postage and courier costs, costs of copying or printing documents and costs for the maintenance and modification of IT interfaces. It should be agreed in advance whether incidental costs are to be reimbursed against evidence as a percentage of total remuneration or as a flat rate.

Expenses are understood to mean expenditure that must be incurred in order to provide the services or perform the mandate and which is initially paid by the contractor. In practice, it has proved appropriate for such expenses likewise to be charged separately only where they exceed the level normally to be expected, based on the actual expenditure incurred and supported by evidence. In RICS's view, surcharges on the (base) remuneration of the kind commonly used in the consulting sector are less advisable.

Insurance represents a special case: where the client requires the asset manager to maintain insurance cover exceeding customary industry levels (e.g., for financial loss), the parties may agree that the cost of the additional cover exceeding the customary level is to be reimbursed separately against evidence.



4

Market-Standard Remuneration Ranges

With Version 2.0 of the Schedule of Asset Management Services, RICS presented ranges of market-standard remuneration for the first time, based on anonymised data provided by market participants. For this new edition, corresponding data was again collected and analysed by the Professional Group Asset Management. We would like to thank all participating partners, including audit and consulting firms, **for providing the data anonymously.**

For the sake of clarity, RICS points out that this data was not collected by RICS itself. The information is provided for information purposes and as guidance on market-standard remuneration ranges. Accordingly, unlike the preceding sections, this section expressly **does not constitute a recommendation by RICS.**

It should also be noted that the ranges shown can provide **only a rough guide** and are not representative. Determination of a specific level of remuneration, which must in every case be undertaken solely by the parties involved, is subject to a number of influencing factors that can be taken into account only inadequately when deriving empirical ranges. Finally, remuneration levels are subject to continual change, meaning that the ranges collected as **at 2025** should not be regarded as a benchmark for market-standard remuneration ranges in the future.

4.1 Methodology

The 33 datasets received cover a confirmed portfolio comprising approximately:

- 4,400 assets
- 31 million square metres of lettable area
- €66 billion in market value

The requested analysable information included:

- Portfolio quality
  (Core / Core Plus / Value Add / Opportunistic) – this information was not included in all datasets
- Main type of use
  (residential, office, retail, healthcare, logistics)
- Basic information
  (number of assets, lettable area, market value)
- Regional distribution
  (dispersed / medium / centralised)
- Client structure (simple / medium / complex)
- Service level (low / medium / high).

More detailed information on the setup fee and minimum remuneration, as well as other characteristics, could only be analysed in part. This is commented on accordingly below.

Not all datasets collected contained sufficient information or were plausible, and eight datasets were therefore excluded before the analysis.

4.2 Setup fee

Of the 25 datasets remaining after the data had been cleaned, 24 contained information on whether a setup fee had been agreed in addition to the ongoing base remuneration. This was the case in exactly half of the datasets.

It can be observed that where the core asset management service itself was remunerated as a percentage of GAV, a separate setup fee tended not to be agreed, whereas where the Core Service was remunerated as a percentage of net cold rent or NRI, a separate setup fee was generally agreed.

The reasons for this correlation are unclear. One possible explanation is that GAV-based remuneration tends to be found in a more capital-markets-oriented environment involving longer-term contractual commitments, although no information on contract terms was available.

Where a setup fee was agreed, in all but one case it took the form of a flat fee per property, which naturally varies considerably depending on the size and complexity of the properties.

By contrast, a time-based fee was reported in only one case. It was not possible to convert the flat fees into a euro amount on a common basis (e.g., per thousand square metres).





4.3 Minimum remuneration

Data on minimum remuneration (in combination with variable base remuneration) was available in only a small number of cases, and no generally applicable conclusions can therefore be drawn.

For the portfolios for which this information was available, minimum remuneration was agreed in 58% of cases and was not agreed in 42%.

For portfolios where minimum remuneration was agreed, the agreed variable base remuneration tended to be higher than for portfolios where no minimum remuneration was agreed. This suggests that minimum remuneration is more likely to be agreed upon for weaker and/or management-intensive portfolios.

No correlation with the 'use' characteristic is apparent.

The agreed minimum remuneration ranged between €200 and €400 per 1,000 m² per month, with an unweighted mean of €300 per 1,000 m². Subject to comparability of the underlying populations, this would represent a significant increase compared with the corresponding mean of €198 per 1,000 m² in the 2015 analysis.

4.4 Base remuneration

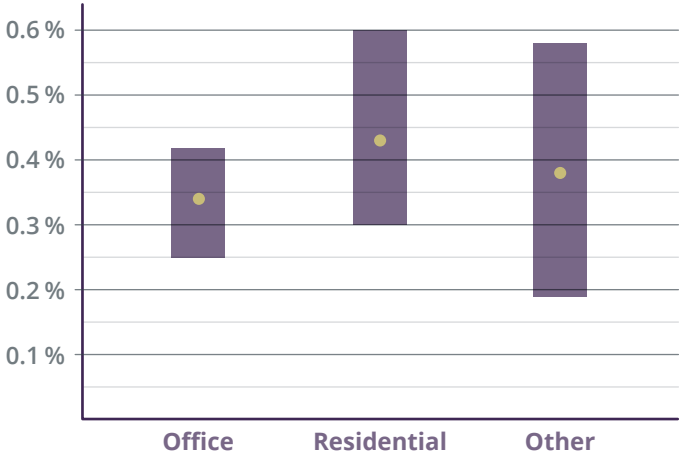
Variable remuneration for ongoing Core Services was agreed in all cases. Variable remuneration was agreed on the following bases:

- GAV (Gross Asset Value) in 60% of the datasets
- NCR (Net Contracted Rent) in 28% (various types of use)
- NRI (Net Rental Income) in 12% (exclusively 'office' use)
- NOI (Net Operating Income) in no cases.

It was not possible to convert variable base remuneration between GAV, NCR and NRI, as insufficient information was available for this purpose.

Given that the majority of the datasets reflected GAV-based variable remuneration, only this basis is discussed below.

Variable remuneration based on GAV was agreed within a range of 0.19% to 0.60% of GAV per annum. The unweighted mean is 0.39%, while the AuM-weighted mean is 0.36%. This means that the level of agreed remuneration tends to decrease as market value increases (i.e. with the size and/or quality of the portfolio).



‘Regional distribution’ characteristic

This information was available for 14 datasets with GAV-based base remuneration:

- Eleven portfolios were assessed as regionally ‘centralised’, with a range of 0.19–0.60% (mean 0.39%).
- Three portfolios were assessed as regionally ‘medium’, with a range of 0.30–0.45% (mean 0.36%).
- No portfolios were classified as regionally ‘dispersed’.

No conclusions can therefore be drawn from the ‘regional distribution’ characteristic.

‘Use’ characteristic

- ‘Office’ use: 0.25–0.42%, unweighted mean 0.34%
- ‘Residential’ use: 0.30–0.60%, unweighted mean 0.43%
- All other types of use combined: 0.19–0.58%, unweighted mean 0.38%

It can therefore be concluded that variable remuneration for residential use tends to be higher than for other types of use.

‘Client structure’ characteristic

Only 10 portfolios with GAV-based base remuneration included information on the complexity of the client structure.

- In two cases involving a simple structure, the range was 0.30–0.42%.
- In four cases involving medium complexity, the range was 0.30–0.45% (mean 0.40%).
- In four cases involving a complex structure, the range was 0.19–0.60% (mean 0.41%).

No clear conclusion can be drawn for this characteristic either.

Note: Compared with the 2015 analysis, the proportion of datasets with a client structure assessed as ‘complex’ was noticeably higher in 2025.

4.5 Letting

Information on additional remuneration for the asset manager in connection with new lettings was available for 23 of the 25 datasets analysed:

- In nine cases, no additional remuneration was agreed for new lettings. It can be assumed in these cases that letting is outsourced.
- In fourteen cases, and therefore in the majority of asset management contracts, the asset manager is also actively involved in letting.

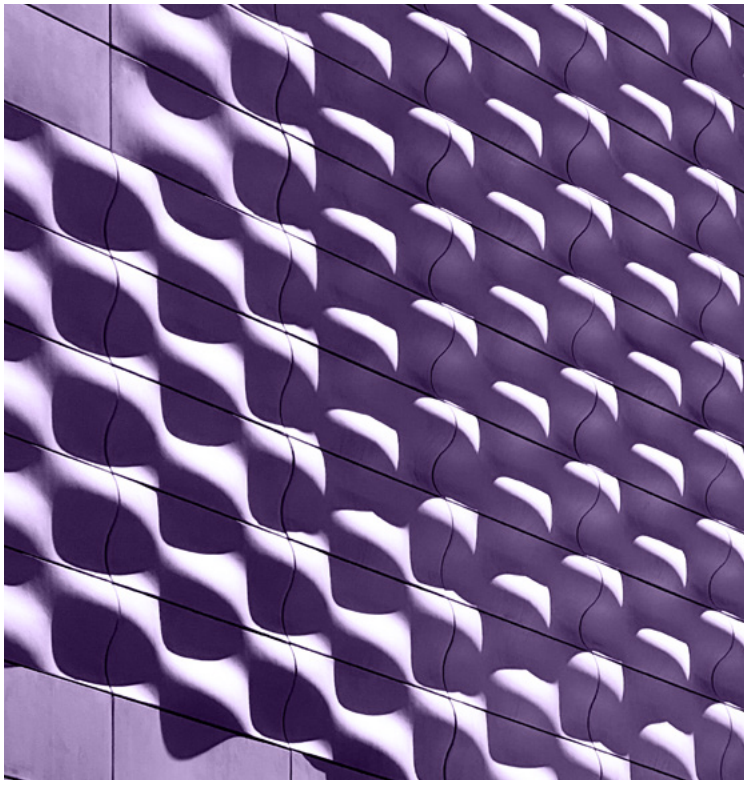
Where the asset manager acts without an external letting agent, additional remuneration for concluding new leases ranges from 1.0 to 3.0 months net cold rents with a mean of 2.5 NCRs, in some cases depending on the term of the lease.

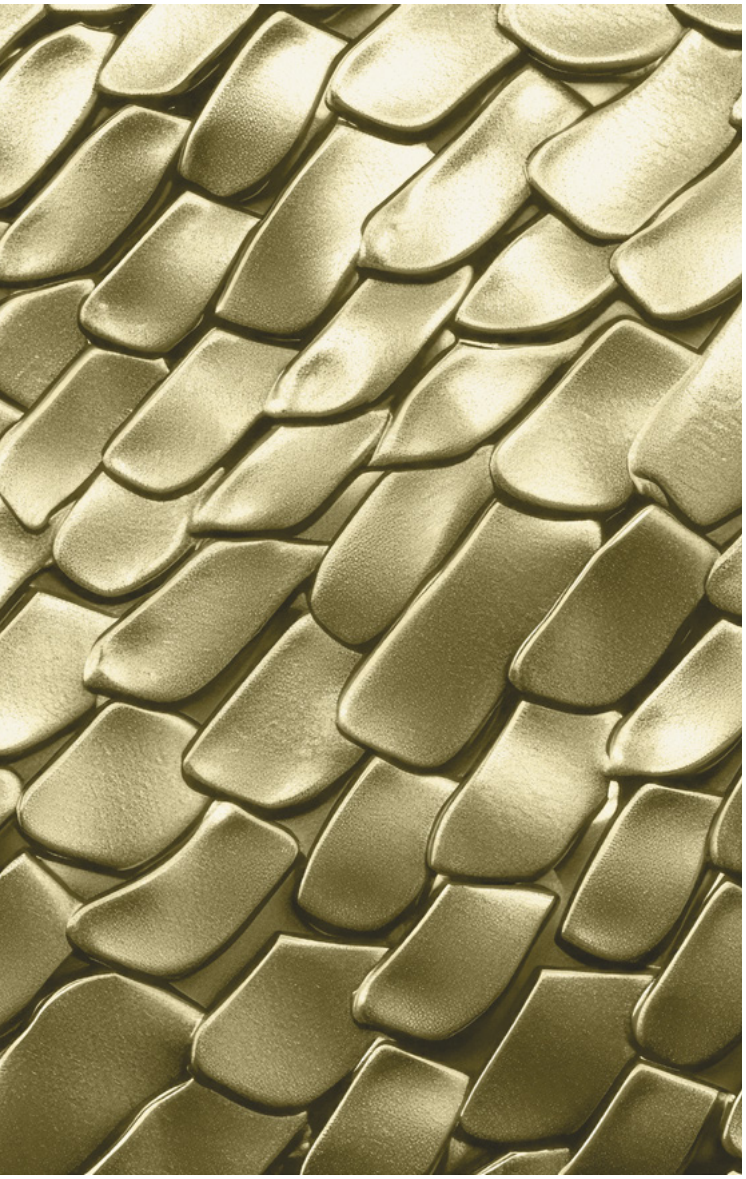
Where a separately remunerated external letting agent is involved, this figure falls – again depending on the term of the lease – to 0.7–2.0 NCRs.

Information on additional remuneration for the asset manager in connection with extensions of existing leases was available for 21 of the 25 datasets analysed:

- In ten cases, no remuneration was agreed with the asset manager for extending existing leases.
- In eleven cases, and therefore in just over half of the cases, the asset manager receives additional remuneration for extending existing leases. It is notable that in nine of these eleven cases, the level of remuneration does not differ from that applicable to new lettings.

It can therefore be concluded that, for all types of use other than 'residential', the asset manager's involvement in letting and receipt of remuneration for such activities is more the rule than the exception. In residential portfolios, by contrast, the asset manager is only actively involved in letting – and remunerated for doing so – in exceptional cases.





4.6 Acquisition and sale

With regard to acquisitions, 22 datasets contained information:

- In 18 cases, and therefore in the large majority of asset management contracts, the asset manager is actively involved in acquisitions and receives separate remuneration.
- Specific information on the level of remuneration was provided in 15 cases. For acquisitions without an external broker, the remuneration range was 0.75–2.25% of the purchase price, with a mean of 1.17%.

No correlation is apparent between the level of remuneration and characteristics such as type of use.

Information on property sales was available for 24 of the 25 datasets analysed:

- In 21 of the 24 asset management contracts, the asset manager is actively involved in the sale and receives separate remuneration for this, which can therefore be regarded as the norm.
- Remuneration for sales without an external broker was specifically stated in 17 cases, ranging from 0.50% to 3.00% of the sale price, with a mean of 1.05%.
- Remuneration of more than 2% generally occurs only in highly granular structures with properties averaging less than 2,000 m² of lettable area.
- In several cases, the percentage level of remuneration depends on the amount of the sale price.
- Special arrangements apply in some cases to sales between affiliated companies.

5

Legal Information

The asset management agreement forms the basis for commissioning asset management services. It defines the contracting parties, the properties to be managed and the scope of the asset management services. In addition, it generally contains provisions governing, in particular, the term of the agreement, remuneration and the obligations of the contracting parties, as well as powers of representation, the contractor's liability and termination of the agreement. More recently, provisions relating to further areas, such as data protection, have also been added to reflect the changing regulatory environment.

There is no generally applicable standard form of asset management agreement, and, given the wide variety of possible contents, it would not be sensible to formulate one. However, in RICS's view, it is important at least to ensure that key matters are addressed. The international law firms Freshfields Bruckhaus Deringer and Jones Day have kindly agreed, on the basis of their experience, to identify such key matters in the following contribution.

RICS would particularly like to thank Dr Timo Elsner (Freshfields) and Christian Trenkel (Jones Day).

RICS expressly points out that the following section does not necessarily reflect the views of RICS, does not constitute or replace legal or tax advice, and is intended solely as general guidance. Accordingly, unlike [Sections 2 and 3], this section expressly does not constitute a recommendation by RICS. The discussion relates to agreements governed by German law. However, many of the structures described are also used in other jurisdictions, particularly in agreements governed by English law, meaning that parts of the following discussion may also be relevant to asset management agreements governed by other laws.

Note regarding the English version: in the event of any inconsistencies, the German version shall prevail.

This contribution addresses key provisions in asset management agreements and explains selected legal aspects. The drafting of asset management agreements depends in particular on the commercial arrangements between the parties and on the extent to which individual matters are to be regulated in detail in the agreement.

5.1 Parties and change of control

5.1.1 Parties

While the identity of the company acting as asset manager (contractor) is generally clear, various companies may potentially act as the client.

This is particularly the case where a property portfolio is acquired through an acquisition structure comprising a holding company and numerous subsidiaries (so-called 'propcos'). In such cases, it must be decided whether and to what extent the holding company, the propcos or all of these companies are to become clients.

The following should be borne in mind: the contractor's property-related services (e.g., letting) primarily and directly benefit the propcos, whereas the asset manager's higher-level, i.e., portfolio-related, services (e.g., strategy) are more closely directed towards the holding company. Advice in connection with disposals represents a special case: in the case of property sales (asset deals), it is directed towards the propcos; in the case of sales of the propcos (share deals), it is directed towards the holding company. Finally, the client will often seek to link performance-related remuneration payable to the contractor to the performance of the overall portfolio, which typically requires the holding company to be a client.

From a civil law perspective, it is advisable to include as clients in the agreement those companies that, in accordance with the preceding paragraph, are the direct recipients of the services concerned. This also ensures that corresponding liability issues are dealt with within the relationship in which loss can arise directly on the client side.

This allocation based on the direct recipients of the services will typically correspond to the supply relationships for VAT purposes and therefore also facilitates clearer invoicing for VAT purposes.

For income tax purposes, it is relevant where profits and losses arise within the structure and to what extent they can be offset against one another. For optimal tax treatment, it may be appropriate to establish a tax group.

If the scope of services is structured in such a way that it substantially concerns both the holding company and the propcos, all of them may act as clients. If the scope of services includes the acquisition of properties, the relevant propcos may not yet have been incorporated when the agreement is concluded. In such cases, the agreement should include a clause permitting the propcos to be transferred into or included in the agreement at a later date.

5.1.2 Preamble

The preamble to the agreement is generally not intended to contain provisions that are directly enforceable in their own right, but rather to set out the commercial interests of the parties and facilitate interpretation of the agreement. The preamble generally acquires legal significance because it may be taken into account when interpreting specific contractual provisions. In asset management agreements, a preamble may, for example, be used to set out the portfolio strategy and other objectives of the client.

The asset manager's services may also be placed within the overall investment concept and functionally distinguished from the services provided by other project participants (investor, project developer, property manager or operator of specialist properties). Where the client structure is complex, it may be helpful to explain this in greater detail in the preamble.

5.1.3 Change of control

In each case, the contracting party, i.e. the client or contractor, will be a specific company which, at the time the agreement is concluded, has particular shareholders and forms part of a particular group of companies. From a technical legal perspective, therefore, the contracting party is often a company which does not fully reflect what the other party economically regards as its contractual counterparty:

In the case of larger investors, a subsidiary within the investor's group will often become the client or, in the case of private equity and other funds, a subsidiary of the specific fund entity will become the client; the investor itself is the manager/general partner of the relevant fund but is not technically the client under the agreement. This also generally means that the individuals responsible for managing the specific portfolio, and who are therefore the contractor's points of contact when the agreement is concluded, are not employed by the company that technically becomes the client.

The business profile of many asset managers is strongly shaped by the owners who established the relevant company and have managed it for many years. This entrepreneurial approach will often have been the reason why a client selected a particular contractor. However, the owner is typically not personally a party to the agreement, but merely the owner of the relevant asset management company.

Because the ownership structure of the relevant contracting party will therefore often have been both a motive for and a basis of entering into an agreement with that party, the parties will frequently wish to reserve the right to terminate the asset management agreement if those ownership arrangements change materially. This may be combined with a contractual penalty payable by the party on whose side the change has occurred.

Corresponding termination clauses may be triggered by a change of control or may go beyond this:

A change of control occurs where the direct or indirect ownership interests in the client or contractor change in such a way that it comes under the control of a new direct or indirect (ultimate) shareholder or, depending on the definition, at least ceases to be controlled by its current direct or indirect (ultimate) shareholder.

The client will often even have an interest in preventing a competitor from acquiring as little as a minority interest in the contractor, including the associated information rights, or similar instruments such as a silent partnership interest, trust arrangement, etc. The contractor may, in turn, wish to prevent third parties from acquiring an interest in the client company, as this may economically amount to a partial exit without triggering corresponding remuneration for the contractor. In the cases described above, where only minority interests are acquired, there is no actual change of control.

A corresponding termination clause would therefore need to be triggered by any direct or, where applicable, indirect participation by third parties (or specifically by competitors only).

Whether and which changes in a party's ownership structure should trigger a termination right for the other party, and whether the affected party should be required to pay a contractual penalty, will depend heavily on the circumstances of the individual case. In any event, this must always be expressly agreed in the asset management agreement, since in the absence of such an agreement, changes of control and other changes in the ownership structure have no effect on the asset management agreement.

5.2 Electronic signature

Contracts are increasingly being signed electronically, which is fully permissible for asset management agreements. However, in order to make it easier to prove effective conclusion of the agreement in court if necessary, it may be advisable to use a 'qualified electronic signature'.

5.2.1 Substantive validity

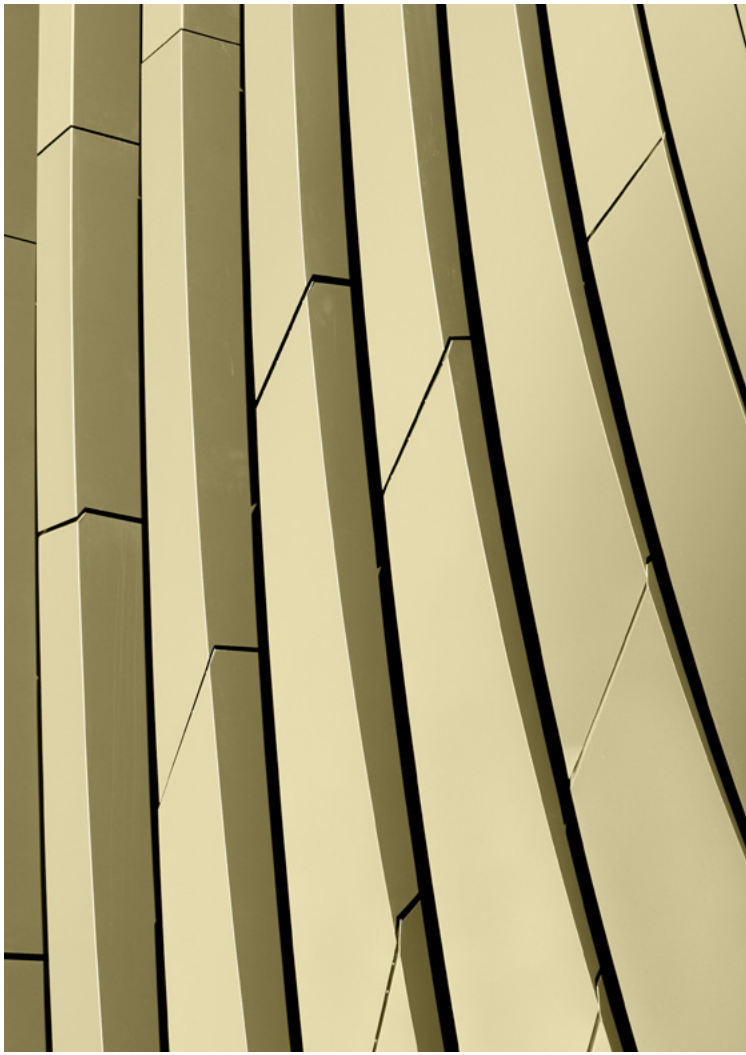
Under German law, legal transactions may be concluded in writing, orally or solely by conduct where the law does not expressly prescribe a particular form for the legal transaction concerned (e.g., written form or notarisation). It follows that, as a general rule, all forms of electronic signature are recognised asa means of concluding legally binding contracts, provided that German law does not impose a specific formal requirement.

Since asset management agreements, which are legally classified as service agreements and, where applicable, contracts for work and services, are not subject to any statutory formal requirement, they too may be concluded not only orally or by conduct, but by any electronic means. By contrast, termination of the agreement may, where applicable, require written form pursuant to Section 623 of the German Civil Code (BGB).

Asset management agreements often provide (although this is not legally necessary) that future amendments to the agreement must be made in writing. Where this reflects the parties' intention, it should be supplemented by specifying that electronic signatures may be used for amendments to the agreement and, where appropriate, which form of electronic signature may be used. The parties are entirely free to agree to such arrangements.

5.2.2 Evidential value

The substantive validity of electronic signatures described above must be clearly distinguished from the question of the extent to which a digital signature serves as evidence in court that a particular individual actually signed the document. All three types of electronic signature referred to below are, in principle, admissible as evidence in court proceedings (Article 25(2) of the eIDAS Regulation). However, only a qualified electronic signature gives rise to prima facie evidence (Section 371a(1), sentence 2, of the German Code of Civil Procedure (ZPO)) and may be submitted as documentary evidence, meaning that only a qualified electronic signature has the same evidential value as a handwritten signature.





When an asset management agreement is signed electronically, it is therefore advisable to use a qualified electronic signature.

5.2.3 Types of electronic signature (eIDAS Regulation)

EU Regulation No. 910/2014 of 2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation) entered into force on 1 July 2016. The eIDAS Regulation does not stipulate when a particular electronic signature may be used for a legal transaction. Rather, as explained above, this follows from national law, in Germany in particular from the BGB and ZPO. The eIDAS Regulation defines three types of electronic signature: simple, advanced and qualified.

The qualified electronic signature (QES) pursuant to Article 3(12) is the only type of electronic signature that is equivalent to a handwritten signature under German law (see in particular Section 126a BGB). It is a special type of electronic signature which must, in particular, be supported by a qualified certificate issued by a 'trust service provider' pursuant to Article 21 eIDAS. Under the German Trust Services Act (VDG) of 29 July 2017, the German Federal Network Agency recognises and supervises certain companies as trust service providers. However, recognition of a trust service provider for German legal transactions does not require supervision specifically by the Federal Network Agency as the German authority. Supervision by any competent national authority of an EU Member State is sufficient. For example, the Federal Network Agency does not supervise the widely used DocuSign service, which is, however, established with the competent French authorities. Accordingly, DocuSign – in cooperation with IDnow, one of DocuSign France's registration services – is also regarded as a trust service provider for German legal transactions.

5.3 Anti-Money Laundering Act and sanctions

There is now a good level of understanding within the German property industry of the anti-money laundering requirements applicable in Germany. Real estate asset managers are not expressly listed as obliged entities in Section 2 of the German Anti-Money Laundering Act (GwG), meaning that classification may depend on the specific activity performed (for example, acting as a real estate agent (broker) as part of the mandate), or on whether the asset manager falls within another category of obliged entity. Contractually, the parties generally undertake to support one another in complying with the relevant requirements and to provide each other with the necessary information.

The requirements arising for the contractor and client from the various sanctions regimes at national, European and international level are considerably less straightforward. These regimes prohibit, in particular, transactions with sanctioned persons and impose obligations to report certain matters. Contractual obligations should be balanced and should require both parties to comply with the requirements applicable to them. Where such obligations are agreed, a breach may give rise to liability towards the other party and – which is particularly important to the contracting party in cases of serious breach – a right of termination. From the contracting party's perspective, provisions requiring it to comply with rules of other jurisdictions are often problematic. Foreign clients frequently provide for this by referring, for example, to sanctions under US law, such as those administered by the OFAC (Office of Foreign Assets Control), or to the UK Sanctions List under the UK Sanctions and Anti-Money Laundering Act 2018. It should be noted that rules from jurisdictions such as the United States may have extraterritorial effect, meaning that foreign companies may in any event be subject to them where certain links to the United States exist. Foreign legislation is also sometimes referred to in relation to bribery and corruption, for example, the UK Bribery Act 2010, which contains the anti-corruption rules applicable in the United Kingdom.

Additional complexity arises from so-called 'Blocking Regulations' (Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country and actions based thereon or resulting therefrom). The Regulation prohibits companies in the European Union, for example, from complying with certain sanctions imposed by the United States against third countries such as Iran or Cuba where those sanctions are not endorsed by the European Union. The agreement should expressly provide that any obligation to comply with the rules of third countries applies only insofar as this does not result in a breach of mandatory rules of the party's own legal system. Although the practical relevance may be limited, this avoids conflicts arising from contradictory requirements.

5.4 Subject matter of the agreement

5.4.1 Definition of the scope of services, amendments

The agreement should contain a clear description of the services to be provided by the asset manager. The scope of services described in [Section 2] may form the basis for this. It is also advisable to expressly agree which services are not owed. In particular, asset managers regularly clarify that they do not provide services under the German Legal Services Act and do not provide tax advice.

The services to be provided by the contractor are usually set out in a detailed schedule to the asset management agreement, for example, on the basis of [Section 2] of this Schedule of Services. If the client subsequently requires additional services, it will generally want the contractor to provide them without making performance conditional on prior agreement of additional remuneration. The contractor, by contrast, will want to ensure that it subsequently receives appropriate remuneration and that it is only required to provide additional services which it can actually perform having regard to its expertise and staffing resources.

For services falling outside the agreed scope, remuneration based on actual time and effort may be agreed, with employee hours charged at specified hourly rates and expenses reimbursed. The client will often seek to have such services included among those covered by the flat remuneration, particularly where services are shifted or previous services cease to be required. The agreement may contain mechanisms governing how the parties are to reach agreement, for example, provisions for determining the amount of effort involved or a reference to mediation under the RICS mediation clause. Ultimately, however, an agreement and subsequent contractual amendment between the parties will still be required.

5.4.2 Additional properties, removal of properties from the agreement

How additional properties are incorporated into the agreement depends heavily on the circumstances of the individual case. Often, the agreement is strictly limited to a particular portfolio, so that the inclusion of new properties requires an addendum to be negotiated freely between the parties. Where the agreement is intended to cover further acquisitions, so that the client may require additional properties to be included, it should first be defined more precisely how many new properties may be added and what characteristics they must have, such as use, location, size and physical condition. The remuneration provisions should also be sufficiently variable for them to 'automatically' reflect changes in the portfolio. Finally, the agreement should provide that the client informs the contractor in good time and in the agreed form when new properties are added.

The agreement will often cover a large number of properties. In such cases, provisions should be included for circumstances in which individual properties leave the portfolio before expiry of the agreement, in particular as a result of a sale, and therefore can no longer remain subject to the agreement. The provision governing removal of a property must apply from a clearly defined point in time, such as the transfer of possession, benefits and burdens to a purchaser. This should be supplemented by an ongoing obligation on the contractor to assist with transition to a new asset manager. The general remuneration provisions of the agreement should be structured so that they vary with the property portfolio (see [Section 3]). Compensation and other protective provisions in favour of the contractor, such as a termination right, may be appropriate where the contractor has incurred significant start-up and capacity reservation

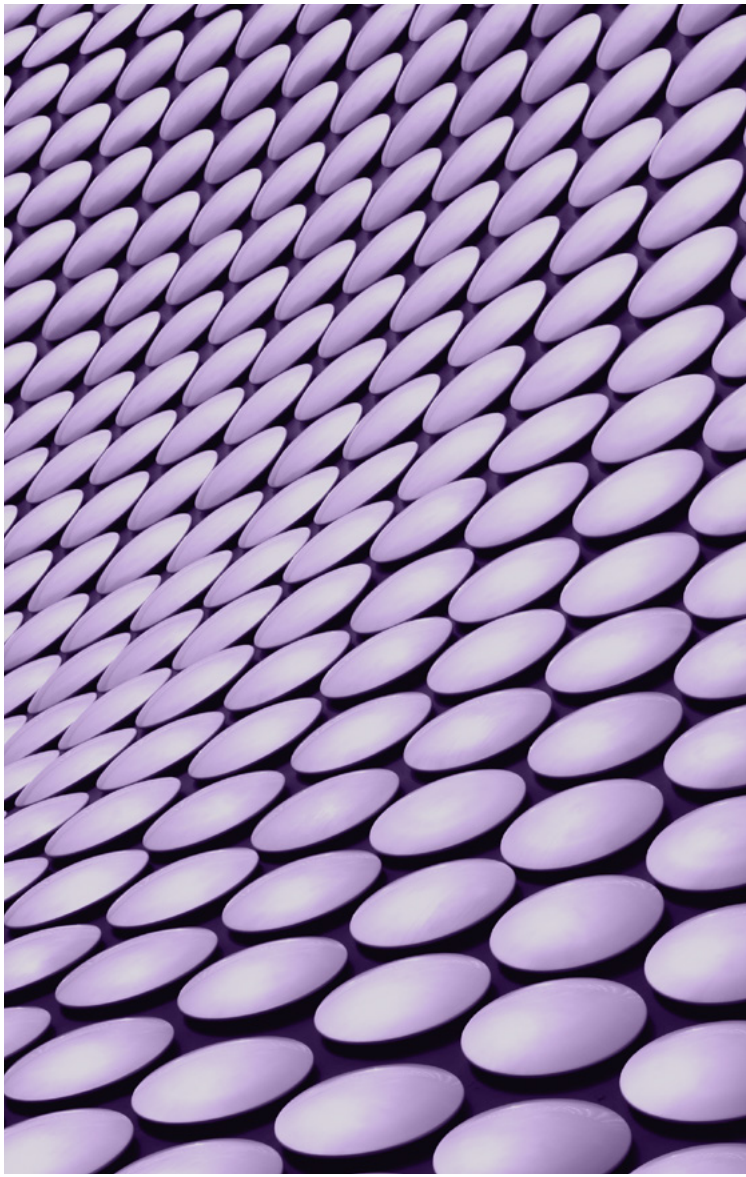
costs and a substantial part of the property portfolio is sold shortly after commencement of the agreement. If the agreement is (also) concluded with a holding company, the sale of individual property companies by way of a share deal should likewise be addressed in a clause analogous to that described above.

5.4.3 Asset management agreement as a service agreement compared with a contract for work and services

In their pure forms, under a service agreement the service provider owes the performance of specified services, whereas under a contract for work and services the contractor owes a specified result. Complex agreements often contain elements of both service agreements and contracts for work and services. The distinction is fluid. Services are ultimately commissioned in order to achieve results, and results must be brought about through activities (i.e., services).

In particular, the 'liability for achieving a result' borne by the contractor under a contract for work and services is often the subject of discussion where it is proposed that an agreement should partly be classified as such. However, there is little reason for concern if the relevant contractual provisions are carefully drafted and the work product or result is precisely defined. One example would be the contractor's obligation to 'prepare the business plan in accordance with the client's requirements'. It could be argued that the contractor owes the business plan as a document and, therefore, as a work product or result, meaning that the agreement is, to that extent, a contract for work and services. The asset manager nevertheless clearly does not warrant the accuracy of the assumptions and forecasts contained in the business plan, let alone achievement of the business plan itself. It should also be noted that classification as a contract for work and services can itself create risks for the client, for example, an obligation to notify defects upon acceptance of the work.

In the practice of asset management agreements, which the parties often classify as service agreements, the legal distinction is of limited significance because all material issues are expressly regulated in the agreement. Accordingly, there is generally no scope for application of the default statutory rules, for which classification as a service agreement or contract for work and services would otherwise be primarily relevant.



5.5 Services and obligations of the contractor

5.5.1 Provisions on 'key personnel'

Clients are often interested in ensuring that the principal activities owed by the asset manager are performed by specific individuals known to the client ('key personnel'). On the other hand, the contractor can only make key personnel available to a certain extent. As a general principle, the contractor must also remain free to decide which personnel it employs (including terminating the employment contracts of existing key personnel for good cause). From the contractor's perspective, provision should be made for replacing individuals named in the agreement. This should in any event be acceptable to the client where equivalent or better qualifications can be demonstrated. This must apply in particular where the contractor is not responsible for an employee ceasing to be available. In the interests of proper performance of the agreement, it should then be sufficient for the contractor to inform the client, without requiring the client's consent. Particularly in owner-managed management companies, additional instruments are sometimes used to create a stronger commitment on the part of the owner, such as equity participations.

Where changes are already foreseeable, for example, in connection with succession planning at the contractor, this should be reflected in the agreement.

5.5.2 Conflicts of interest and exclusivity

Whether and to what extent exclusivity arrangements should be included in the agreement depends heavily on the circumstances of the individual case. As a precaution, corresponding provisions should also be reviewed from a competition law perspective. Provisions that restrict the contractor excessively may potentially be unenforceable.

Arrangements designed to create transparency are generally possible. For example, the contractor may be required to disclose whether it holds interests in third parties providing services in connection with its mandate. Existing potential conflicts of interest, for example, where properties of the same asset class are managed in the same vicinity, should likewise be specifically disclosed and regulated, subject to confidentiality obligations towards third parties.

5.5.3 Power of attorney granted by the client to the contractor

When structuring the authority granted by the client to the contractor, a distinction must be made between the powers that the contractor is to have vis-à-vis the client under the asset management agreement (i.e., in the internal relationship), and the powers the contractor is to have vis-à-vis third parties (i.e., in the external relationship). As a general principle, it is desirable for the two to correspond, although in practice this is not always possible when granting authority vis-à-vis third parties. The power of attorney granted to the contractor will specify certain matters in relation to which the contractor may represent the client. In the internal relationship, further restrictions may be agreed, such as consent requirements derived from an authority matrix and based on value thresholds, or the need for specific instructions from the client in individual cases. These restrictions are not included in the power of attorney, as otherwise the third party before whom the power of attorney is used would have to examine them in order to establish whether the contractor has authority to represent the client. It is therefore possible for the contractor to act validly on behalf of the client vis-à-vis third parties even though, in its relationship with the client, it was not authorised to do so.

If the contractor exceeds its authority in the internal relationship when exercising the power of attorney, claims for damages may arise, but in the external relationship the legal transaction will normally remain

effective for the client. When granting the power of attorney, consideration should be given to whether the contractor should be entitled not only to make declarations on behalf of the client, but also to receive declarations or formal service. If the client has its registered office abroad, this can allow third parties to avoid the often cumbersome process of effecting service abroad. However, receipt of declarations and formal service may have far-reaching consequences, for example, where it causes time limits in administrative or court proceedings to begin to run. It should also be borne in mind that third parties, such as authorities, which have once been informed that the asset manager is authorised to accept service will generally continue to serve documents on the asset manager even after the agreement has subsequently been terminated.

As a general rule, a power of attorney is not subject to any particular formal requirement unless such a requirement arises from the legal transaction for which the power is granted. Even for property transactions, a power of attorney may generally be granted without formality provided it is not irrevocable, although it must be evidenced to the Land Registry in the prescribed form (Section 29 of the German Land Register Code (GBO), notarised certification of the signature and evidence of authority to represent).

However, the contractor will generally be provided with a separate written power of attorney as evidence of its authority. In particular, the contractor should hold originals when making unilateral declarations of intent. A 'unilateral legal transaction' carried out vis-à-vis the recipient without presentation of an original power of attorney (such as termination or a request for a rent increase pursuant to Section 558b of the German Civil Code (BGB)) is not automatically ineffective; however, the recipient may reject it, in which case it becomes ineffective (Section 174 of the German Civil Code (BGB)).

5.5.4 Tax risks arising from the contractor's decision-making powers

Companies with their registered office outside Germany that conduct their business in such a way that no German trade tax is triggered will generally examine, when powers are delegated to a contractor resident or operating in Germany, whether this results in a relocation to Germany of activities relevant for tax purposes. The broader the contractor's legal powers, the more likely it is that the tax authorities will consider the client to have a permanent establishment in Germany for trade tax purposes. For this reason, the contractor is often not granted authority allowing it freely to enter into legal transactions on behalf of the client. Instead, the contractor's decision-making powers and authority are granted only within very narrow limits, on the basis of clearly defined criteria and for transactions regarded as non-material business decisions of the client. In other cases, the contractor acts only on specific instructions on the basis of a power of attorney granted for the individual case.

The assessment must be made having regard in particular to the client's business model and the scope of its business activities. It is also crucial that the arrangements are implemented in practice. Provisions concerning powers and authority should always be reviewed on a case-by-case basis by the client's tax advisers. The above principles must also be observed in relation to other service providers, such as the property manager. Any authority of the asset manager to issue instructions to such service providers may therefore only be exercised with due regard to the principles set out above.

5.5.5 ESG/sustainability

ESG (Environmental, Social and Governance) is now firmly established in the property industry as well. This is due not only to the general trend towards taking sustainability criteria into account in economic activity or to voluntary commitments to sustainability principles, but above all to legal requirements, foremost among them the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation (Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial



services sector and Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088).

Asset managers that operate as financial services institutions or hold the corresponding authorisation are directly subject to the Sustainable Finance Disclosure Regulation and are therefore required, among other things, to determine the extent of their sustainable activities and their impacts. However, structures are also common in the property industry in which it is not the contractor but the client that is directly subject to the regulations referred to above, for example, because the client is a bank or fund manager. In such cases, the client will generally expect the contractor to assist it in complying with its legal obligations. The same applies where the client has voluntarily committed to certain sustainability standards, for example, in relation to building efficiency under criteria such as BREEAM (Building Research Establishment Environmental Assessment Method), LEED (Leadership in Energy and Environmental Design) or DGNB (German Sustainable Building Council).

The specific extent of the support required will often depend on the circumstances of the individual case and on the underlying regulatory frameworks or standards to be observed, the client's ambitions and the nature and composition of the portfolio. For example, a building that has yet to be constructed in accordance with a particular standard will generally require more detailed provisions than a portfolio of existing properties, where the sustainability component of the agreement may potentially be limited to reporting obligations concerning greenhouse gas emissions (CO_2 emissions) and water consumption. Accordingly, the sustainability-related provisions of the agreement may be brief and comparatively simple or detailed, multifaceted and complex. From the contractor's perspective, however, care is required when drafting the contractual provisions. For example, if the client wishes to require the contractor to comply with its 'sustainability policies', these must be formulated with sufficient specificity to enable the contractor to take them into account effectively in practice.

5.6 Remuneration

This document contains a comprehensive overview of the various components and models for the contractor's remuneration. The following discussion is limited to highlighting those aspects which, in addition to the wording used to define the forms of remuneration, may need to be addressed in the contractual arrangements governing remuneration.

5.6.1 Base remuneration

Fixed base remuneration

The contractor will always require ongoing base remuneration in order to cover its own ongoing costs (in particular salaries). This may be linked to net rental income (see below), but may also be expressed as a fixed amount.

A graduated minimum remuneration structure is also possible. Where indexation is contemplated, however, it should be borne in mind that this is only permissible in accordance with the German Price Clause Act.

In any event, where a fixed fee not linked to rent is agreed, a provision should be added specifying the extent to which the fee changes if the property portfolio changes. For example, the originally agreed fee may be expressed in relation to the value of the portfolio then in existence and subsequently adjusted accordingly to reflect increases in value through acquisitions or decreases in value through disposals. Where base remuneration is rent-based, explicit provisions will often be unnecessary because changes in the portfolio will automatically affect the fee.

Rent-based base remuneration

Where ongoing fees are based on rental income, the following parameters need to be clarified:

- Definition of net rent: all payments made by tenants and other users of the properties during a calendar year, excluding service charges and VAT;
- It should be agreed whether the basis is the budgeted rent, the rent contractually owed by tenants under the leases, or the rent actually collected. The latter is particularly justifiable where the contractor is also responsible for collecting rents.

Particularly where new leases are entered into during the course of the management mandate or where actual rental receipts are used as the basis, it is advisable to designate the monthly or quarterly payments to the owner as payments on account and to provide for a true-up after the end of the relevant calendar year.

Other fixed fees

CapEx: Further remuneration may also be provided for managing smaller construction measures (in particular repairs, maintenance and minor refurbishments), for example, as a percentage of the budgeted or actual cost volume. Here too, a model may be agreed upon under which payments on account are made initially, followed by a final reconciliation after the end of a specified period. For larger projects, it may be advisable to enter into a separate project development agreement (development management agreement).

Additional Services: Other forms of remuneration include, in particular, remuneration for taking over the asset management mandate, compensating the asset manager for the work involved in onboarding the mandate. This work may include, for example, transferring data into IT systems, taking over and reviewing documentation, and attending meetings or inspections at the properties. This form of remuneration is particularly significant where, from the asset manager's perspective, the guaranteed term of the agreement – i.e., the period until the first opportunity for the client to terminate the agreement or until termination becomes possible due to circumstances

for which the asset manager is not responsible – is relatively short. The remuneration may take the form of a flat fee or be based on actual time and effort.

5.6.2 Performance-based forms of remuneration

Letting fee

The remuneration rates may vary depending on the following parameters:

- Categories: conclusion of a new lease with a new tenant; conclusion of a new lease with an existing tenant or agreement of an extension to the lease term; exercise of a renewal option by the tenant; non-exercise of a special termination right by the tenant; agreement of an expansion of the leased premises with an existing tenant;
- Involvement of a letting agent;
- Term of the lease concluded.

Basis for calculating the remuneration, which, unlike ongoing fees, must be ascertainable when the lease is concluded:

- Initial rent or determination of the total economic value of the lease by reference to the average rent (in which case incentives such as rent-free periods reduce the basis for calculating the remuneration);
- In the case of residential lettings, because leases can be terminated at relatively short notice, the initial rent will need to be used as the basis or a specific lease term will need to be assumed;
- Involvement of a letting agent;
- Taking agreed indexation into account, e.g., on a flat-rate basis as an increase in rent by a fixed percentage.

It should be agreed whether the letting fee becomes due upon legally effective signature of the lease (and satisfaction of any conditions precedent contained in it) or only following handover and, where applicable, the tenant's first unconditional rent payment. The latter is particularly justifiable where the contractor is responsible for handing over the premises to the tenant.

Acquisition and sale fees

Acquisition and sale fees are generally calculated as a percentage of the acquisition costs or sale proceeds respectively. The following should be taken into account when determining these fees:

- The starting point in each case is the net purchase price, i.e., the price at which the property is acquired or sold.
- It should be ensured that the remuneration covers not only the purchase of the property (asset deal), but also a share deal. In the latter case, it is advisable not to use the share purchase price as the basis for the remuneration, but rather the agreed property value underlying the calculation of the share purchase price, which is generally expressly stated in the share purchase agreement. This property value, which is adjusted for the target company's cash and liabilities in calculating the share purchase price, will typically correspond to the purchase price in a property acquisition (asset deal).
- It should be clarified whether and which items are to be deducted from the purchase price. These may include transaction costs (due diligence, lawyers, etc.), broker and notary fees and – in the case of a sale – any liabilities arising from warranties and indemnities. In this respect, it should be borne in mind that the contractor's role differs from that of a broker. The contractor typically has greater responsibility for ensuring contractual terms that are as secure as possible, organising the due diligence or – in the case of a sale – the data room so as to avoid liability, and keeping track of ancillary acquisition and disposal costs (including taxes).
- Where applicable, a reduction in remuneration if the client has additionally appointed a broker or if the client itself established contact with the seller or purchaser.

Particularly in mandates aimed at rapid disposal of a property portfolio, additional performance-related incentives may be included. For example, the remuneration rate may increase if a sale is achieved above a specified target sale price.

In determining when remuneration becomes due, account should be taken not only of the usual timetable of a transaction but also of particular features of a sale. If conditions for payment are not satisfied until a considerable period after notarisation, for example in a forward deal, the asset manager will not wish payment of its remuneration to be linked to payment of the purchase price, but rather to notarisation, or will at least require a prompt partial payment.

Letting and sale fees following termination of the agreement

The agreement may contain provisions for cases in which the conditions for a letting or sale fee are not fully satisfied until after the agreement has ended. A period following termination of the asset management agreement may be agreed during which completion of a letting or sale will still trigger remuneration. However, this applies only where the contractor made a sufficient contribution during the term of the agreement, in particular by introducing a tenant or purchaser with whom a contract is subsequently concluded as a consequence of that introduction. This may be based on a list provided by the contractor to the client upon termination of the asset management agreement identifying prospective tenants and purchasers with whom at least a specified stage of negotiations has been reached.

If the agreement is terminated extraordinarily by the client for a reason attributable to the contractor, only remuneration that has already been fully earned, or for which the corresponding lease or purchase agreement has at least already been concluded, will generally remain payable.

IRR-/RoE-based performance remuneration (promote)

Also not discussed in detail here are 'promote' models, which are often accompanied by a small equity participation by the asset manager in the acquisition structure and provide for tiered remuneration triggered by the client exceeding specified return targets (IRR, RoE).

5.6.3 Miscellaneous

Security

Where remuneration is not payable immediately but accrues over time, payment should be secured, for example, by depositing amounts in an account pledged to the contractor or by means of a guarantee provided by the client.

Taxes

All remuneration is typically stated initially as a net amount, but under a separate clause is payable by the client plus the applicable statutory VAT (currently 19%). The contractor must issue the client with an invoice sufficient for VAT purposes.

Compensation for termination by the client

Remuneration may also be agreed for cases in which the agreement is terminated prematurely by the client, for example, because of a change of control on the client's side.

5.7 Failure to perform

5.7.1 Grounds for termination

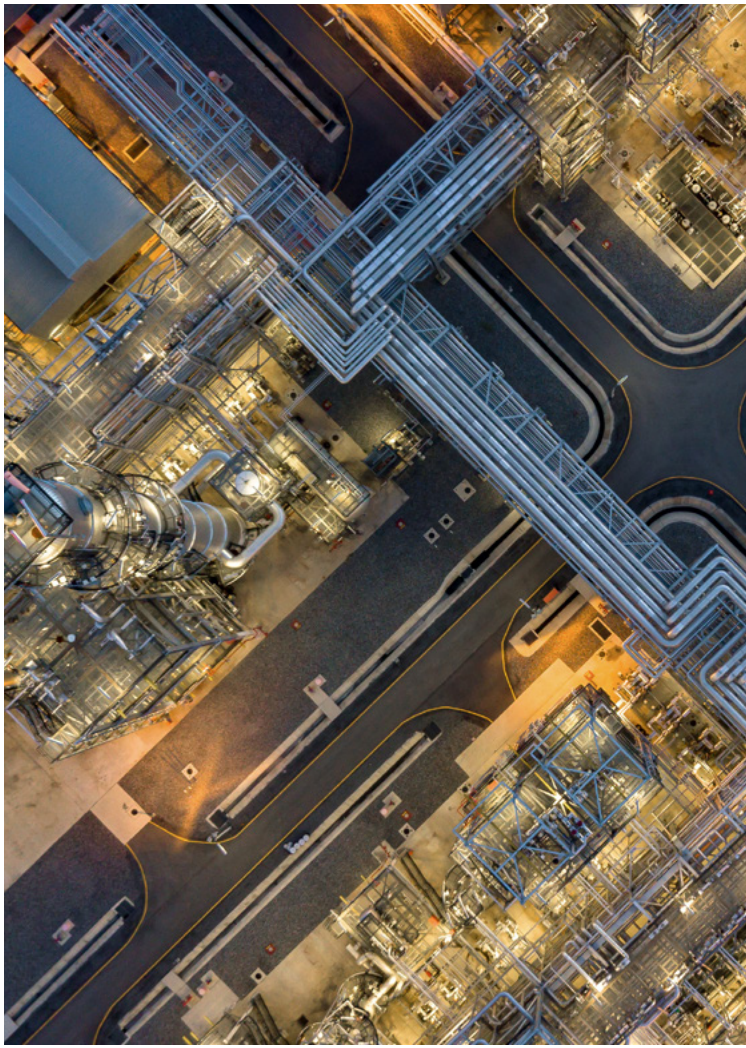
In order to provide both parties with planning certainty, asset management agreements generally provide for a fixed contractual term. Such agreements are then not subject to ordinary termination during that term, i.e., early termination is possible only in certain circumstances.

Section 314(1) of the German Civil Code (BGB) provides that continuing contractual obligations may be terminated for good cause without notice. The law provides that good cause exists where, 'taking into account all the circumstances of the individual case and weighing the interests of both parties, the terminating party cannot reasonably be expected to continue the contractual relationship (...)'. This provision cannot be excluded or restricted in its entirety by general terms and conditions, and deviations are also possible only to a limited extent even by means of an individually negotiated agreement. Before termination, Section 314(2) of the German Civil Code (BGB) may require an unsuccessful period to have been set for remedying the breach.

The parties will generally expressly specify particular grounds for termination upon the occurrence of which extraordinary termination is to be permissible 'in particular'. Such a provision therefore identifies breaches of contract or circumstances regarded as particularly serious, for example, from the contractor's perspective, non-payment of remuneration by the client.

5.7.2 Rights to refuse performance and rights of retention

German law recognises various rights of retention and rights to refuse performance. These can be excluded by express contractual provisions. For example, where the contractor receives documents and records in the course of its activities which it must return to the client upon termination of the agreement, the client will generally exclude the contractor's ability to rely on the aforementioned rights. This enables the client to prevent the contractor from refusing proper performance of the agreement where matters are disputed.



5.8 Copyright and similar rights; access to data

5.8.1 Copyright

Although the issue of copyright, particularly an architect's copyright, arises more commonly in project development agreements than in pure asset management agreements, it may nevertheless be appropriate for the latter to include a brief provision dealing with potential copyright held by the contractor. This ensures that the client can use, without restriction and on a permanent basis, any copyright held by the contractor in relation to a property, should such rights have arisen.

Copyright arises only where the contractor creates a copyright-protected 'work' in the course of its activities, which may include purely intellectual works such as designs and plans. The central criterion for a copyright-protected work is the required degree of originality. Whether this requirement is satisfied can be determined by reference to extensive case law. In addition to plans relating to a property, copyright may also subsist in software or databases, indicating that the activities of an asset manager may likewise produce copyright-protected works. Databases may additionally or alternatively be protected by 'related rights' under the German Copyright Act.

The client will wish to ensure that any legally protected work products created as a result of the contractor's services under the agreement can be used by the client without restriction both during and after the term of the agreement. Since copyright itself cannot be transferred, the client must therefore obtain a comprehensive right of use from the contractor.

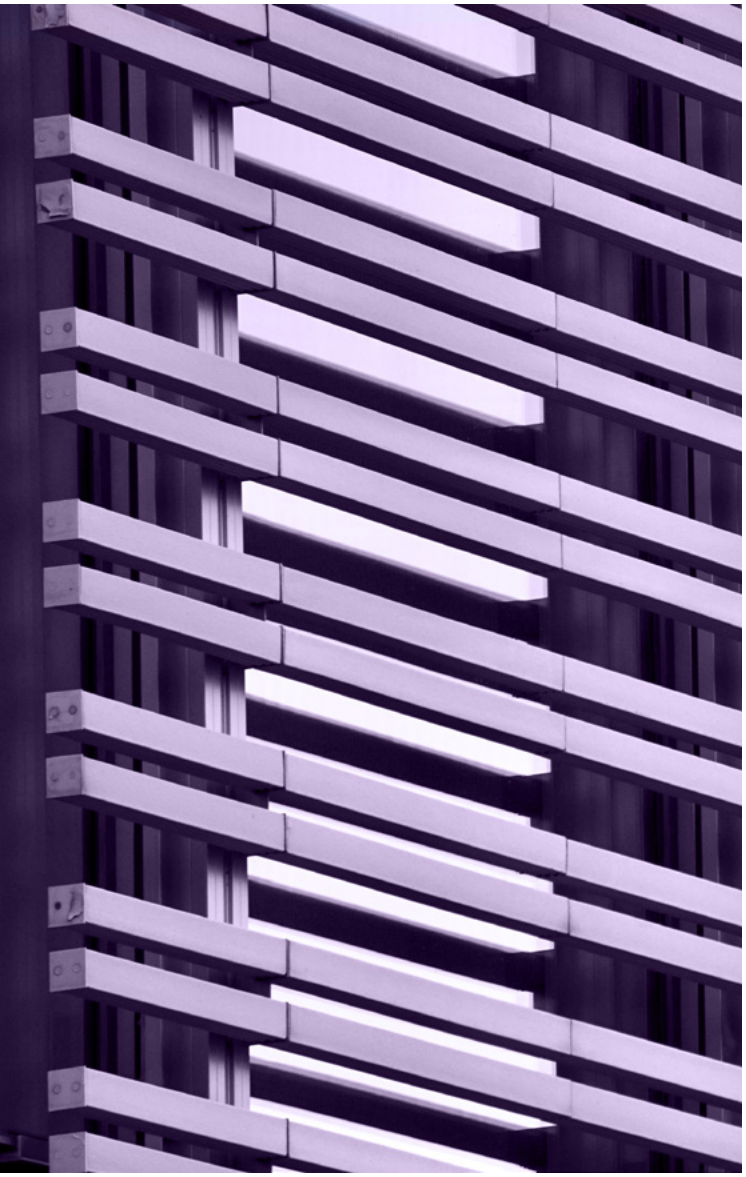
If the contractor wishes to avoid this because it intends to continue using and exploiting its work itself, this should likewise be expressly regulated. If the material is not a protected work, such a provision merely serves as clarification, but nevertheless clearly defines the parties' rights and obligations.

5.8.2 Access to data

The use of data relating to the properties, some of which is collected and generated by the contractor, is of considerable practical importance. This includes the computer software used to store and process such data.

It should first be clarified that, as owner of the properties, the client has, or must at all times be granted, unrestricted 'ownership' of the data relating to those properties. Provision should also be made to ensure that the contractor may not disclose such data to third parties without the client's consent unless this takes place within the framework established by the asset management agreement.

It should also be agreed that the client has access at all times to the data stored by the contractor and that the data must be transferable to the client's systems. The contractor must therefore ensure that rights of use, such as software licences, which it uses or acquires for the purpose of providing services under the asset management agreement, do not prevent such transfer, or that such rights are granted to the client in a manner allowing unrestricted transfer at any time. In practice, the client will generally wish to provide that the contractor stores data relating to the properties separately from its other data and uses software systems compatible with those of the client. The client can often require a declaration from the relevant software providers confirming directly to the client that the data is transferable and can be transferred at the client's request.



5.9 Employment law, transfer of undertakings

Asset management agreements generally do not contain detailed provisions on employment law matters. However, where one asset manager replaces another, the issue of a so-called transfer of undertaking may become relevant (Section 613a of the German Civil Code (BGB)). In certain circumstances, a transfer of undertaking from the contractor to the client may also arise. Where a transfer of undertaking occurs, the new owner of the business or part of the business succeeds to the rights and obligations arising from employment relationships existing at the time of the transfer. In practical terms, this means that the existing personnel must be taken over. Dismissal of the employees concerned because of the transfer is prohibited by law. Section 613a of the German Civil Code (BGB) and its statutory consequences cannot be excluded in advance by the contracting parties, as these are mandatory employee protection provisions.

Whether a transfer of undertaking has occurred is often not straightforward to determine in practice. The basic requirement is that an economic entity – i.e. an organised grouping of persons and/or assets – is transferred while retaining its identity. The courts always carry out an assessment of the individual case by reference to a range of criteria.

Relevant factors include, for example, the assumption, potentially without interruption, of material tasks, specialist personnel or know-how, as well as access to key systems, databases or work equipment. These factors are weighted differently depending on the individual circumstances. The case law recognises that a transfer of undertaking may also occur where no tangible operating assets are transferred and only personnel and know-how are transferred. Mere succession to a function or contract, however, is not sufficient.

To avoid an unintended transfer of undertaking when changing service providers, the description of services and the practical handover arrangements should be structured so as to ensure functional continuity without transferring material resources or employees. Integration of the contractor's employees into the client's organisational processes should be avoided.

5.10 Data protection (personal data)

It has already been explained [above] how data relating to the property should be handled. Only a small proportion of such data will fall within the scope of data protection legislation, since those rules apply only to personal data.

At least since the adoption of the European General Data Protection Regulation (GDPR) of 4 May 2016 and the German Federal Data Protection Act (BDSG) of 25 May 2018, it has been customary for asset management agreements to include a brief provision governing the parties' handling of personal data. In our view, it is particularly important to recognise that the relevant data protection issues cannot be regulated exhaustively in the asset management agreement itself, since the agreement cannot assign responsibility for data protection matters exclusively to one of the parties.

5.10.1 Data relating to natural persons

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'). Although the term is interpreted broadly by the courts and data protection authorities, i.e., it is not limited to sensitive information, it includes in particular a data subject's name, date of birth, address, telephone number and bank details. It is important, however, always to bear in mind that this concerns exclusively the data of natural persons, i.e., human beings. Data subjects in the property industry may include tenants, landlords, purchasers and sellers, prospective tenants and purchasers, occupants, brokers or employees of companies involved in property management, in each case insofar as they are natural persons.

5.10.2 'Controller'

For the purposes of applying data protection obligations, it is crucial to determine whether a particular person or company is to be regarded as the 'controller' in respect of particular personal data. This is because the controller is subject to the obligations under the GDPR and BDSG, some of which are enforceable by fines.

The GDPR provisions apply to 'data processing' activities, which expressly include the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or other form of making available, alignment or combination, restriction, erasure or destruction of personal data.

The 'controller' is any person to whom such processing activity is attributable, i.e. whoever, alone or jointly with others, determines whether, how and for what purpose processing takes place.

Allocation of responsibility may be difficult in individual cases, particularly where several parties are involved in the processing (e.g., the client, contractor, landlord, tradespeople and brokers). The European data protection authorities provide specific guidance for distinguishing between responsibilities (see EDPB Guidelines 07/2020 on the concepts of 'controller' and 'processor' in the GDPR, Version 2.0). Where processing activities cannot be clearly allocated, all parties involved must assume that they may all be regarded as controllers in respect of the same processing activity. In asset management, this therefore also applies to the client and contractor, both of whom are generally to be regarded as controllers where they carry out one of the processing activities referred to above in relation to particular personal data.

5.10.3 Involvement of the contractor and its limits

Although the contractor is already required by law to process personal data lawfully, it may be advisable also to confirm that obligation vis-à-vis the client in the asset management agreement. In addition, the client will generally wish to require the contractor to support it in certain activities connected with the lawful processing of personal data, in particular preparing and issuing a privacy notice suitable for the client, dealing with complaints from data subjects, preparing the documentation required by law and ensuring confidential storage and, where applicable, deletion.

The client must, however, be aware that this does not enable it to divest itself completely of its own responsibility. In particular, the contractor will typically not satisfy the requirements for classification as a 'processor' within the meaning of Article 28 GDPR, and such classification would in any event not fully relieve the client of responsibility. Classification as a processor simplifies the involvement of a third party in the processing of a controller's personal data by permitting such involvement without any additional legal justification; however, it does not relieve the controller of its own obligations. Examples of processors in the property industry include heat metering service providers or security companies that analyse video surveillance footage, but not property managers.



5.11 Duty of care agreement

Duty of care agreements are also common in the German market in connection with property and asset management agreements. Their purpose is to give banks or other lender-side parties involved in financing a property subject to an asset or property management agreement their own contractual rights and claims against the contractor. Under the duty of care agreement, the contractor generally undertakes towards the financing party to perform all or certain services under the asset management agreement in accordance with the arrangements agreed with the client.

This is particularly important for financing parties where the asset or property manager is authorised to dispose of rental income from the portfolio or at least to manage its receipt and use. The contractor will therefore seek to limit its direct liability towards the banks to those actions that are genuinely essential for the bank in this respect, in particular account management.

It should be clarified that this does not increase the contractor's overall liability, i.e., a single overall liability cap applies vis-à-vis the client and beneficiaries under the duty of care agreement; rather, an additional beneficiary is merely added alongside the client. The duty of care agreement will also grant that beneficiary the right to exercise the client's termination rights independently. It also often entails amendments to the agreement in favour of the lender. For example, lenders may require termination rights linked to circumstances arising solely within the client's sphere, such as breaches of the loan agreement. The contractor is also often required to continue providing services even if the client ceases to pay remuneration and the lender assumes payment instead. Finally, step-in rights are sometimes required, giving the lender or a third party nominated by it the right to become a party to the agreement in place of the client.

A simple alternative to entering into a duty of care agreement is to structure the asset management agreement as a contract for the benefit of a third party (Section 328 of the German Civil Code (BGB)). Such an arrangement is only suitable where no substantive amendment of the asset management agreement is required.

In all cases, the document establishing the specific duty of care must be made available to the contractor.

5.12 Liability

5.12.1 Liability where there are several clients; allocation of fees

For property portfolios in which the properties are held by different companies, the mandate may be awarded by the common holding company, all property companies or all of them jointly (see [Section 5.1.1] above). Where several companies act as clients but there is no provision governing their liability as between themselves, the agreement must be interpreted to determine whether joint and several liability applies. This will be the case where each client is intended to be obliged to perform the entire obligation even though the contractor may demand performance only once. This therefore enables the contractor, at its discretion, to claim all amounts due, such as the full remuneration, from any one of the clients. An indication in favour of this interpretation would be, for example, that the remuneration has not been allocated among the individual clients in separate amounts. In order to avoid having to rely on contractual interpretation, joint and several liability should be expressly agreed.

Joint and several liability may be problematic for clients where their ability to assume liability for the benefit of third parties is restricted. For a property company in the legal form of a GmbH, this follows from Sections 30 et seq. of the German Limited Liability Companies Act (GmbHG), under which assets required to maintain the share capital may not be distributed to shareholders. Such a situation may arise where a client is required, by virtue of joint and several liability, to pay remuneration owed by its holding company or a sister company.

The issue is legally complex overall and entails significant liability risks. Provisions addressing this problem are familiar particularly from financing transactions, where the liability of a GmbH in such cases is limited so that its share capital is not impaired ('limitation language'). However, where such a provision is agreed, the value of joint and several liability may be significantly reduced.

5.12.2 Standard of liability

Under the statutory provisions (Section 276 of the German Civil Code (BGB)), the contractor is liable for intent and negligence. Liability for intent cannot be limited. Restrictions on liability for negligence are governed to a significant extent by the rules on general terms and conditions (GTCs, Sections 305 et seq. of the German Civil Code (BGB)). Where agreements are proposed by the contractor and based on its standard forms, these restrictions generally apply to limitations of the contractor's liability.

Although it is not impossible even in such cases to agree on a limitation of liability that does not constitute general terms and conditions, the parties should avoid such legal uncertainty and instead observe the requirements applicable to standard terms. Liability for loss caused by a grossly negligent breach of duty cannot then be excluded. Liability for (ordinary) negligence cannot be limited or excluded where the loss arises from injury to life, limb or health or from breach of 'cardinal obligations'; in the latter case, however, liability may be limited to the typical and foreseeable loss. Depending on the terms of the contractor's insurance, it will often make sense not to limit liability insofar as the relevant loss is covered by insurance. From the contractor's perspective, it should also be borne in mind that it is liable for services provided by third parties it appoints unless otherwise agreed.

A limitation of the client's liability corresponding to that of the contractor should likewise be agreed. However, for the client's central obligation – payment of the agreed remuneration – a limitation is irrelevant.

5.12.3 Contractor's operator liability

In asset management agreements, the client will seek to transfer its liability as operator of the property to the contractor. 'Operator liability' means the legal responsibility of the person operating a property, including its associated installations, and includes in particular the duty to maintain safety and public law obligations (for example, under building regulations or environmental law). Breach of such obligations may result in civil liability (e.g., towards persons injured as a result of the breach), public law responsibility (e.g., as the addressee of official orders or fines) and also criminal consequences for individuals (e.g., for negligent bodily injury).

From the contractor's perspective, it is important before accepting the mandate to obtain an overview of the actual circumstances (e.g., whether there are known breaches of fire safety requirements) and the extent to which third parties are subject to relevant obligations (e.g., whether the duty to maintain safety has been validly transferred to tenants under lease agreements). Where specific risks exist, the agreement must contain specific provisions governing the basis on which the contractor assumes operator obligations without exposing itself directly to liability.

To avoid breaches of operator obligations by the contractor, appropriate processes and sufficient resources for fulfilling those obligations must be put in place when the mandate is assumed. This is also important for the client, since an extensive exclusion of the client's own operator liability likewise requires the person assuming the operator obligations to have been selected carefully and to be suitable for the transfer. The client must also check at appropriate intervals whether the contractor is performing its duties properly.

5.12.4 Contractor's insurance obligation

Asset management agreements generally require the contractor to take out specified insurance policies and maintain them throughout the term of the agreement. The client's principal objective is to ensure that any claims for damages against the contractor are adequately covered. The clause below provides only for an obligation to take out professional indemnity insurance for financial loss. In individual cases, it should be considered whether additional insurance may be required, for example, where the asset manager also performs substantial property management services. In addition, financing agreements entered into by the client will often contain requirements regarding the insurance policies to be maintained by the asset manager.

5.13 Dispute resolution and litigation

Asset management agreements, which require close cooperation between the parties over a long period, give rise to a particular need for efficient dispute resolution mechanisms. A distinction should be drawn between the resolution of specific deadlock situations, following which the agreement is intended to continue regardless of whether the issue is resolved, and situations in which one party wishes to terminate the asset management agreement definitively and this is disputed, or seeks damages.

5.13.1 Deadlocks

Particularly where the asset management agreement is combined with a material equity participation by the asset manager in the property-holding structure, the parties sometimes agree that certain decisions (e.g., material amendments to the business plan) must be taken unanimously. Provisions of this kind, which may result in deadlocks, are generally contained in the relevant shareholders' agreement rather than in the asset management agreement itself. In pure asset management agreements, where the contractor bears no economic risk of its own, it would be unusual for the client to grant the contractor a right of veto. The subject is therefore mentioned here only for the sake of completeness. In addition to 'buy/sell' arrangements, which by their nature are only possible in shareholders' agreements, the RICS mediation procedure described below may also be considered in this context.

5.13.2 Mediation

In this context, RICS suggests agreeing to mediation: 'Any difficulties arising in connection with this agreement should, in accordance with the parties' intentions, be resolved amicably through negotiations. The parties therefore undertake to resolve disputes by means of commercial mediation in order to avoid commencing litigation before the ordinary courts.'

However, a binding resolution of a dispute through mediation cannot be achieved against the wishes of either party.

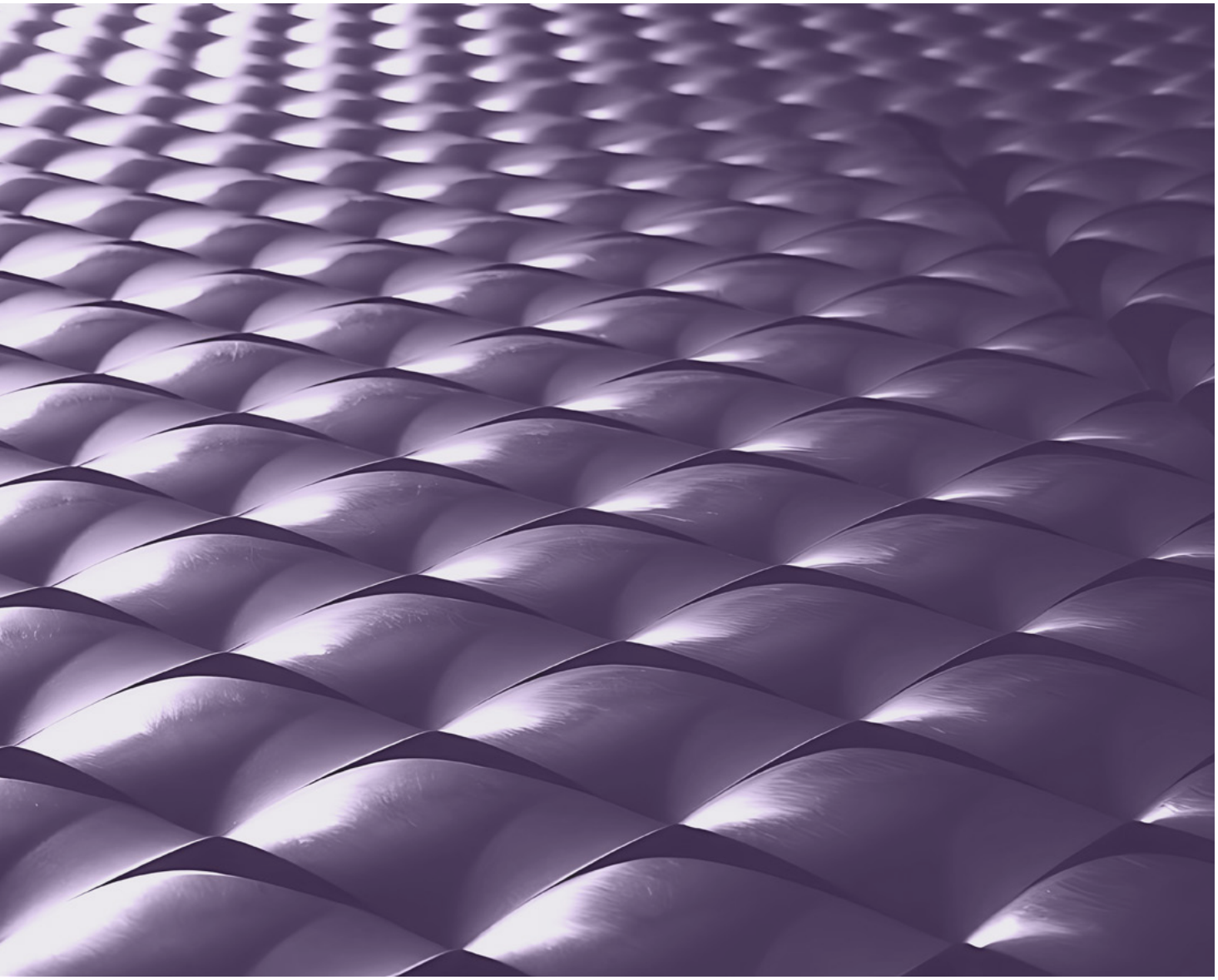
5.13.3 Ordinary court proceedings vs arbitration

Unless arbitration has already been agreed, the asset management agreement should specify the place of jurisdiction, i.e., identify a particular place whose courts are to hear any dispute. This will generally be either the place of the contractor's registered office or that of the client. This is not mandatory, however; the parties may also choose a place of jurisdiction in which neither party has its registered office.

An alternative to proceedings before the ordinary courts is to agree to arbitration. Well-known sets of arbitration rules that may be agreed upon include those of the International Chamber of Commerce (ICC) and the German Arbitration Institute (DIS).

The decision between arbitration and court proceedings in a property dispute requires careful legal and strategic consideration of several key factors:

- Confidentiality: If confidentiality is of paramount importance – for example, to avoid reputational damage or protect sensitive business information – arbitration is preferable, since hearings and case files are not publicly accessible.
- Complexity and expertise: Arbitration gives the parties the opportunity to appoint arbitrators with expertise in property or finance. Judges in state courts, by contrast, are generalists who usually hear a broad range of civil disputes and may lack sector-specific expertise. An arbitrator with a relevant background is more likely to be able to



reach a well-informed, tailored solution addressing the particular complexities of such cases.

- Rights of appeal: If a party anticipates that an appeal may be necessary, litigation may be the better route. The German court system provides a structured, multi-tier system of appeal, whereas arbitral awards may only be challenged on limited grounds. Accordingly, parties seeking a meaningful right of appeal may be more inclined to choose court proceedings, while those seeking a swift and final decision may opt for arbitration.
- Enforceability and asset recovery: In cross-border disputes involving foreign investors or assets located in several countries, arbitration is often preferable. Arbitral awards are more readily enforceable internationally under the New York Convention, which facilitates cross-border asset recovery.

5.14 Miscellaneous

5.14.1 Confidentiality

Confidentiality provisions in asset management agreements generally serve two purposes. First, they provide for mutual confidentiality regarding the contents of the agreement itself. Secondly, they provide mutual protection for information that the contracting parties obtain about one another in the course of performing the agreement. Such information must in each case be treated as confidential, although exceptions typically apply to matters that are already publicly known or which a party is legally required to disclose. In the latter case, disclosure is permitted only to the extent required by law. Finally, the parties will generally seek to retain a degree of flexibility to disclose information where commercially necessary, for example to advisers, auditors and financing partners.

5.14.2 Contractor's obligations following termination of the agreement

As a general principle, the parties' obligations end upon termination of the asset management agreement. In the absence of a specific provision, the contractor remains obliged to return documents made available to it, but is not otherwise required to assist with the takeover of asset management by the owner or a new asset manager. Arrangements requiring the contractor to provide such assistance vary and may include preparation of a final report, handover meetings and availability to answer follow-up questions. In addition to describing the substance of the services owed, provision must be made for additional remuneration if such services are to be required.

5.14.3 Contract language / governing law

In practice, asset management agreements are very often drafted in English as well as in German.

In addition to the language of the agreement itself, the parties must agree on the language in which they will communicate with one another. In this context, it should also be stipulated whether, and to what extent, the contractor is required to translate original German documents, e.g., official notices or lease agreements, into English where necessary.

Asset management agreements with a German asset manager relating to German properties are frequently governed by German law. This does not prevent the agreements from being drafted in English. In practice, cooperation between international clients and German asset managers often involves agreements governed by German law but drafted in English and with structure and terminology modelled on Anglo-American templates.

6

Digitalisation

In the past, the term 'digitalisation' was frequently used without the specific form of implementation being sufficiently apparent. This has changed, with digital processes now becoming an integral **part of day-to-day work.** Professional management of data and documents (see Module 7) is an essential prerequisite for efficient asset management. Particular attention must be paid to **data quality** and **data security.**

In general, digitalisation means the **conversion of analogue** data and processes into digital workflows. It involves **networking of users, storage, processing and analysis of data,** and conversion and improvement of analogue processes.

Building on the conversion of analogue information into digital data formats, further potential arises from the consistent use of digital solutions throughout. Processes must be designed with digitalisation in mind.

The key elements of a digitalisation strategy usually include:

- Description and objectives of the strategy
- Project organisation
- Information on existing and new IT systems and software solutions
- Definition of technical, substantive, qualitative and regulatory requirements
- Information on processes, roles and authorisations
- Integration of artificial intelligence (AI) into work organisation
- Planned timetable for the transformation

A key objective of digitalisation is the partial or complete automation of workflows while maintaining a high degree of process stability and quality, together with appropriate documentation and auditability of processes and the underlying data.

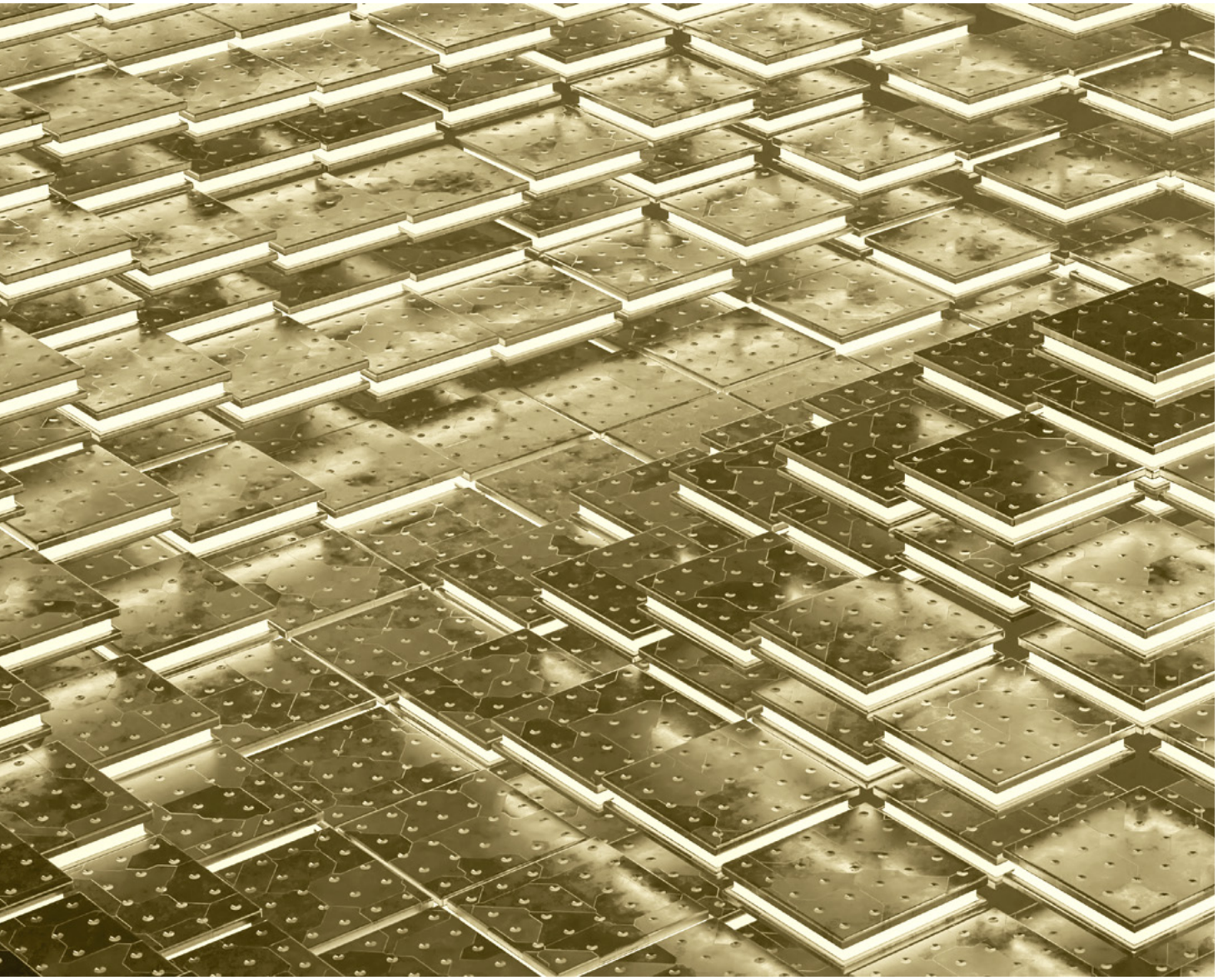
Digitalisation is an essential prerequisite for addressing challenges such as shortages of skilled personnel, increased transparency and regulatory requirements, and demands for quality and efficiency among all parties involved.

Conceptual and advisory services relating to digitalisation do not form part of the usual scope of asset management services and generally fall within the client's sphere of responsibility. With regard to this Schedule of Services, it is recommended that asset management and the client agree before services commence on the scope, organisation and costs of services relating to digitalisation.

Implementation of a digitalisation strategy should take the form of a digitalisation project. This is typically based on the preparation of a functional specification taking into account the client's requirements as set out in a requirements specification.

The functional specification should cover, among other things, the following topics, although the order in which they are listed should not be understood as chronological:

- **Introduction:** Summary description of the project and the project objectives
- **Description:** More detailed description of the project content, special features, interim objectives and overall project objective
- **Organisation:** Definition of working groups and personnel involved, responsibilities, interfaces, sequencing of work stages and interim objectives, and project working times
- **IT systems and software solutions:** Description of technical requirements and the integration of new and/or existing hardware and software
- **Problem analysis:** Identification of obstacles expected during implementation and formulation of possible solutions
- **Content requirements:** Definition of all information to be recorded, processed and analysed, including data fields, document types, definition of data and document sources, and key workflows
- **Qualitative requirements:** Ensuring adequate quality of data and documents and consistency of definitions and calculations
- **Processes:** Definition of processes (organisational description of business processes), including the necessary interfaces (also covering technical interfaces) and consideration of regulatory requirements
- **Roles:** Definition of roles (standardised description of functions and tasks)
- **Authorisations:** Key elements of a role-based authorisation framework and the levels of administration and support.



A paradigm shift is currently taking place in relation to the use of artificial intelligence (AI). Until now, AI has primarily been embedded in individual IT systems and software solutions used within the organisation of real estate management activities, for example, in document management software. The increasing use of self-learning large language models (LLMs), rather than conventional algorithms requiring extensive training in order to achieve an acceptable level of confidence, is opening up the prospect of using AI not only within individual system components but more broadly at the core of work organisation. In particular, in the area of automated workflows, the use of AI is likely to generate significant efficiency gains.

Despite, or precisely because of, the rapid development of AI, its benefits from a business perspective (lower staffing requirements, speed advantages, potentially lower error rates) must be critically weighed against the costs (licences, consultants, specialised personnel). Issues such as data protection and critical dependencies on advisers / suppliers must also be addressed, together with quality assurance and the implementation of appropriate controls.

Glossary

A common understanding of terminology is an essential basis for successful **cooperation between all parties** involved in asset management. The following glossary explains the technical terms and abbreviations used in this document and establishes consistent terminology for the services, processes and tasks described. It serves as a **reference for applying** the document and supports consistent interpretation of its contents in professional discussions. The definitions included are based on the terminology used in this guidance and are **not intended** to constitute generally applicable or exhaustive definitions of the terms concerned.

A	
Acquisition calculation	Calculation performed in advance of a transaction to assess its economic viability
Annual financial statements	Balance sheet and profit and loss account prepared at the end of a financial year to determine financial performance
Asset class	An asset class comprises all assets consisting of real estate that have a similar risk-return profile. This includes different types of property, such as residential, commercial and specialist properties, which are grouped into broader categories to make them understandable to investors and meet investment requirements
Asset strategy	Strategic direction and objectives for an individual property, including income/expenditure, economic performance, exit, etc., usually in the context of a portfolio strategy
Audit	Used here in the broader sense to mean an examination of the effectiveness of systems or processes and compliance with requirements
Authorisation concept	An authorisation concept specifies the rights granted to a particular role (e.g., 'commercial asset manager') and to the individuals assigned to that role in relation to an IT application (e.g., viewing, editing and deletion rights for documents relating to particular assets)
B	
Benchmarking	Analytical method involving the systematic comparison of key indicators against reference values or peer groups in order to identify performance, trends or potential areas for optimisation
BID	Business Improvement District – a defined area in which the quality of a commercial property location is to be improved on the basis of state legislation and/or municipal requirements and through cooperation between the local authority, owners and tenants
Budget	Planned income and expenditure of a project or company for a defined period as part of business planning
Building certification	Quality certification relating, for example, to sustainability, energy efficiency, environmental performance and other building qualities, e.g., DGNB, LEED, BREEAM, QNB, Wired, etc.
Business plan	Financial planning of income and expenditure for a property or portfolio over a defined period (e.g., five years)

C	**CapEx**	Capital Expenditure – all longer-term investments in a property (often also eligible for capitalisation for accounting purposes)
	CO_2 reporting	Recording and reporting of a company's CO_2 emissions
	Compliance	Compliance with laws and statutory requirements as well as non-statutory requirements (e.g., those arising from contracts, internal company rules and ethical standards)
	Confidence level	Measure of the probability that a mean derived from a sample survey applies to the overall population
	Controlling	Process of managing and monitoring achievement of objectives and economic performance at company level
	Core Plus risk class	This risk category comprises properties (generally in good locations) with good property quality and a solid letting base, meaning that moderate potential for value appreciation exists; moderate risk is accompanied by moderate return expectations
	Core risk class	This risk category comprises properties (often in good locations) with very high property quality and a strong letting base, meaning that they are regarded as stable in value; low risk is accompanied by a low return (i.e., high purchase prices)
	CSRD	Corporate Sustainability Reporting Directive – EU directive on mandatory corporate reporting of sustainability matters
D	**Drawdown**	Date on which funds are disbursed
	Due diligence	Due diligence means the careful review and analysis of projects / assets or contracts
	Duty of care reporting	Reporting on compliance with duties of care (a duty of care agreement is often entered into in connection with financing)
E	**ESG**	ESG comprises Environmental, Social and Governance considerations
	ESG reporting	Systematic recording and reporting of material environmental, social and governance aspects of a property or property portfolio, particularly for assessing and transparently presenting sustainability performance, risks and achievement of objectives

EU Taxonomy	Classification system for environmentally sustainable economic activities; see also https://www.bafin.de
Eviction	Enforced vacation of leased premises on the basis of an enforceable title
Facility management	Technical and infrastructure services for the operation of properties – this is the definition most commonly used in the market (as distinct, for example, from the GEFMA definition)
Financial reporting	Reporting on financial performance indicators for internal and external stakeholders
Forecasting	Forecasting of future developments based on historical and current data
GAV metric	Gross Asset Value – market value of the property without taking liabilities into account
Handling fee	In asset management, a 'handling fee' is a fee charged for coordinating and processing assets. It is often charged as part of the management fee and is intended to cover the costs of operational services extending beyond pure investment management. Such fees may take different forms and are typically calculated as a percentage of assets under management (AuM)
ICS	Internal Control System – an internal system of controls designed to ensure compliance and identify risks and breaches of rules
ImmoWertV	German Property Valuation Ordinance, incorporated into the German Building Code framework
Impact reporting	Reporting on the social, environmental and economic impact resulting from a company's activities or an investment
Implementation	Implementation means putting into practice structures and process flows that have been defined in advance through planning, taking account of the applicable framework conditions and objectives
Interest rate hedging instruments	Instruments used to reduce or avoid interest rate risk in property financing. They help protect against increases in interest rates and secure a favourable interest rate for the term of the loan
Interest rate monitoring	Observation and monitoring of the interest-rate market, both in the short term, e.g., Euribor, and developments in loan interest rates over longer periods (5 / 10 / 15 / 20 years)

	Investment strategy	Investment strategy means the approach and direction of an investment project aimed at achieving a return target. The components of liquidity, return and risk must be taken into account. In the property context, the term relates to a specific property investment, which may comprise an individual asset or a portfolio
	Investment vehicle	Special-purpose vehicle established for a specific purpose
	InvG	German Investment Act. It provides the statutory basis for a modernised and internationally competitive investment business in Germany and arose from implementation of amending directives to the EC Directive coordinating laws, regulations and administrative provisions relating to certain undertakings for collective investment in transferable securities
K	**KPI report**	Report systematically presenting and analysing quantitative key performance indicators (KPIs) for an asset or portfolio. It supports transparency, management and assessment of financial performance, e.g., using rental income, vacancy, operating costs or returns
	KYC/AML check	Statutory KYC ('Know Your Customer')/AML checks under the German Anti-Money Laundering Act (GwG) examine the contracting party in order to prevent money laundering and undesirable links with third countries
L	**Liquidity management**	Liquidity management means planning, managing and monitoring the solvency of a company or organisation. The objective is to ensure that sufficient liquid funds, e.g., cash or bank balances, are available at all times to meet payment obligations as they fall due
	LOI (Letter of Intent)	Statement by an interested party setting out the principal terms of a proposed purchase
M	**Monitoring**	Monitoring means the supervision of activities in a broad sense, for example, with regard to achievement of objectives and/or compliance with thresholds or targets (e.g., time or cost targets)
N	**NCR metric**	Net Contracted Rent – contractual rent, i.e., the total contractually agreed net cold rent (amount billed)
	Net cold rent metric	Agreed rent excluding advance payments for operating and ancillary costs ('cold') and excluding VAT ('net')

NOI metric	Net Operating Income – operating surplus, i.e., rent collected less non-recoverable OpEx
NRI metric	Net Rental Income – rent collected, i.e., the total net cold rent actually received; where a tenant fails to pay, it may be unclear what proportion of the non-payment relates to net cold rent

O

Operating equipment company	Property holding company for operating equipment (e.g., goods lifts, kitchens, working platforms used to operate machinery, brick kilns, refinery oil tanks and chimneys) which is so closely connected with a commercial business that the business is operated directly using it. The purpose of such a company is to avoid the property holding company being treated as carrying on a trade ('contamination theory') where it derives income solely from letting and leasing and therefore qualifies for the extended trade tax deduction. Note: the issue is partly disputed in case law and practice
OpEx	Operational Expenditure – expenditure required to ensure the continuous operation of a functioning business
Opportunistic risk class	This risk category comprises properties with poor building quality or a weak letting base, meaning that substantial parts of the planned property value must first be created through construction measures (up to and including demolition and new construction) or through letting

P

Performance fee	Performance-related remuneration based on achievement of agreed indicators, e.g., level of rental income
Plan/target/actual comparison	Comparison of planned, expected and actual key indicators for analysis and management purposes
Portfolio strategy	Overarching strategy for managing, developing and optimising a property portfolio
Project controlling	Monitoring and management of achievement of objectives and economic performance at project or asset level
Property holding company	Special-purpose vehicle established for a specific purpose

Property management	Commercial administration and technical management services for properties – this is the definition most commonly used in the market (as distinct, for example, from the GEFMA definition)

QR

Quarterly financial statements	Financial report presenting a company's financial position for a quarter
Red Book	RICS Global Valuation Standards, supplemented by additional requirements and best practice guidance
Refurbishment	Renovation, usually of an entire property
Regulatory framework	The framework of applicable laws, regulations and public law requirements
Reporting	Preparation and communication of reports on financial key indicators and developments

S

Service Level Agreement (SLA)	Agreement on the quantity (e.g., scope and frequency) and quality of the service
SFDR	EU Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088), intended to direct capital flows towards sustainable investments and economic activities. In particular, the Regulation is intended to create transparency for investors regarding sustainability
Special-Purpose Vehicle (SPV)	Special-purpose vehicle established for a specific purpose
Stakeholder	Stakeholders are generally persons or groups with an interest in a project, company or institution. The various groups need not necessarily be connected with it, but will generally have a particular interest, be in a relationship of dependency or be able to exert influence in various ways
Sustainability	Holistic consideration of environmental, social and corporate governance aspects in the development, use and management of properties. It comprises three dimensions: Environmental (E) – environment and climate; Social (S) – social aspects and user interests; Governance (G) – responsible corporate governance
Sustainability metrics	Measurable quantitative or qualitative indicators for assessing and managing the sustainability performance of a property or property portfolio across the Environmental, Social and Governance (ESG) dimensions, e.g., energy consumption, CO_2 emissions or social and governance-related criteria
Sustainability reporting	Presentation of performance in environmental, social and governance (ESG) areas

SWOT analysis	Planning tool for assessing Strengths, Weaknesses, Opportunities and Threats
Term sheet	Legally non-binding document setting out the principal terms of a proposed investment or financing. It serves as the basis for subsequent, more detailed and legally binding agreements, but is not itself a contract
TI	Tenant Improvements – expenditure incurred by the landlord on tenant fit-outs and alterations
TNRI metric	Total Net Rental Income – lease surplus, i.e., the total agreed net cold rent over the entire fixed term of a commercial lease less investment expenditure and other incentives, and more rarely also letting costs
UTC	Unit Turnover Cost – total expenditure incurred in reletting a vacated rental unit, including investment in the leased premises and letting costs
Value Add risk class	This risk category comprises properties of medium building quality or with a moderate letting base, where the property's value can be increased through construction measures or letting; the correspondingly higher risk is accompanied by higher return expectations
Variance analysis	Analysis of differences between planned, target and actual values in order to identify optimisation needs and management measures
Vendor due diligence (Vendor DD)	Preparatory review and structured compilation by the seller of all information relevant to a sale. The objective is to provide prospective purchasers with a consistent, transparent and complete information base

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