OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – GERMANY (AS OF 15 MARCH 2017)

CONTENTS

A. EXECUTIVE SUMMARY

Within months of becoming Chancellor of Germany in 1933, Adolf Hitler and his Nazi Party began to implement legal and extra-legal measures to dispossess German Jews of membership in political parties and trade unions. During the following twelve years, the regime systematically dispossessed Jews, Roma and other targeted groups (in Germany and in other territories occupied by the Nazis and other Axis powers) of their dignity, jobs, homes, businesses, and ultimately killed them. By 1943, the German Reich was declared "free of Jews". It was not until 8 May 1945 that Germany unconditionally surrendered and World War II was over.

The lives of the millions who perished at the hands of the Nazis during World War II could not be brought back, but in a first-of-its-kind decision, the Allied powers required Germany – initially, just the Western part – to restitute confiscated property.

In Germany, in the years since the end of World War II (under Allied occupation, during the division of the country into East and West Germany, and finally after unification in 1990) various comprehensive laws and other measures have been enacted in order to address restitution of confiscated immovable private, communal and heirless property. This includes settlement agreements with foreign countries, national legislation, as well as the establishment of so-called Jewish "successor organizations" to claim heirless property and communal property. Germany's restitution laws have been the most comprehensive in Europe.

Private property. The restitution of private property after the war began first in the Western occupation zone (composed of the American, British and French zones). After failing to agree on a single comprehensive law, each of the three (3) Western powers enacted their own restitution legislation: **Law No. 59** – Restitution of Identifiable Property (1947) (American Occupation Zone); **Decree No. 120** of the French Commander in Chief for the Restitution of Stolen Assets (1947) (French Occupation

Zone); and **Law No. 59** – Restitution of Identifiable Property to Victims of Nazi Oppression (1949) (British Occupation Zone), known in the aggregate as the **Allied Restitution Laws**. By mid-1955, 490,000 restitution claims had been filed under the **Allied Restitution Laws** and property restituted in the American occupation zone and West Berlin was valued by claimants at more than USD 290,000,000, with real estate accounting for almost half of that amount. The **Allied Restitution Laws** remained in effect after the Western powers merged their three (3) zones of occupation into the new Federal Republic of Germany (FRG or "West Germany") in 1949. The 1957 **German Federal Restitution Law** (Bundesrückerstattungsgesetz) (**BRüG**) (and amendments) filled in gaps not covered by the **Allied Restitution Laws,** namely, providing for the compensation of property that was no longer traceable.

As of December 2011, a total of EUR 2.023 billion has been paid in compensation under the **German Federal Restitution Law** (German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions", November 2012, p. 29.)

In 1956, the FRG passed the **Federal Compensation Act**. It provided for compensation not covered by the restitution laws, including for those who suffered bodily harm, damages to professional advancement, damage to property, and damage to business or professional career as a result of National Socialism. The property compensation component of the **Federal Compensation Act** was capped at DM 75,000. Of the EUR 46.726 billion that Germany has paid out under the **Federal Compensation Act** (and its amendments), EUR 216 million relate to payments for damage to property (both movable and immovable).

With few exceptions, no property restitution regime was established in the Soviet occupation zone, or later, in the German Democratic Republic (GDR or "East Germany"). It was not until the unification of Germany in 1990 that property restitution in East Germany could take place. The 1990 **Act on the Settlement of Open Property** provided the restitution framework for property located in the former GDR. For property that could not be restituted, the 1994 **Nazi Persecution Compensation Act** provided compensation for the property, so long as the claimant first received a successful decision under the **Act on the Settlement of Open Property** claims process. The German Ministry of Finance reported in 2016 that while the value of the property returned can be only partially quantified, by the end of 2001 more than EUR 724 million had been generated from the sale of property restituted under the **Act on Settlement of Open Property**, and that by the end of 2011, more than EUR 1.83 billion had been paid as compensation under the **Nazi Persecution Compensation Act**. (These figures include both movable and immovable property). (2016 Germany Response to ESLI Immovable Property Questionnaire, p. 3.) However, other experts in the field believe that there is no number for the value of restituted property to individuals and corporations.

The 2000, German Foundation **Remembrance, Responsibility and Future**, which was established chiefly to compensate former slave and forced laborers, also provided compensation to persons who suffered damage to property (movable, immovable) under

the National Socialist era if the damage was directly caused by German companies, and the claimant had been ineligible to file claims against Germany or Germany companies under previous legislation. This program affected a narrow group of people and provided only a small amount of compensation.

Finally, in limited circumstances, claimants have been able to rely on general provisions of the German Civil Code, e.g., **Section 985**, to recover property confiscated during the Nazi Regime, but only where the Code section has not been superseded by specialized restitution laws.

Communal property. Restitution of communal property in the Western occupation zone and the FRG took place under the framework of the **Allied Restitution Laws**. The laws gave so-called successor organizations the right to manage communal *and* unclaimed property. The successor organizations in the Western occupation zones were the **Jewish Restitution Successor Organization (JRSO)** (American occupation zone), **Joint Trust Corporation (JTC)** (British occupation zone), and **JTC Branche Française** (French occupation zone), and a joint office for property in Berlin. While disagreements arose between the successor organizations and Jewish leaders in Germany who believed Germany Jewish communities were the rightful successors to communal property, the highest restitution court ultimately sided with the successor organizations, recognizing them as the legitimate heir of the communal property. However, the successor organizations did reach agreements with local Jewish communities in order to apportion the communal property between themselves and the communities.

Communal property restitution in the GDR initially took place via a **29 April 1948 Decree** providing for the return of property confiscated by the Nazi state to organizations. The umbrella Jewish organization in the GDR, **State Association of Jewish Communities in the Soviet Zone**, lacked resources to file claims for all Jewish communal property by the deadline but did recover 122 pieces of property.

Finally, the **1990 Act on Settlement of Open Property** gave the **Conference on Material Claims Against Germany ("Claims Conference")** an opportunity to reclaim communal property in the former GDR.

Heirless Property. Principles enshrined in documents such as the 2009 Terezin Declaration, 2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property should be used to provide for the material needs of Holocaust survivors most in need of assistance.

The **Allied Restitution Laws** empowered the successor organizations to file restitution claims and to use the proceeds from successful claims to provide relief to needy survivors worldwide. In addition to the three (3) successor organizations in the Western occupation zone, after unification, the **1990 Act on the Settlement of Open Property Issues** provided that a similar successor organization – the **Claims Conference Successor Organization** – be designated for heirless or unclaimed property in the former GDR. The

Claims Conference Successor Organization was permitted to file restitution/compensation claims for unclaimed property until the end of 1992. As of 30 June 2016, it had filed 124,500 claims for real estate and businesses with the German authorities and 111,075 decisions had been issued, of which 16,133 (15 percent) were approved in favor of the **Claims Conference Successor Organization.** As of 31 December 2015, the total gross income (inclusive of sales, compensation, Wertheim, bulk settlements and property management) to the **Claims Conference Successor Organization** was approximately EUR 2.50 billion. (Conference on Material Claims Against Germany, "What We Do – The Successor Organization".) These funds have been primarily distributed to support the social welfare of Holocaust survivors and have also been used to create special ex gratia funds for individuals who missed the original private property restitution deadlines, e.g., the **Goodwill Fund** and **Late Applicant Fund**. The **Claims Conference** also spent USD 300 million on Holocaust education, research and documentation.

Germany endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. Germany submitted a response in March 2016.

B. POST-WAR ARMISTICES, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY

Within months of becoming Chancellor of Germany in 1933, Adolf Hitler and his Nazi Party began to implement legal and extra-legal measures to dispossess German Jews of their membership in political parties and trade unions, and later, their property. Holocaust historian Peter Hayes, in a discussion aptly titled "*Learning How To Steal: Germany 1933-1939*" summarizes the massive robbery of Jewish property in the German Reich.

First came the 1933-1937 period:

> By the end of 1937, 60 percent of the roughly 100,000 Jewish-owned businesses in Germany as of 1933 had been liquidated or "Aryanized' [sic](i.e., taken over by non-Jews), the total wealth of German Jews had fallen by 40-50 percent, one-third of the German Jewish population had fled the country, and nearly all of the Jews remaining were working for themselves or each other or unemployed and dependent on the community's relief measures.

(Peter Hayes, "Plunder and Restitution", *in* The Oxford Handbook of Holocaust Studies (Peter Hayes & John K. Roth, eds., 2010, p. 542 (*"Peter Hayes*").) Kristallnacht accelerated the robbery:

> Following the *Kristallnacht* pogrom of November 1938, this system of dispossession was extended to the entire Reich and expanded in a variety of ways. All German Jews had to establish blocked accounts, the "Aryanization" of all Jewish-owned businesses became compulsory at terms set by politically appointed trustees, and a fine of one billion reichsmarks was imposed on the Jewish population. Each person who had registered his or her property in the summer of 1938 now had to pay 25 percent of its total value in installments to the national treasury by August 1939. Doing so became doubly difficult when the regime ordered Jews to put their stocks and bonds in safe deposit accounts from which sales could take place only with government permission and forced Jews to surrender virtually all their possessions containing precious metals to the state-run pawnshops in return for nominal compensation paid to the blocked accounts [] Such restrictions compelled Jews to covert as many of their other assets as possibly to cash, often by selling their furniture, artworks, and household goods and by redeeming their insurance policies for their paid-in value, which went directly to the blocked accounts [].

(*Id.,* p. 543 (internal citations omitted).) On the eve of World War II, the robbery was complete:

> By the summer of 1939, the Third Reich had reduced German Jews to penury and pocketed at least 3 billion of the 7.1 billion reichsmarks in property that they had registered the previous year ($12 billion of $28.4 billion in U.S. currency in the year 2000). In the succeeding years, the regime may have raked in as much as half of the remainder through additional impositions, the mandatory conversion of sums in blocked accounts into war bonds, and the terms of the Eleventh Decree to the Reich Citizenship Law, which declared that the property of German Jews "fell" to the state as of the moment they exited the country, whether through emigration or deportation [].

(*Id.,* p. 544 (internal citations omitted).) Numerous professions, businesses, and ordinary German consumers benefited from this mass theft:

> Despite the siphoning off of substantial amounts by the middlemen in property transfers—a diverse group that included corrupt Nazi officials, lawyers and real estate brokers who specialized in "Aryanization," art dealers and auction houses, and banks that matched buyers and new managers to properties—Göring thus succeeded in grasping the bulk of Jewish assets for the national treasury. But thousands of Germans also became complicit in the spoliation by taking advantage of the knocked-down purchase prices as businesses, homes, and possessions changed hands.

(*Id.*) Looting from the Jews of Europe continued with each conquest, beginning with the attack on Poland on September 1, 1939. It continued unabated for the next six (6) years:

> [T]he Nazi regime caught up with the lust of the Party faithful to impoverish and dispossess the Jews, developing ever more numerous and rapacious means of monetizing and/or confiscating their assets and turning most of these to the purposes of the German state. The result was robbery on a scale scarcely seen in

> European history, the more so because the plunder of the Jews outside of Germany during World War II took place alongside the looting of even greater quantities of precious metals, stocks and bonds, cash, art works, enterprises, real estate, and labor from non-Jewish sources in the occupied countries.

(*Peter Hayes*, p. 541.)

By the end of 1938, Hitler and the German Reich had annexed Austria as well as the Czech Sudetenland and expanded through Europe. In 1930, they took Poland, which prompted Britain and France to declare war on Germany. Nazi Germany expanded its influences into vast areas of Europe and brought with it a persecutory regime against Jews, Roma, and other targeted groups. (European Holocaust Remembrance Initiative, "Countries – Germany".)

According to the 1933 census, the German Jewish population numbered approximately **500,000**. More than half emigrated during the early years of the Nazi dictatorship. Around **214,000** remained on the eve of World War II. By the end of the war, it is estimated that the Nazis and their collaborators killed **160,000-180,000** German Jews. Few deportees survived the war – they were sent east to the Reichskommissariat Ostland, or to camps and ghettos in occupied Poland (including the Lodz ghetto). Later deportees were sent to the Theresienstadt ghetto or directly to Auschwitz. By mid-1943, the German Reich was declared "free of Jews."

Prior to and immediately after Germany's unconditional surrender on 8 May 1945 (putting an end to World War II), the Allied powers (United States, Great Britain, France, Soviet Union), gathered together at the **Casablanca Conference** (1943), **Tehran Conference** (1943), **Yalta Conference** (1945), and **Potsdam Conference** (1945). They discussed conditions of a German surrender, what post-war Europe would look like, and the division of Germany into "zones of occupation". The United States, Great Britain and France governed occupied zones in western and southern Germany and the Soviet Union governed its zone in eastern Germany. Decisions on matters affecting Germany as a whole were to be decided collectively by the Allied powers. Berlin was jointly administered. Occupation was meant to be only temporary.

In May 1949, the Western powers (the United States, the United Kingdom and France) merged their occupation zones into the new Federal Republic of Germany (FRG) (informally known as "West Germany"). In October 1949, the Soviet occupation zone became the German Democratic Republic (GDR) (informally known as "East Germany"). Germany would not be unified until 1990.

Germany became a member of the Council of Europe in 1950 and ratified the European Convention on Human Rights in 1952. As a result, suits against Germany claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Germany has been a member of the European Union since 1958.

For additional information on events leading to the Holocaust, property confiscation and the creation of governing entities in postwar Germany, *see, e.g.,* Götz Aly, *Hitler's*

Beneficiaries: Plunder, Racial War, and the Nazi Welfare State (2005); Michael J. Bazyler, *Holocaust Justice: The Battle for Restitution in America's Courts* (2003); Richard Z. Chesnoff, *Pack of Thieves: How Hitler and Europe Plundered the Jews and Committed the Greatest Theft in History* (2001); Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust*, 1933-1945 (2008); and Stuart Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II* (2003).

1. Claims Agreements with other Countries

Between 1959 and 1964, the **Federal Republic of Germany (FRG)** (established in 1949 and composed of the former U.S., U.K. and French occupation zones) entered into comprehensive settlement agreements with a number of countries whose citizens suffered under Nazi persecution. Unlike other countries that endorsed the Terezin Declaration, many of Germany's bilateral agreements related to compensation for persecution, and not solely property issues. They included agreements: (1) in **1959** with **Luxembourg** (DM 18 million), **Norway** (DM 60 million), **Denmark** (DM 16 million); (2) in **1960** with **Greece** (DM 116 million), the **Netherlands** (DM 125 million), **France** (DM 400 million), **Belgium** (DM 80 million); (3) in **1961** with **Italy** (DM 40 million), **Switzerland** (DM 10 million), **Austria** (DM 95 million); and (4) in **1964** with the **United Kingdom** (DM 11 million) and **Sweden** (DM 1 million). Integration of the neutral countries like Switzerland, and the former allies of Germany, like Finland, into the process of restitution signaled that no country in Europe was left unaffected by the Nazi crimes, even if the country itself was left out of the Holocaust.

The **German Democratic Republic (GDR)** (established in 1949 and composed of the former Soviet occupation zone) entered into comprehensive settlement agreements with a number of countries relating to property rights after 8 May 1945. They included agreements: (1) in **1984** with Finland; (2) in 1986 with **Sweden**; and (3) in 1987 with **Austria**.

After unification, the **United States** and **Germany** entered into an agreement in 1992 (**Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Settlement of Certain Property Claims**) whereby Germany paid USD 102 million to cover U.S. citizen claims for property located in the former GDR that had been nationalized, expropriated or otherwise taken by the GDR. Pursuant to **Article 3** of the Agreement, citizens otherwise covered by the Agreement, were permitted to opt-out within a specified time period and pursue their domestic remedies in Germany.

For more information on claims agreements with Germany, *see* German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions", November 2012, pp. 8, 21, 36; Richard B. Lillich and Burns H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (1975); Richard B. Lillich and Burns H Weston, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995*

(1999); The United States Department of Justice – Foreign Claims Settlement Commission, Completed Programs – German Democratic Republic.

C. PRIVATE PROPERTY RESTITUTION

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II ("Terezin Best Practices") for the purpose of restitution, is:

> Property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

During the early post-World War II period, restitution efforts were limited to the Western occupation zone. There was little interest in property restitution in the Soviet occupation zone in the east. In fact, after the war, the GDR government actually sought to nationalize all property (this time expropriation took place regardless of race, religion or ethnicity). Consequently, restitution in the former GDR would not begin until after German unification in 1990.

1. Allied Restitution Laws

Initial efforts to enact a single restitution law applicable for all of the occupation zones failed. Restitution laws were eventually enacted on a zone-by-zone basis.

The so-called **Allied Restitution Laws** were separate laws implemented by the United States, Great Britain and France in the Western occupation zone between 1947 and 1949. The Soviet Union did not participate in establishing restitution mechanisms.[1]

Law No. 59 – Restitution of Identifiable Property (1947) (**U.S. Occupation Zone**)

On 10 November 1947, the U.S. Military Government passed the first restitution law in any of the occupation zones. **Law No. 59 – Restitution of Identifiable Property ("American Restitution Law")** applied to property return in U.S.-controlled areas (Bayern, Bremen, Hessen, Württemberg-Baden). The restitution regime applied to both Aryanized property that had been sold under duress, as well as property that had been seized by the state.

[1] While Germany's first restitution law was passed in the eastern state of Thuringia in 1945, the law was abolished in 1952 and led to few proceedings.

Restitution claims could be brought by any person, regardless of citizenship, whose identifiable, movable and immovable, private and communal property was confiscated between 30 January 1933 and 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism (**Article 1**). Members of a persecuted group, such as the Jews, were presumed to have lost property as a consequence of Nazi persecution. (*See* Caroline Dostal, Anke Strauss & Leopold von Carlowitz, "Between Individual Justice and Mass Claims Proceedings: Property Restitution for Victims of Nazi Persecution in Post-Reunification Germany", 15 German L.J. 1035 (2014) ("*Between Individual Justice and Mass Claims Proceedings*"), p. 1044).)

Restitution was required regardless of whether the property was in the hands of the state or had been sold to third parties. Compensation was only allowed in the limited instances where the physical property could not be returned (e.g., if the property had been destroyed). Claims had to be submitted on or before **31 December 1948** (**Article 56**).

Decree No. 120 of the French Commander in Chief for the Restitution of Stolen Assets (1947) (**French Occupation Zone)**

On 10 November 1947, the French Commander-in-Chief in Germany passed **Decree No. 120 of the French Commander in Chief for the Restitution of Stolen Assets ("French Restitution Law")**. It applied to property in French-controlled areas (Baden-Württemberg, Rheinland-Pfalz, Saarland). The law was heavily influenced by earlier French restitution legislation implemented in North Africa and in liberated France. It voided all transfers after 30 January 1933 that occurred without the consent of the owner (natural or legal persons) if they were made in pursuit of measures, which resulted in "differentiations based on nationality, ethnic origin, race, religious or political view or activities hostile to the National Socialist regime." (**Article 1**). Claimants had **18 months from the publication of the law (10 November 1947)** to file an action (**Article 13**).

Law No. 59 – Restitution of Identifiable Property to Victims of Nazi Oppression (1949) (**British Occupation Zone**)

On 12 May 1949, the British Military Government passed a restitution law pertaining to property in British-controlled areas (Nordhein-Westfalen, Niedersachsen, Schleswig-Holstein, Hamburg). With a few minor exceptions, **Law No. 59 – Restitution of Identifiable Property to Victims of Nazi Oppression ("British Restitution Law")**, was functionally equivalent to the **American Restitution Law** passed two (2) years earlier. Claims for restitution under the **British Restitution Law** had to be filed by **30 June 1950**.

Decree on Restitution of Identifiable Property of Victims of Nazi Oppression – (1949) (**Berlin**)

On 26 July 1949, the leaders of the Allied powers in Berlin passed a restitution law exclusively applicable to the city of Berlin, the **Decree on Restitution of Identifiable**

Property of Victims of Nazi Oppression ("REAO"). The law was functionally equivalent – both in terms of structure and contents – to the **American Restitution Law** and **British Restitution Law**.

Cooperation between the Western powers (the United States, the United Kingdom and France) and the Soviet Union soon ended. In May 1949, the Western powers merged their occupation zones into the new Federal Republic of Germany (FRG) (informally known as "West Germany"). The subsequent, 26 May 1952 Allied-German **Convention on the Settlement of Matters Arising out of the War and the Occupation** (as amended by the **Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany ("Paris Protocol")** of 23 October 1954) provided that the **Allied Restitution Laws** would remain in effect as part of the legislation in the newly established FRG (*see, e.g.,* Convention, Chapter 3 – Internal Restitution).

In October 1949, the Soviet occupation zone became the German Democratic Republic (GDR) (informally known as "East Germany"). No restitution took place in the GDR. Instead, restitution was understood in a socialist manner – by providing housing, health assistance, pensions and jobs to those who had been persecuted by the Nazi regime.

One source estimates that, by 30 June 1955, roughly 490,000 restitution claims had been filed under the **Allied Restitution Laws**, by both individual persons and successor organizations (*see infra*, **Sections D** and **E**), and 400,000 of them had been adjudicated. During this same period, "in the American Zone and West Berlin, where more than two-thirds of the property subject to restitution was located, [the value of restituted property] was estimated by the claimants at $290,000,000. Of that amount, $20,000,000 went to the successor organizations and $270,000,000 to individuals. Real estate and mortgages accounted for almost half, stocks and bonds for 10 per cent [sic], business enterprises for 9 per cent, and cash compensation in lieu of physical restitution for 30 percent. Of the $270,000,000 in property restored to individuals, 42 per cent went to United States residents; residents of Germany received 18 per cent, of the United Kingdom 11 per cent, and of Israel 5.4 per cent." (*American Jewish Yearbook 1956: A Record of Events and Trends in American and World Jewish Life* (American Jewish Committee, Moris Fine & Jacok Sloan, eds. 1956), p. 393.) However, there is some dispute as to whether it was even possible to ascertain the amount of restitution in 1955 because there was no central registration and no registration of the value of restituted property.

For additional information on the early restitution laws and the social circumstances that existed at the time these laws were implemented, *see, e.g.,* Constantin Goschler, "Jewish Property and the Politics of Restitution in Germany after 1945" *in Robbery and Restitution* (Martin Dean, Constantin Goschler & Philipp Ther, eds. 2008), pp. 116-120**;** Jürgen Lillteicher, "West Germany and the Restitution of Jewish Property in Europe" *in Robbery and Restitution* (Martin Dean, Constantin Goschler & Philipp Ther, eds. 2008), p. 102; *see also* British zone case of *Hugo Hertz v. Marie Louise Klein* (Decision of the Wiedergutmachungskammer of 23 April 1952, WgA LG HH, Z 10; Decision of the Board of Review of 29 April 1954, decisions of the Board of Review, BOR/53/623, part number 20, p. 41.

2. 1956 Federal Compensation Act (FRG)

On 29 June 1956, the FRG passed the **Federal Compensation Act** (Bundesentschädigungsgesetz or **BEG**). The law had retroactive effect, dating back to 1 October 1953, and replaced the earlier, temporary 1953 **Additional Federal Compensation Act.**

The **Federal Compensation Act** was a comprehensive piece of legislation that covered all aspects of compensation for National Socialist Injustice not covered by the restitution laws. The law provided compensation to victims of persecution, including, *inter alia*, those who suffered bodily harm, damages to professional advancement, damage to property, damage to business or professional career. A claim for damage to real estate could be asserted regardless of the persecutee's domicile or permanent residence provided only that the real estate was located within the FRG (**Section 4, ¶ 7**). The **Federal Compensation Act** provided for compensation only, not actual property restitution. Compensation for damaged or destroyed property was capped at DM 75,000 and the loss had to have occurred because "the claimant migrated or fled Nazi oppression, was deprived of his or her liberty, lived 'underground' or was expelled or deported in connection with his or her persecution." (*Between Individual Justice and Mass Claims Proceedings*, p. 1046.)

In 1956, the German Supreme Court determined that where a claim for property to be restituted *in rem* was possible under the precursor **American Restitution Law**, compensation could not be paid out under the **Federal Compensation Act**. (*See* BGH, NJW 1956, 265.) All claims had to be filed by **31 December 1969** (the **1965 Final Federal Compensation Act** revised the deadlines initially included in the **BEG**).

Between 1 October 1953 to 31 December 1987, over four (4) million claims (4,383,138 applications) were submitted for compensation under the 1953 **Federal Additional Compensation Act**, the **Federal Compensation Act,** and the 1965 **Final Federal Compensation Act**. Over two (2) million applications (2,014,142 claims) were approved, over 1 million applications (1,246,571 claims) were denied and over 1 million (1,123,425) were otherwise processed (e.g., withdrawn). The number of applications processed after 1988 to present is small and Germany therefore does not maintain these figures.

As of 31 December 2011, the government paid out EUR 46.726 billion in payments under these three laws, of which EUR 216 million related to payments for damage to property – including movable and immovable (of which EUR 95 million was paid to individuals residing abroad). We do not have information was to how many of these claimants were Jews.

For more detailed information concerning the **Additional Federal Compensation Act**, the **Federal Compensation Act,** and the **Final Federal Compensation Act**, *see, e.g.*, German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions," November 2012; *see also* Constantin Goschler, "Jewish

Property and the Politics of Restitution in Germany after 1945" *in Robbery and Restitution* (Martin Dean, Constantin Goschler & Philipp Ther, eds. 2008) pp. 122-126.

3. 1957 German Federal Law on Restitution (FRG)

The 1957 **German Federal Restitution Law** (Bundesrückerstattungsgesetz) (**BRüG)** (and amendments) filled in gaps not covered by the **Allied Restitution Laws,** namely, providing for the compensation of property that was no longer traceable. The **Allied Restitution Laws** had failed to spell out evaluation criteria for determining compensation for properties that could not be restituted. In many instances, recommendations for compensation had already been made under the **Allied Restitution Laws**, but there was no means or mechanism to pay out the property claims.

The **BRüG** authorized Regional Finance Offices to review and authorize payment of "assessment resolutions" (i.e., provisional compensation recommendations that have previously been issued in accordance with the **Allied Restitution Laws**). As a result, under the **BRüG**, compensation claims accepted under the **Allied Restitution Laws** finally be paid out.

The **BRüG** determined that full compensation was to be paid for destroyed property or property not otherwise available for return based upon the replacement value on 1 April 1956. However, a ceiling for all compensation claims was initially set at DM 1.5 billion and claims were to be satisfied up to at least 50 percent (notwithstanding the fact that the total value of the claims was estimated to be DM 6-7 billion). (*Between Individual Justice and Mass Claims Proceedings*, p. 1045.) The DM 1.5 billion total compensation ceiling was removed in a 1964 amendment of the law.

Claimants had until **1 April 1959** to file a claim (**Sections 27-29b**).

As of 31 December 2011, EUR 2.023 billion in compensation had been paid out under the **BRüG –** including both movable and immovable property**.** The Ministry of Finance reported in 2012 that with a few exceptions, compensation under the **BRüG** is complete. Approximately 17% of payments made under the **Federal Compensation Law** (described in **Section C.2**) and the **BRüG** have been disbursed to individuals living in Germany, 40% to individuals in Israel and the rest to individuals living elsewhere.

For additional information on domestic governmental and judicial attitudes towards the **Federal Law on Restitution**, *see, e.g.,* Jürgen Lillteicher, "West Germany and the Restitution of Jewish Property in Europe" *in Robbery and Restitution* (Martin Dean, Constantin Goschler & Philipp Ther, eds. 2008), pp. 104-106. For additional information about the **Federal Law on Restitution,** *see* German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions", November 2012).

4. 1990 Act on the Settlement of Open Property (former GDR territory)

Prior to the unification of Germany in 1990, no restitution regime had been established for property lost during the Nazi era that was located in the GDR. An estimated 45,000 pieces of real estate and 10,000 businesses had been Aryanized in East Germany during World War II. A further 3.5 million East Germans left their homes and property after the war to resettle chiefly in West Germany (**FRG)**). Moreover, most industrial and agricultural property was expropriated during the Soviet rule and nationalized. Thus, at the time of unification, there was a complex web of outstanding property issues needing to be addressed.

In 1990, the GDR government passed the **Act on the Settlement of Open Property (Vermögensgesetz –VermG).** This law became applicable to the whole of Germany via the **Treaty on the Establishment of German Unity** on 29 September 1990. A 1992 amendment to the law added provisions to assist with restitution for victims of Nazi persecution. These included that victims of Nazi persecution were entitled to restitution, even if their property had been first Aryanized and then nationalized during the Soviet rule. (*Between Individual Justice and Mass Claims Proceedings*, p. 1050.) **Article 1, para. 6** also provided a beneficial presumption on proof of property loss for victims of Nazi persecution (similar to the **Allied Restitution Laws)**. (*Id.*) The **Act on Settlement of Open Property** addressed restitution only.

Article 3 of a companion law from 1994, the **Compensation and Adjustment Payments Act** (Entschädigungs- und Ausgleichsleistungsgesetz), contained a separate compensation law – the **Nazi Persecution Compensation Act –** for property takings that occurred between 1933 and 1945. A claimant could only file a compensation claim under the **Nazi Persecution Compensation Act** if a successful restitution claim had previously been decided under the **Act on Settlement of Open Property.** Compensation was paid from the **Federal Compensation Fund.** Compensation was calculated at four (4) times the last standard tax value of the property established before the loss (**Article 2**, **Nazi Persecution Compensation Act**).

These two (2) laws – **Act on Settlement of Open Property** and **Nazi Persecution Compensation Act** – permitted former owners (and their heirs) of property sold under duress during the National Socialist period (30 January 1933 – 8 May 1945) or confiscated by the Nazi regime, to claim property located in the former GDR.

The post-unification restitution regime was carried out via administrative law proceedings. No standard form was required to submit a claim to the **Open Property Office** (*Between Individual Justice and Mass Claims Proceedings*, p. 1055). Claimants could appeal against the decisions of the regional **Open Property Office** to administrative courts, and in some instances could file and appeal with the Federal Administrative Court. (*Between Individual Justice and Mass Claims Proceedings*, pp. 1064-1065.) Many cases are also resolved by out of court settlements. (*Id.*)

Judicial case law has confirmed that property initially confiscated in West Germany, but later relocated to East Germany, was subject restitution under the **Allied Restitution Laws** or laws of the FRG, but not the 1990 **Act on the Settlement of Open Property Issues**.

Real estate claims had to be filed by **31 December 1992**.

According to the German Ministry of Finance, "the value of the property returned to the victims of National Socialism under [the 1990 **Act on the Settlement of Open Property Issues]** can only be partially quantified. According to the [**Conference on Material Claims Against Germany**], more than € 724 million had been generated from the sale of restored property by the end of 2001." (2016 Germany Response to ESLI Immovable Property Questionnaire, p. 3.) By the end of 2011, more than EUR 1.83 billion had also been paid as compensation under the **Nazi Persecution Compensation Act** for property that either could not be returned or where the claimants exercised their right to choose compensation. (*Id.*) We do not have information on what proportion of the restored or compensated property belonged to Jewish individuals.

For additional information on the legal contours and social effects of the 1990 **Act on the Settlement of Open Property** and **Nazi Persecution Compensation Act**, *see, e.g.*, Caroline Dostal, Anke Strauss & Leopold von Carlowitz, "Between Individual Justice and Mass Claims Proceedings: Property Restitution for Victims of Nazi Persecution in Post-Reunification Germany", 15 German L.J. 1035 (2014); Constantin Goschler, "Jewish Property and the Politics of Restitution in Germany after 1945" *in Robbery and Restitution* (Martin Dean, Constantin Goschler & Philipp Ther, eds. 2008); Karen Helig, "From the Luxembourg Agreement to Today: Representing People", 20 Berkley J. Int'l L. 176 (2002). For additional information on current restitution and compensation figures for these laws, see Federal Bundesamt für zentrale Dienste und offene Vermögensfragen (Office for Central Services and Unresolved Property Issues), Unresolved Property Issues – Statistics (statistics available in German only)).

5. 2000 Foundation for Remembrance, Responsibility and Future

In 2000, the German Foundation **Remembrance, Responsibility and Future** (**"Foundation"**) was established as a result of a United States-Germany bilateral agreement. The Agreement became part of German law on 2 August 2000. While the main purpose of the **Foundation** was to provide individual humanitarian payments to former slave and forced laborers, the **Foundation** was also tasked with providing compensation payments to persons (wherever currently located) who suffered loss of or damage to property (movable, immovable, tangible or intangible) under the National Socialist era as a result of racial persecution or other Nazi wrongdoing, *which had been directly caused by German companies but who had been ineligible to file claims against Germany or German companies under previous legislation.* A total of DM 200 million

(EUR 102 million) was made available for property losses.[2] The Property Claims Commission, established by the International Organization on Migration (IOM), was responsible for processing all property claims. 5,000 claims were expected but over 35,000 claims were received by the **31 December 2001** deadline. Payments were made in 15,781 cases.

For additional information on the **Foundation**, the agreement leading to its creation, and the IOM's Property Claims Commission and disbursal of funds, *see, e.g.,* Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation "Remembrance, Responsibility and the Future", 17 July 2000; German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions", November 2012, pp. 11-12; International Organization for Migration, *Property Restitution and Compensation – Practices and Experiences of Claims Programmes,* (2008), pp. 31-33, 71-74; Stiftung Erinnerung Verantwortung Zukunft (Foundation Remembrance Responsibility Future), "History – Payments to former forced labourers".

6. Application of the German Civil Code to Restitution Cases

In limited instances, claimants have also been able to rely on provisions from the German Civil Code (and not the specialized restitution laws) to recover property confiscated during the Nazi regime. **Section 985** of the **German Civil Code (BGB)** states that "The owner may require the possessor to return the thing." The Germany Federal Supreme Court had determined that **Section 985 BGB** could be applied in restitution cases only if the code section was not superseded by special provisions concerning making amends for social injustice (i.e., particularized restitution laws). (*See Heir of Dr. Hans Sachs v. German Historical Museum* (BGH NJW 2012, 1796).)

As a result, with the exception of limited circumstances where the German Civil Code can be used, the time to file restitution claims for immovable property in the former West or East Germany has passed. The **Conference on Material Claims Against Germany** made blanket claims for the unclaimed property after the filing deadlines for the **Act on the Settlement of Open Property** had passed. Through the creation by the **Claims Conference** of ex gratia funds, individual owners who failed to timely make claims to the German government under the law were able to file a claim directly with the **Claims Conference** to recover a portion of their asset. However, the final filing deadline for the last of these late claim funds was in 2015. (*See infra,* **Section E.**)

[2] According to the Foundation, out of the DM 200 million, "DM 150 million was allocated to property losses due to National Socialist persecution and a further DM 50 million for other property losses sustained in connection with National Socialist injustice." (Stiftung Erinnerung Verantwortung Zukunft (Foundation Remembrance Responsibility Future), "History – Payments to former forced labourers".) However, due to the narrow definition of eligible claimants, the total amount of funds set aside for this claims process was not exhausted.

Since endorsing the Terezin Declaration in 2009, Germany has not passed any new laws dealing with restitution of private property.

D. COMMUNAL PROPERTY RESTITUTION

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> Property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

In the years after World War II, the FRG and GDR took different approaches to communal property restitution.

1. Communal Property Restitution in the Western Occupation Zones and the FRG

The **Allied Restitution Laws** (*see supra,* **Section C.1**) applied to both private *and* communal property restitution. Under this regime, communal property was technically declared heirless and was to be taken over by so-called "successor organizations" to be disbursed for the benefit of the Jewish survivors worldwide. The successor organizations were the **Jewish Restitution Successor Organization (JRSO)** in the American zone, the **Jewish Trust Corporation** in the British zone, and the **Branche Française de la Jewish Trust Corporation** in the French zone. According to scholars, the rationale behind characterizing communal property as heirless was the belief that the almost-destroyed postwar Jewish communities would not be able to manage all of their property and that they might not exist for very long.

Disagreements arose between the successor organizations and Jewish leaders in Germany who believed the German Jewish communities were the rightful successors to the communal property. This led to instances where the Jewish communities and the **JRSO** in the American zone registered separate claims for the same property. Despite initial lower court victories in favor of the Jewish communities, the highest restitution court ultimately sided with the **JRSO**, recognizing it to be the legal successor of communal property. During the same period, the **JRSO** also reached agreements with local Jewish communities, whereby communal property was apportioned between the two (e.g., **JRSO** received 60 percent of property in Berlin and the Jewish community got 40 percent).

For additional information on the return of communal property in western Germany, *see, e.g.,* Michael Brenner, *After the Holocaust: Rebuilding Jewish Lives in Postwar Germany* (1995 in German (1997 trans. English)), pp. 62 -65; David Cesarani, "The Aftermath of

the Holocaust", *in Encyclopedia of the Holocaust* (Robert Rozett & Shmuel Spector, eds. 2000), p. 91); Michael Meng, *Shattered Spaces: Encountering Jewish Ruins in Postwar Germany and Poland* (2011), p. 32.

2. Communal Property Restitution in the Soviet Zone (and the GDR)

When the GDR was established in 1949, the ruling Communist party of Social Unity (SED) largely renounced calls to enact widespread return of confiscated property, with one exception.

A **29 April 1948 Decree** provided for the "return of property confiscated by the Nazi state to democratic organizations." (Michael Meng, *Shattered Spaces: Encountering Jewish Ruins in Postwar Germany and Poland* (2011), p. 41 (quoting language from the Decree).) The **Decree** was meant chiefly for returning property to Communist groups but also applied to "church or humanitarian" groups. (*Id.* (quoting language from Decree).) The decimated Jewish communities had to rely upon the newly formed umbrella organization, the **State Association of Jewish Communities in the Soviet Zone** ("**Jewish Communities Organization")** to file claims before the **two-month deadline**. Yet, even the **Jewish Communities Organization** lacked resources to locate all Nazi-confiscated properties before the deadline. In the end, 122 pieces of property were recovered. (*Id.*) Success varied by region and in the case of East Berlin instead of property being returned, on 24 June 1948, the Soviets ordered that all Jewish property be placed under their direct control. (*Id.*, p. 43.) This included 70 properties belonging to the Jewish community. (*Id.*) Jewish groups tried to secure the return of the East Berlin properties during the years of the GDR with no success.

For additional information on the restitution of communal property in the Soviet zone and later, the GDR, *see, e.g.,* Michael Meng, *Shattered Spaces: Encountering Jewish Ruins in Postwar Germany and Poland* (2011), pp. 40-47.

3. Communal Property Restitution after Unification in 1990

The 1990 **Act on the Settlement of Open Property (Vermögensgesetz –VermG)** applied "to any property claims of citizens and associations who were persecuted from 30 January 1933 to 8 May 1945 for racial, political, religious or ideological reasons . . ." (**Section 1**). As a result, the law gave Jewish communities in the former GDR another opportunity to reclaim property that had been confiscated by the Nazi regime. Communities had until **31 December 1992** to file claims for the return of real estate.

At the time of unification, relying on the precedent of the previous successor organizations in western Germany (e.g., **JRSO**), the **Conference on Material Claims Against Germany ("Claims Conference")** (see also **Sections E.2** and **E.3**) negotiated to become the legal successor to individual Jewish property *and* property of dissolved Jewish communities and organizations that went unclaimed after the 31 December 1992 filing deadline. The status of "successor organization" permitted the **Claims Conference** to recover property from the former GDR where it could prove original Jewish ownership

of the property. The **Claims Conference** has also entered into an agreement with the umbrella organization of the Jewish community, the **Central Council of Jews in Germany,** to share proceeds of the sale of properties of the former Jewish communities and organizations in the GDR.

For additional information concerning the **Successor Organization**, *see, e.g.*, Conference on Material Claims Against Germany, "What We Do – The Successor Organization"; "Statement of Saul Kagan, Plenary Session on Nazi-Confiscated Communal Property" *in* Proceedings of the Washington Conference on Holocaust-Era Assets 30 November -3 December 1998, p. 700.

Since endorsing the Terezin Declaration in 2009, Germany has not passed any new laws dealing with restitution of communal property.

E. HEIRLESS PROPERTY RESTITUTION

The Terezin Declaration states "that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences." (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

The principle of using heirless property for the benefit of the most needy survivors breaks with established European legal tradition that heirless property reverts to the state. The revised concept was established in response to the unprecedented devastation of World War II.

The **Allied Restitution Laws** provided for the creation of a so-called "successor organization" (*See, e.g.,* American Restitution Law, Article 10.) Where Jewish property owners died without leaving any heirs and no timely claim was made for the return of the property, the successor organizations were empowered to file claims and use the proceeds from successful claims to provide relief to needy survivors worldwide.

1. Successor Organizations in the Western Occupation Zones

The **Jewish Restitution Successor Organization (JRSO)** was set up as the successor organization in the American occupation zone. The **Joint Trust Corporation (JTC)** was the successor organization in the British occupation zone. French authorities had initially vested the right to claim unclaimed property in the *Länder* (state) governments in its occupation zone but later set up the **JTC Branche Française** as its successor organization. A joint office, headed by the **JRSO,** was established in Berlin for recovery of properties located in the city. In order to expedite the heirless property claims process, the **JRSO** reached bulk settlement agreements with various West German *Länder,* which covered large amounts of property. In all, the **JRSO** filed claims for over 173,000 pieces of property in the American zone and ultimately collected more than DM 220 million.

2. Establishment of the Conference on Jewish Material Claims Against Germany (Claims Conference)

After the establishment of the FRG, in 1951 Chancellor Konrad Adenauer announced that the FRG would be willing to discuss reparation matters with Israel and representatives of the global Jewish community. In response, 22 Jewish organizations from around the world met in New York and founded the **Conference on Jewish Material Claims Against Germany ("Claims Conference")** to pursue material claims on behalf of the global Jewry. The Claims Conference presented to Germany a global claim whose amount was based chiefly on heirless property. After extensive negotiations, Germany entered into two (2) agreements, one (1) with Israel and one (1) with the **Claims Conference** on 10 September 1952 (the Luxembourg Agreements). Under the agreements, Israel received DM 3 billion in much-needed goods and services (and in return Israel waived compensation claims for Jews in Israel in 1952) and the **Claims Conference** received an agreement from the FRG that it would enact restitution laws and that DM 450 million would be paid to the **Claims Conference** to be used for the benefit of needy Holocaust survivors, living outside of Israel.

3. Claims Conference Successor Organization

After unification, the 1990 **Act on the Settlement of Open Property Issues** provided that a successor organization should be designated for heirless or unclaimed property located in the former GDR. This time, the **Claims Conference** was designated as the "successor organization" and was permitted to file claims for the return of or compensation for unclaimed property where a claim for the property was filed by the **Claims Conference** by the regular claims process deadline, 31 December 1992. As of 30 June 2015, the **Claims Conference Successor Organization** had filed 124,500 claims for real estate and businesses and the German restitution authorities had issued decisions in 111,075 claims, of which 16,133 (15 percent) were approved in favor of the **Claims Conference.** As of 31 December 2015, the total gross income (inclusive of sales, compensation, Wertheim, bulk settlements and property management) to the **Claims**

Conference Successor Organization was approximately EUR 2.50 billion. (Conference on Material Claims Against Germany, "What We Do – The Successor Organization".)

In addition to distributing these funds primarily to support the social welfare of survivors of the Holocaust, limited funds have been established for individuals who failed to timely make claims for property under the **1990 Act on the Settlement of Open Property Issues**.

The **Claims Conference Goodwill Fund** permitted owners of real property given to the **Claims Conference Successor Organization**, to make claims until 2004 (with certain exceptions).

The **Claims Conference Late Applicants Fund** permitted certain claimants who both failed to file under the 1990 law and missed the **Goodwill Fund** deadline to seek compensation from a fixed pool of EUR 50 million from 2013-2015. In 2015, the **Claims Conference** committed to compensating each eligible claimant in an amount not less than 33 percent of the value of the asset in question – even if the total amount paid to all successful claimants exceeded EUR 50 million. (*See* Claims Conference, Late Applicants' Fund Rules and Procedures (Updated November 2015).)

Moreover, the Ministry of Finance has reported that in order to speed up the process getting compensation to victims, comprehensive settlements were reached with **Claims Conference** in cases of a similar nature, where the **Claims Conference** is an eligible party. These included settlements reached in respect of damage to synagogues and their contents (settlement in 2002); damage to movable property and household effects (2004); damage to the property of self-employed persons (2006); for losses suffered with respect to security rights over land and bank account balances (2007); assets of organisations (2009); the clothing industry (2011/2012); securities (2012); businesses without immovable property (2013); small shareholdings (2013); compensation in accordance with section 1(1) of the Act on the Compensation of Victims of National Socialist Persecution (2014); and small shareholders – IG Farben (2014). (2016 Germany Response to ESLI Immovable Property Questionnaire, p. 3.)

Since endorsing the Terezin Declaration in 2009, Germany has not passed any new laws dealing with restitution of heirless property.

For additional information concerning heirless property and the successor organizations, *see e.g.,* Michael Brenner, *After the Holocaust: Rebuilding Jewish Lives in Postwar Germany* (1995 in German (1997 trans. English)), p. 64; Conference on Material Claims Against Germany, "What We Do – The Successor Organization"; Conference on Material Claims Against Germany, "Late Applicants' Fund Rules and Procedures (Updated November 2015)" (last accessed 4 May 2016); Caroline Dostal, Anke Strauss & Leopold von Carlowitz, "Between Individual Justice and Mass Claims Proceedings: Property Restitution for Victims of Nazi Persecution in Post-Reunification Germany", 15 German L.J. 1035 (2014); German Federal Ministry of Finance, "Compensation for National Socialist Injustice Indemnification Provisions", November 2012; Karen Helig,

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