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CEE newsletter

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AUSTRIA | Austrian Supreme Court narrows scope of "automatic stay" provision in Insolvency Act

The changes introduced by the Insolvency Law Reform Act 2010, as implemented in Section 25b para. 2 of the Insolvency Act, have put an end to the long-established and accepted legal practice of contracts being automatically terminated in the event that bankruptcy proceedings are initiated against a business partner. Under Section 25b para. 2 of the Insolvency Act, it is generally prohibited for one party to have a right of withdrawal or the right to terminate a contract in the event of the opening of insolvency proceedings. Since this change in the law came into effect, contractual penalties, sunset clauses, the right to transfer a contract to a third party or even changes to payment conditions have had to be assessed to ensure they comply with Section 25b para. 2 of the Insolvency Act if they are related to the opening of insolvency proceedings (see *Fichtinger/Foglar-Deinhardstein*, Die Zulässigkeit von Lösungsklauseln für den Insolvenzfall nach dem IRÄG 2010, insbesondere bei Kreditgeschäften, ÖBA 2010, 824).

Automatic stay is meant to remedy the situation

The basic idea behind this new regulation is completely understandable in light of the financial and economic crisis. After all, the chance of restructuring and continuing an enterprise ultimately depends on whether important contracts for recurring services are maintained (as already covered by Section 20e para. 2 of the former Reorganisation Code).

Admittedly, the flip side is that the contracting party has to remain tied to the insolvent business partner – often against its will and deprived of private autonomy. For this reason, a growing number of practitioners are calling for a means of lawfully "circumventing" such an "automatic stay", including those involved in the drafting of contracts (most recently *Hoenig*, Reichweite der Vertragsauflösungssperre der IO, RdW 2013/515; *Trettnak/Höfer*, Vertragsauflösung reloaded – Gedanken zur Vertragsgestaltung im Lichte der neuen Insolvenzordnung, ZIK 6/2010).

The most recent case-law of the Supreme Court reins in the ban on terminating contracts

It should come as no surprise to hear that it took quite some time for the Supreme Court to issue its first decision on Section 25b of the Insolvency Act. What is even more astonishing is that the Supreme Court ruled in its very first decision (1 Ob 157/13 i) that a clause providing for the automatic termination of a contract subject to the opening of insolvency proceedings is admissible, thereby restricting – so it would seem – the scope of application of Section 25b of the Insolvency Act as regards the drafting of contracts.

In the reasons for its decision, the Supreme Court stated that, in line with Section 20e para. 2 of the former Reorganisation Code, the intention of the legislature was to consider automatic termination justified if there are *other* reasons (meaning: "objectively justified" reasons) for termination of the contract.

In the case in question, part of the loan had been waived by the creditors (lenders) of the company in financial difficulty, subject to a condition subsequent that insolvency proceedings are opened. Thus, the period of respite granted to the company for restructuring purposes was brought forward, in the opinion of the Supreme Court. However, it is perfectly understandable that in doing so the lenders did not wish to dispense with the insolvency ratio of waived claims in the event restructuring efforts fail and this likely constitutes an objectively justified reason for termination of the contract. A ban on reinstating the claims that had been waived, based on Section 25b para. 2 of the Insolvency Act, would otherwise put the creditors who are striving towards restructuring at a disadvantage compared to other creditors.

New drafting possibilities guaranteeing legal certainty, even for creditors other than banks?

Banks acting as lenders and their advisers clearly fought hard to win the first case to come before the Supreme Court. However, if for instance suppliers of companies – for whom it is not unusual to act in the capacity of a lender – place their trust in the "objectively justified" reasons put forward by the Supreme Court, there is no apparent reason why they should not be able to anticipate the "period of respite" necessary for restructuring prior to the opening of insolvency proceedings. It would therefore be desirable that the future line of case-law dealing with Section 25b of the Insolvency Act will deem as admissible the sincere efforts of creditors to come to the aid of business partners in times of crisis,

for instance through customary extension agreements for amounts owed to suppliers.

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BELARUS | New regulations on representative offices

On 1 January 2014 new regulations came into force governing the procedure for the establishment and operation of representative offices by foreign companies in the Republic of Belarus (the "Regulations"). The Regulations were approved by Resolution No. 1189 of the Council of Ministers of the Republic of Belarus dated 31 December 2013 and aim to streamline the relevant legislation currently in force. At the same time, the Regulations tighten control over the representative offices of foreign companies in Belarus (the "Rep Office") and restrict the possibility for Rep Offices to conduct commercial activity.

Limitation of Commercial Activity of Rep Offices

Before 1 January 2014, Rep Offices in Belarus in practice performed (i) auxiliary activities (i.e. marketing, market research, etc.), as well as (ii) commercial activities. The Regulations clarified the scope of the legal capacity of Rep Offices. Now that the Regulations have entered into force, Rep Offices are entitled to perform auxiliary and subsidiary activities only. For example, Rep Offices may:

- take steps to improve cooperation and exchange commercial and technological information;
- conduct research into the Belarusian commodity markets; and
- conduct research into possibilities for investment and the incorporation of companies, etc.

Commercial activities, which are not auxiliary and subsidiary with respect to a foreign company's main business, including the conclusion of contracts and negotiating sale prices, may not be performed by a Rep Office in Belarus. As a result, the only option for foreign companies wishing to conduct business in Belarus is to establish a local Belarusian subsidiary.

Employment Regulations

To clarify the rules governing the employment of foreigners by Rep Offices, the Regulations allow a Rep Office to employ a maximum of five foreign or stateless individuals. Prior to 1 January 2014, there was no limit on the number of foreign/stateless individuals who could be employed by Rep Offices. As a default rule, the Ministry of Foreign Affairs granted Rep Offices permission to employ three foreigners. However, it was possible to increase the number of foreign/stateless individuals that a Rep Office could employ if the foreign parent company made a request to this effect in its application to open a Rep Office.

Furthermore, the Regulations also lay down that where Rep Offices employ Belarusian citizens, the contracts of employment concluded with such citizens are subject to and governed in accordance with the provisions of Belarusian labour law only. Previously, it was possible for the contract of employment of a Belarusian employee of a Rep Offices to be governed by the law of a foreign country provided such contracts were concluded beyond the territory of Belarus. This is now prohibited.

Summary

In general, the Regulations have introduced restrictions on the activities of Rep Offices in Belarus. The vast majority of foreign companies doing business in Belarus are now establishing local subsidiaries in addition to or instead of their Rep Offices. Thus, the Regulations are not welcomed by a large proportion of the business community. As a consequence, the Regulations may directly contribute to a deterioration in the investment climate in Belarus.

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BULGARIA | Recent developments in the renewable energy sector

Revocation of temporary fees for access to the electrical grid

In September 2012, the State Energy and Water Regulation Commission (the "Commission") introduced significant fees for access to the electrical grid. The fees were payable by those wishing to feed electricity produced from renewable energy sources into the grid. The highly controversial access fees were subsequently challenged by renewable energy producers and by its final decision in June 2013, the Supreme Administrative Court revoked the fees. The revocation of the access fees has retroactive effect, thereby allowing renewable energy producers to claim back any access fees paid under the now revoked resolution, on the grounds that unjust enrichment must be avoided.

New fees

(a) Permanent fees for access to the electrical grid

To replace the access fees that were revoked, the Commission adopted permanent fees for access to the electrical grid in March 2014. The new fees only apply to solar and wind energy producers, which has led to allegations of unequal treatment of solar and wind energy producers compared to other energy producers. Some producers challenged the permanent fees before the Supreme Administrative Court. The case is still pending.

(b) A new fee for producing energy from sun and wind

The fee was introduced in January 2014 by amendments to the Energy from Renewable Sources Act. Just as was the case with the permanent access fee, this fee only applies to solar and wind energy producers. The fee amounts to 20% of the electricity produced that is sold at preferential rates, and is paid quarterly. Although it is called a "fee", this new charge in essence constitutes a tax since no service is provided to the producers in return. Therefore, the "fee" has been challenged by the President of the Republic of Bulgaria before the Constitutional Court on the grounds that it is incompatible with the constitutional provisions for equal treatment, the rule of law, and the protection of investments, etc. The case before the Constitutional Court is still pending.

In conclusion, the chaotic legislative developments in the renewable energy sector over the past two years have created an uncertain investment climate by making it difficult for investors to predict profits and the return on their investments. At present, the situation is unclear as all of the abovementioned fees are subject to court proceedings. In the event the fees are held to be lawful by the respective courts, this would effectively worsen the investment climate in this and other industries. Foreign investors may explore the options available to them to start international arbitration proceedings under the applicable international treaties for the protection of foreign investments.

An overview of real estate case-law

To harmonise and unify the practice of the lower courts, the Supreme Court of Cassation ruled on the interpretation of Article 137 of the Bulgarian Commerce Act, which stipulates that real estate transactions conducted by a Bulgarian limited liability company (*Druzhestvo s ogranichena otgovornost*) fall within the competency of the shareholders (as opposed to the managing director). The decision of the Supreme Court of Cassation concerns the question of whether the absence of a shareholders' resolution for the transfer of title (or other property rights) over real estate makes the transfer itself null and void. The Supreme Court of Cassation ruled that the signature of the managing director on the property deed would constitute a valid and binding transfer even without the respective shareholders' resolution. However, in case of the absence of such a resolution, the managing director could be held liable for any damage caused to the company by such actions.

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CZECH REPUBLIC | Important milestones for companies in 2014

Apart from 1 January 2014, when new Czech legislation entered into force, there are still a few other dates that Czech companies should be aware of in terms of the most important changes in private law.

The most mentioned dates relating to the changes brought in by the new rules in the Czech Republic are undoubtedly 30 June 2014 and 1 July 2014. Below we focus on these dates in connection with the legal requirements introduced by the respective laws in the Czech Republic.

Key regulations relating to the changes forced by the new applicable laws have been incorporated into the final and transitional provisions of Law No. 90/2012 Coll., Business Corporation Act ("BCA").

Adaptation of Memorandum of Association

According to Section 777 (1) of BCA, all provisions contained in a company's Memorandum of Association which are contrary to the mandatory provisions of the BCA are null and void with effect from the date on which the BCA entered into force. Despite this fact, the BCA places an obligation on all Czech companies to bring all such documents into line with the BCA regulations within a period of six months of the entry-into-force of the BCA. Thereafter, the Memorandum of Association – as amended to ensure it complies with the new rules – must be submitted to the department at the Commercial Register responsible for the collection of deeds.

If any of these obligations is not fulfilled, the registration court is entitled to ask the company to fulfil its obligations within an additional period of time. If the company fails to fulfil its obligations within the additional period, a court may order the dissolution and liquidation of the company.

General opt-in into new corporate law

Section 777 (5) of the BCA states that it is possible to opt into the BCA. This would mean that the company and its internal matters would be fully governed by the BCA after such an opt-in. If such an opt-in is not undertaken, the company's matters would be governed by the mandatory rules of the BCA together with the previous regulations. Companies are recommended to opt into the BCA to avoid any doubts as to which rules apply and how they are to be interpreted. The second reason is that the BCA regulation brings greater flexibility for shareholders and more issues can be left to the discretion of the parties. This decision has to be made within two years of the effective date of the BCA at the latest, i.e. by 1 January 2016.

Adoption of Managing director's agreement

The managing director's agreement ("MDA") must contain the terms and conditions which apply to the relationship between the managing director and the company. The most relevant change introduced by the BCA relates to the remuneration of the managing directors. Newly, the remuneration rules must be explicit and they must be set out in detail in the MDA. If the respective changes are not reflected in the MDA by 30 June 2014 or 1 July 2014, the managing director's function will, with but a few exceptions, be considered as being exercised without entitlement to remuneration.

Changing the form of shares

The change relates to all Czech joint stock companies. On 1 January 2014, bearer shares were automatically converted into registered shares. The board of directors of the joint stock companies is obliged to ensure that (i) the company's Memorandum of Association and Statutes reflect this change and that (ii) the updated version is delivered to the department at the Commercial Register

responsible for the collection of deeds by 30 June 2014 at the latest.

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HUNGARY | New legislative regime concerning Hungarian agricultural land

Hungary has adopted new rules on agricultural land in connection with its EU membership. The matters covered by the changes include the acquisition of ownership, usufructuary rights and leaseholds. Although existing rights (that were obtained in a lawful manner) are generally not affected by the changes, the new rules may apply in certain cases where existing agreements are modified.

Historical overview

Before its accession to the EU, Hungary had strict rules on the ownership of agricultural land. From the start of the transition from a planned economy up until 1994, foreign (non-Hungarian) private individuals and legal entities could only acquire ownership of agricultural land with the consent of the Hungarian Ministry of Finance. Later, from 1994 onwards, the rules became even narrower: legal entities and foreign (non-Hungarian) private individuals were not allowed to acquire ownership of agricultural land at all.

Upon joining the EU, Hungary was granted a grace period in which to open up its market for agricultural land to all EU/EEA member states. This period ended on 30 April 2014. Hungary, therefore, had to adopt new rules that would come into effect on 1 May 2014.

Key changes

Persons entitled to acquire agricultural land

Under the new rules, private individuals and legal entities are not allowed to acquire unlimited ownership of agricultural land. Hungarian citizens and nationals of EU and EEA countries can acquire ownership of a limited area: 1 hectare of agricultural land. Nationals of third countries are generally barred from acquiring land.

Hungarian citizens and nationals of EU and EEA countries who hold an agricultural qualification or have carried on agricultural activity in Hungary for at least 3 years qualify as farmers. Farmers can hold ownership of and usufructuary rights over 300 hectares of agricultural land in total. Farmers can possess additional land in other forms (e.g. leasehold). However, the total area of land held by a farmer (including the lands in his/her ownership) may not exceed 1200 hectares.

Under certain conditions, the law allows specific legal entities to acquire ownership of agricultural land. These entities are the Hungarian state, local municipalities, officially recognised churches and institutions providing mortgages and credit (the latter for a limited time only). Agricultural collectives are only allowed to lease land (up to 1200 hectares), but not own it.

Right of first refusal

When agricultural land is put up for sale, certain persons/entities are entitled to exercise a right of first refusal. This includes (in the following order of priority) the Hungarian state, the local farmer using the agricultural land at the time the relevant agreement is concluded, other local farmers, and farmers whose place of residence or centre of agricultural operations is located within a 20 km radius of the land.

Upon conclusion of the sale and purchase agreement, those entitled to exercise a right of first refusal must be duly notified of the intended sale. Notice is given by posting an extract of the sale and purchase agreement at the offices of the local municipality. These rights holders have 60 days within which to notify the notary of the local municipality if they wish to exercise their right of first refusal. Upon expiry of the deadline, the notary forwards the agreement and any notifications by rights

holders to the agricultural authority.

Administrative approval of the acquisition

According to the new rules, the agricultural authority has to approve the acquisition before it becomes effective. First, the agricultural authority examines if the documents meet the standard validity requirements. If they do, the authority forwards them to the local land committee, a newly-formed body established in every settlement consisting of between three and nine local farmers and other users of agricultural lands.

The local land committee evaluates the agreement based on publicly available information in order to determine to the best of its knowledge whether:

- the agreement can be construed as an attempt to circumvent the statutory restrictions;
- the parties have previously and unlawfully entered into an agreement on the acquisition of the land (under the former regime), and the sole purpose of the new agreement is to give effect to the previous agreement;
- the buyer or the holder of the right of first refusal would acquire ownership without any real economic need, solely in order to accumulate land; and
- the price corresponds to the market value of the land.

The local land committee has to issue its opinion on the planned purchase of land. If the committee does not support the purchase by the buyer (and/or by any of those entitled to exercise a right of first refusal), the agricultural authority has to withhold its approval of the acquisition.

Usufructuary rights, rights of use, leaseholds

Without prejudice to previously and lawfully acquired rights, the new rules state that usufructuary rights and (general) rights of use cannot be established on agricultural land. A right to use land can however be granted under a lease agreement. Lease agreements on agricultural land can be concluded for a maximum of 20 years, and tenants can only be farmers and agricultural collectives (the latter being a special legal entity). As is the case with sale and purchase agreements, local farmers and agricultural collectives are granted a right of first refusal in connection with leases. Lease agreements are also subject to administrative approval.

Under the new regime, the right to use land can only be transferred without consideration to a close relative. Agreements previously concluded free of charge were terminated by operation of law as of 31 December 2014.

Transitional provisions

Agreements that were concluded under the old regime (before 2014) are governed by the previous legislation. Therefore, as a general rule, the new legislation has no effect on such agreements. However, the new laws do apply to any modifications made to these lease agreements if such modifications concern the term of the lease or the rent payable under the agreement.

Although agreements unlawfully concluded under the old regime (e.g. a sale and purchase agreement concluded with a national of an EU country) were always considered invalid, a recent law (Act VII of 2014) also declares the nullity of such agreements. Furthermore, according to this act, the consideration paid in connection with an unlawful agreement (e.g. the purchase price) cannot be reclaimed by the buyer in court (so-called '*naturalis obligatio*').

Since 2012, entering into an agreement aimed at the acquisition of ownership, usufructuary rights or the right to use agricultural land by circumventing statutory restrictions has constituted a criminal offence punishable by imprisonment of between one and five years. In addition, the Public Prosecutor's Office has been granted investigative powers to discover unlawful agreements concerning agricultural land. If a prosecutor identifies such an agreement, he/she may file a civil lawsuit so that the land is returned to the previous owner (or to the state).

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ROMANIA | Accessing European Funds in Romania in 2014

The cohesion policy of the European Union for 2014-2020 will make up to EUR 366.8 billion available for investment in the real European economy. Structural funds are financial instruments managed by the European Commission, the main purpose of which is to provide aid at the structural level. The financial support is mainly granted for the aim of consolidation in regions which are less developed, ensuring economic and social cohesion within the European Union.

Romania's gross domestic product ("GDP") grew in 2013 by 3.5% against the previous year, representing the third consecutive year of growth. The increase in GDP of 3.5% in 2013, the highest rate recorded by the Romanian economy over the past five years, puts Romania ahead of all European Union member states, with the European Union average being 1.0%.

The global objective of the European funds, with respect to Romania, is to reduce the gap between Romania's economic and social development and that of other European Union member states. In order to achieve steady economic growth and increase the country's purchasing power standard ("PPS"), Romania should focus its resources and European Union funding on: (i) competitiveness and local development; (ii) people and society; (iii) administration and government; (iv) infrastructure; and (v) resources.

For the 2014-2020 Partnership Agreement, Romania is expecting an indicative allocation of financial support of EUR 30 billion, funds which shall be used to strengthen twelve key areas. In particular, funds have been allocated to: 1) strengthen research, technological development and innovation – EUR 858 million; 2) enhance access to and the use and quality of information communication technology – EUR 531 million; 3) improve the competitiveness of small and medium enterprises, as well as businesses operating in the agriculture and aquaculture sectors – EUR 3,027 million; 4) support the shift towards a low carbon economy in all sectors – EUR 3,817 million; 5) preserve and protect the environment and promote resource efficiency – EUR 4,632 million; 6) promote sustainable and quality employment and support labour mobility – EUR 1,877 million; 7) invest in education, training, and vocational training for skills and lifelong learning – EUR 1,647 million; and 8) enhance the institutional capacity of public authorities and stakeholders and an efficient public administration – EUR 1,034 million.

The authorities responsible for managing European funds have communicated their intention of simplifying the procedure for accessing the funds. From 2014 onwards, it might therefore be easier to finance projects with European funds than it was during the years 2007-2013. The number of market participants able to benefit and increase the value of their businesses and their contribution to the global objective may rise as a result.

The European funds may be used for investments in corporeal or incorporeal assets, such as technological equipment, furniture and office equipment and patents, licenses, trademarks and other similar rights and assets. As a principle, the European funds may be used to cover consulting expenses, except for projects undertaken by large companies.
The necessary documents for the project mainly include up-to-date company documents, specifying the financial status of the company and property/usage rights for the location where the acquired assets are to be placed.

Production and Service

European funds are available for companies performing production or service provision activities, such as: (i) the creation of new production units, (ii) the extension of an existing unit, (iii) company development and (iv) the setting up of a new company. The funds allocated for individual projects range from EUR 50,000 to EUR 2,000,000 for a maximum of 3 years. The co-financing contribution of companies may range from 40% to 70% of the project's value.

Information and communication systems and other integrated electronic devices for business purposes ("IT")

European funds may be used to acquire and install (i) integrated systems and other electronic devices for business purposes, such as computers, servers, periphery equipment, network equipment, etc., (ii) other equipment for IT applications, and (iii) IT applications, licenses, trademarks and know-how. The allocated funds for individual projects range from EUR 150,000 to EUR 2,500,000 for a maximum of 3 years. The co-financing contribution of companies may range from 40% to 60% of the project's value.

Human resources development ("HRD")

Companies interested in the HRD market may also be eligible for funding if the company aims to (i) achieve certification as a provider of HRD services; (ii) develop training facilities and the curriculum and establish the methodologies and processes for training; (ii) pay trainers and grant subsidies to trainees in order to participate in training sessions; (iv) provide hands-on activities for trainees and guidance on the acquired skills; (v) develop experimental laboratories for practical activities involving trainees; and (vi) introduce electronic tools and content for developing target group skills. The funds allocated for individual projects range from EUR 50,000 to EUR 1,000,000 for a maximum of 3 years. The co-financing contribution of companies may range from 40% to 60% of the project's value.

Investing in projects co-financed by European funds increases the quality and price competitiveness of products and services of each company implementing such incentives.

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SLOVAKIA | Short-term lease of apartments

On 1 May 2014, Act No. 98/2014 Coll. on the Short-term Lease of Apartments ("Act on the Short-term Lease of Apartments") entered into force. When preparing the new law, the legislator's primary objective was to increase the number of apartments available for lease on the Slovak market. To achieve this aim, the legislator decided to reduce the level of protection afforded to tenants. However, as the reduced level of protection for tenants seems to be the only incentive, with other stimuli being entirely absent, it is questionable whether the new law will make a significant contribution to increasing the number of apartments for lease in Slovakia.

Scope of application

As already suggested by its title, the Act on the Short-term Lease of Apartments applies to apartments leased for a definite period of time. It applies only to apartments leased for a maximum of 6 years, including all extensions of the lease agreement. However, certain categories of apartments are excluded from its scope of application. These exceptions include for instance official lodgings and apartments in the ownership of municipalities, self-governing regions, the capital city Bratislava, the city of Košice and their respective districts.

According to the Act on the Short-term Lease of Apartments, a short-term lease is based on a written lease agreement for a fixed term of a maximum of two years. During the lease, the lease agreement may – with the agreement of both contracting parties – be extended by two years on no more than two occasions under the same conditions. Hence, the total maximum duration of a short-term lease is six years.

Termination of the lease agreement

The new law also provides a list of reasons entitling both the landlord and the tenant to terminate the contract. It is a demonstrative list since the provision concerned explicitly states that parties may agree upon other reasons for termination in the lease agreement. However, the grounds for termination agreed in the lease agreement must be of such a nature that the parties cannot

reasonably be expected to continue their relationship under the lease agreement. Since the court will have the final say on what can and cannot be reasonably expected, the vagueness of this condition may in future lead to many uncertainties when invoking the grounds for termination, particularly in light of the fact that almost no case-law exists on this issue.

Therefore, even if grounds for termination have been agreed upon in the lease agreement, this still does not mean the termination will not be considered invalid by a court.

Rescission of the lease agreement

The law also makes it possible for both contracting parties to withdraw from the lease agreement for reasons specified in the lease agreement or laid down in the Act on the Short-term Lease of Apartments. What is interesting in this respect is that the landlord is entitled to cancel the contract if the tenant, despite having been sent written notification, continues to violate such obligations the violation of which gives the landlord the right to terminate the lease agreement. As the sending of a written notification to the tenant is the only condition that has to be met to cancel the lease agreement, this might in certain cases lead to this right being abused by landlords. To circumvent the notice period, the landlord may send written notification to the tenant and subsequently rescind the contract. In such a case, the tenant has to file an application with the court requesting that the contract rescission be deemed invalid. However, since the application has no bearing on the legal effect of the rescission of the contract by the landlord, the tenant is obliged to vacate the apartment within five days from the end of the lease agreement. In case of rescissions, the lease agreement is cancelled immediately after the rescission of the lease agreement has been served on the other contracting party.

Deposit

The landlord and the tenant may agree in the lease agreement that a deposit has to be paid by the tenant to cover any rental payments that go unpaid, compensate for damage to the apartments or its facilities or to compensate the landlord for other receivables due from the tenant under or related to the lease agreement.

The maximum deposit must not exceed three months' rent. Unless otherwise agreed, the landlord is obliged to return the deposit or what remains of it within one month of the apartment being vacated and all receivables from the lease being settled between the parties.

Landlord's right of retention

If the apartment is not vacated or handed over to the landlord within 10 days of termination of the lease agreement or within five days of rescission of the lease agreement, the landlord has a right of retention with regard to the tenant's movable items in the apartment, except for items excluded for reasons of debt collection and where the remaining part of the deposit is insufficient to satisfy the outstanding receivables due from the tenant.

Preclusion period

Where one of the contracting parties is of the view that the cancellation of the lease agreement is invalid, it must submit a claim with a court within two months of the date of service of the termination or rescission of the lease agreement. Otherwise the contracting party loses its right to claim that the cancellation of the lease agreement is potentially invalid.

Tax implications

The short-term lease of apartments is subject to income tax. In addition, the landlord is obliged to file an application for registration with the tax authority no later than the end of the calendar month following the month in which he/she leased the apartment. If the landlord fails to register with the tax authority within the above mentioned period, the provisions on the termination and rescission of the lease agreement as well as the preclusion period do not apply to the contractual relationship. Hence, the legislator *de facto* forces a potential landlord to register with the tax office if he/she wants to be subject to the more favourable scope of application of the Act on the Short-term Lease of Apartments. Otherwise such relationship is covered by the provisions of the Civil Code.

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