

## Commercial Property - Austria

### Act on Late Payment introduces mandatory rules for rent payments

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

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#### Introduction

Parliament recently introduced the Act on Late Payment, implementing the EU Directive on Combating Late Payment in Commercial Transactions (2011/7/EC).

The act aims to improve payment behaviour by introducing new due dates and increased interest rates. It entered into force on March 16 2013 and will affect payments due under existing agreements in the same way as new agreements. It concerns payments in commercial as well as non-commercial transactions.

#### New due date for rent payments

The act generally provides (not only with regard to rent payments) that payments made by way of bank transfer must be credited to the account of the creditor on or before the due date; it is no longer sufficient to instruct the bank on the last day of the payment period. However, the act takes into account that tenants in such cases would typically not be in a position to pay their rent on time, as they are likely to receive their wages on the last day of each month. Therefore, the act introduces new payment dates for rent agreements.

In Austria, there are different sets of rules in place for rent agreements depending on the type of property and the parties involved (for further details please see "[Overview \(December 2004\)](#)"). The act follows these principles and contains new provisions for each of these sets of rules:

- In lease agreements to which the Rent Act is fully applicable (eg, leasing objects in buildings that were constructed without public subsidies and on the basis of a building permit issued on or before June 30 1953), rent payments must be effected on or before the fifth day of each month. The parties may agree on a later due date, but not an earlier due date.
- In lease agreements to which the Rent Act is partially applicable (eg, leasing objects in buildings which were constructed with public subsidies or on the basis of a building permit issued after June 30 1953) and lease agreements which do not fall within the scope of the Rent Act at all (eg, single family houses or standalone commercial units), in the absence of an agreement to the contrary, rent payments must also be effected on or before the fifth day of each month. The parties may deviate from this rule in either direction (ie, they may also agree on an earlier due date).
- In consumer agreements (including rent agreements), payments by the consumer to a commercial entity are deemed to be on time if the consumer has instructed his or her bank to effect payment on the last day of the payment period.

#### New interest rates

In addition, the act introduces new interest rates for late payment in commercial transactions. These new rates also apply to rent payments. In general, the interest on late payments will increase to 9.2 percentage points above the central bank lending rate. The rate issued on January 1 and July 1, respectively, is valid throughout the following six months. The creditor can also request a lump sum of €40 as reimbursement for costs necessary to claim payment.

## Entry into force and transitional provisions

The changes regarding the due date entered into force on March 16 2013. The new rules also apply to lease contracts concluded before March 16 2013 with regard to payments that become due after that date:

- In lease agreements to which the Rent Act is fully applicable, the maturity date for rent payments has changed to the fifth day of each month (unless a later day has been agreed on in the original agreement).
- In lease agreements to which the Rent Act is partially applicable or which fall outside the Rent Act, the maturity date for rent payments has changed to the fifth day of each month (unless any other due date is specified in the agreement).
- In non-consumer contracts, payments maturing after March 16 2013 must be credited to the creditor's account on or before the due date.

The new interest rate will apply to agreements concluded after March 16 2013.

## Comment

It is difficult to see how the additional administrative burden that comes with the new set of rules can be justified by marginal benefits to creditors, given that bank transfers usually do not take longer than one day.

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