

# Lessor's lien right in case of lessee's insolvency

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**Lessors' general lien right**  
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In order to secure outstanding rental payments, the Austrian legal system allows lessors to attach items that the lessee brought onto the leased property. A lessor may also exercise its lien to secure and satisfy outstanding rental payments if the lessee becomes insolvent. However, the specific features that must be considered in insolvency cases present a number of challenges for both the insolvency trustee and the lessor. As such, lessors often fail to benefit fully from their rights.

## **Lessors' general lien right**

A lessor's lien secures all claims which qualify as 'compensation' (in the broadest sense of the term) in return for having made the leased property available. Liens also cover operating expenses, ancillary claims (eg, interest) and taxes payable by a lessee of a business.

All movables that were brought onto the leased property and are owned by the lessee may be attached. The lien comes onto existence once the items are brought onto the leased property and ceases to exist once these are removed. In addition, items owned by family members living in the same household as the owner may be attached. Items owned by third parties cannot be attached. In practice, purchased items whose title has been reserved are of particular importance.

If a lessee is in arrears with payments, the lessor may request that individual attachable items be listed for attachment, meaning that certain items are marked and recorded by a court bailiff. Although a lien was already created before the items were listed for attachment, it will expire when the items to be attached are removed from the leased property. Thus, it is reasonable to list items for attachment rapidly in order to secure the lien right.

## **Special features in insolvency law**

A lessor may assert and exercise its lien if a lessee becomes insolvent. However, only rental payments accrued in the year preceding the opening of the insolvency proceedings may be attached. The lessor's lien is thus significantly restricted in cases of insolvency.

If the lessee is insolvent, it is particularly important to procure the items listed for attachment without delay, as liens will expire not only once the items are relocated, but also if they are sold by the trustee before they are listed for attachment. Therefore, the lessor must act quickly in order to assert outstanding rental payments and apply to have the items listed for attachment. In practice, lessors should also contact the insolvency trustee immediately to discuss any additional course of action.

Finally, lessors should consider reaching an agreement with the trustee on the sale of the pledged items. Should the trustee acknowledge and realise the lien quickly, the lessor can benefit from significant cost savings. From a purely commercial perspective, even releasing part of the proceeds could be justified in many cases. If the trustee does not acknowledge and realise the lien, it will be necessary to take separate legal action and pursue execution proceedings. Although this is also possible during insolvency proceedings, the lessor would face considerable costs and invest a

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significant amount of time.

### **Comment**

In case of a lessee's insolvency, a lessor's lien right is an excellent opportunity to secure and recover – at least a portion of – outstanding rental payments. However, lessors must act quickly in order to take full advantage of their liens in insolvency proceedings – in particular, rapidly securing a lien can prove to be a considerable advantage for the lessor.

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