

Insolvency & Restructuring - Austria

Protecting tenants from eviction in rescue proceedings

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

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For a successful rescue to take place, the business premises must remain available for the continued operation of the company. Consequently, Section 12c of the Insolvency Code protects the debtor from eviction in rescue proceedings.

When a trustee makes an insolvency application, proceedings to remove a tenant from the premises where a company operates its business (eg, due to unpaid rent for periods before the insolvency proceedings were initiated) must be suspended until either the company has been closed down or the rescue plan has failed.

A company cannot be evicted from the leased premises on which it operates its business even after a rescue plan has been successfully implemented. If the landlord receives the full return determined in the rescue plan, the suspended eviction process must be terminated on application of the company and the lease shall be deemed to continue. The landlord's claim will revive and the extension lapse only if the company:

- defaults on paying the return determined in the rescue plan; and
- fails to pay within a grace period of at least 14 days, granted by the creditor in writing.

In line with this principle, in a November 16 2012 ruling⁽¹⁾ the Supreme Court held that a landlord may proceed with eviction proceedings if:

- the lease had been terminated before insolvency proceedings were commenced;
- the landlord had waived its right to insist on the tenant's eviction on the condition that:
 - unpaid interest on rent would be paid in instalments; and
 - new rental payments would be paid on an ongoing basis; and
- the tenant defaulted on further rental payments, even after the rescue plan was approved and the rescue proceedings suspended.

The court held that Section 12c of the code tacitly implies an obligation to pay for use. Eviction proceedings can therefore be resumed whenever a tenant defaults on payments in breach of this obligation.

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Endnotes

(1) 6 Ob 195/12p.

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