
THE REAL ESTATE LAW REVIEW

THIRD EDITION

EDITOR
DAVID WATERFIELD

LAW BUSINESS RESEARCH

THE REAL ESTATE LAW REVIEW

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Editor
DAVID WATERFIELD

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EDITOR'S PREFACE

Building on the success of the previous editions of *The Real Estate Law Review*, the third edition now extends to some 40 jurisdictions, and we are delighted to welcome new contributors from key countries around the world. *The Real Estate Law Review* seeks to enable practitioners and clients to meet the challenge of keeping abreast of the rapidly evolving global real estate market. Each chapter offers an up-to-date and accessible summary of the key legal and practical developments in the relevant jurisdiction, and a vital snapshot of the important market drivers, trends and opportunities. Together, the chapters provide an invaluable overview of international real estate.

It is no longer possible to look at domestic markets in isolation; real estate has become a global industry, and *The Real Estate Law Review* reflects that status. An awareness of the global real estate market and an understanding of the practices and requirements of overseas investors are vital if practitioners and their clients are to take advantage of investment trends and opportunities as they develop.

The Real Estate Law Review continues to provide an overview of the state of the international real estate market, including the types of investor, the sources of funding and those assets that are in demand. In general, the focus remains on prime properties in the world's leading global cities as investors continue to seek a safe haven for their capital. Although this remains the case with London, investors are starting to see opportunities in the wider UK market, and we are generally more optimistic than at this time last year. However, positive recent news, data and forecasts must still be considered in the light of continuing economic and political challenges, including the next US fiscal cliff, uncertainty in emerging markets and the stability of the eurozone.

Once again, I wish to express my gratitude to the distinguished practitioners from across the globe who have provided invaluable contributions to this edition. As ever, I would also like to thank Gideon Robertson and his team for their sterling efforts in compiling this third edition of *The Real Estate Law Review*.

David Waterfield
Slaughter and May
London
February 2014

Chapter 1

AUSTRIA

*Peter Madl*¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

The principal laws governing real estate in Austria are:

- a* the General Civil Code 1811;²
- b* the Building Right Act 1912;³
- c* the Condominium Act 2002;⁴
- d* the Building Development Contract Act 1997;⁵
- e* the Tenancy Act 1981;⁶
- f* the Land Register Act 1955;⁷
- g* the laws governing the acquisition by foreigners of land of the nine federal states;
- h* the Real Estate Investment Fund Act 2003;⁸ and
- i* the building laws of the nine federal states.

Ownership of land and ownership of a building erected thereon are usually not separated; there are, however, two exceptions. The Building Right Act permits the landowner to give title to any buildings erected on the land (whether already existing or erected in the future) to another person for a period of between 10 and 100 years. At the end of

1 Peter Madl is a partner at Schönherr Attorneys at Law.

2 As amended by the Federal Law Gazette 2013/179.

3 As amended by the Federal Law Gazette 2012/30.

4 As amended by the Federal Law Gazette 2012/30.

5 As amended by the Federal Law Gazette 2013/159.

6 As amended by the Federal Law Gazette 2013/50.

7 As amended by the Federal Law Gazette 2012/30.

8 As amended by the Federal Law Gazette 2013/184.

the agreed period, the title to the buildings reverts back to the landowner. The second exception is that, before a building is erected, the landowner may agree with the tenant that this building will be built by the tenant on a temporary basis and thus does not become part of the land (*superficies*). As opposed to the building right, the *superficies* is not entered in the land register, and therefore is not as secure; nor does it serve as security for financing as easily.

ii System of registration

The land register covers the real estate of a particular district and is kept by the district court of the district in which the property is situated. It is maintained in an electronic database that has limited public access (i.e., to notaries public, lawyers and other entities that have a legal interest, e.g., banks). Excerpts can be obtained from any district court, or in electronic form from other institutions having access to the database. Since 2005, not only the land register excerpt itself, but also the underlying documents (e.g., the purchase contract), are available electronically. It is not possible to protect from disclosure confidential information that is contained in documents that are the basis for the entry in the land register; however, it is permissible to conclude side letters that are not submitted to the land register.

The land register consists of the general ledger and archives. The general ledger contains a land register enclosure for each existing surface area, which also includes the estate's lot number.

The individual enclosure contains three parts (folios):

- a* details of the property: the A folio covers two departments. In the first department (the A1 folio), properties are registered with their respective lot number and disposition of use, size and address; the second department (the A2 folio) contains the rights and public restrictions connected with the real estate (e.g., easements on the entitled property, write-offs, public restrictions and burdens);
- b* ownership: the B folio contains details about the proprietorship structures; and
- c* encumbrances (mortgages, easements): the C folio shows encumbrances on the real estate, in particular mortgages, easements, real burdens, prohibitions of sale or encumbrance.

Under Austrian law any grant, transfer or limitation of rights pertaining to real property generally must be registered in the relevant land register to bind third parties. Therefore, a proprietorship in real estate may only be transferred on the basis of a legal title (e.g., a purchase contract) by registration in the land register. Unless a legal transaction involving real estate is registered, the party to the contract has only a contractual claim for performance against the other contracting party.

In a very limited number of exceptions to this principle, title passes without an entry in the land register: this is the case with adverse possession, inheritance, mergers and demergers (universal succession). However, even in these rare exceptions, the right is lost again if a third party acquires the title in good faith from the registered owner.

Applications to the land register must be submitted electronically by persons with access (especially solicitors and notaries public). This change, from submitting

applications to the land register by post, has reduced the time needed for registrations and publication of the documents that are the basis for the entry.

iii Choice of law

The parties are free to choose the law governing the contract and the court that will have jurisdiction over any disputes relating to the contract. Austrian law is, however, mandatory regarding rights *in rem* to real estate located in Austria. Further, any disputes concerning such rights *in rem* mandatorily fall within the jurisdiction of the Austrian courts. International laws are, therefore, not relevant to real estate in Austria; however, international treaties and conventions regarding real estate are applicable.

II OVERVIEW OF REAL ESTATE ACTIVITY

Certain market participants had restructuring phases because of changed circumstances in Europe after the crisis from 2008 to 2011. However, even during the crisis, the Austrian market remained comparatively stable; the transaction volume decreased, but the prices did not decrease as much as in other countries. Although the majority of the transactions still took place between domestic parties, especially private foundations and family offices invested in apartment and office buildings in prime locations, some German funds, which used to be major investors, made a return as buyers. Even those German funds that have to sell their assets as the funds are now closed have come back with other funds as buyers; however, for these funds the prices are still rather high, and it is difficult to establish deals for them. In 2013, banks and insurance companies sold off buildings in prime locations at rather low yields, which attracted interest from buyers wanting to have landmark buildings in their portfolio.

Investment in the property market was weak in the first three quarters of 2013, but was expected to rise in the fourth quarter, and the total transaction volume for the year is expected to be approximately €1.6 billion, missing the level of 2012 by €0.2 billion or 11 per cent.⁹

The volume of investment related to office buildings decreased compared with 2012, while there was a remarkable increase in investments in residential buildings. Investments in hotels, retail properties and logistics remained stable.

The prime initial yield for newly built office properties with long-term leases in very good locations (outside the city centre) amounted to 4.8 per cent at the end of 2013; this has decreased further since 2012. Yields in good locations decreased slightly and remained steady in average locations. The difference in yields in distinct locations (e.g., very good locations, good locations, average locations) became larger again in 2013, and this gap will continue to widen.

After coming under considerable pressure in 2011, the rental market remained stable in 2012 and 2013. Rents did not increase, except in top locations, where the highest achievable rent increased slightly. However, tenants were able to negotiate more incentives, such as rent-free periods (approximately one month per year of a fixed lease

9 Source: CBRE.

period for the tenant) and contributions to fit-out works, just to keep the nominal rental figure up at the same level. The vacancy rate increased slightly from 6.6 per cent at the end of 2012, and is expected to be close to 7 per cent by the end of 2013. 2013 saw the lowest number of finished projects for many years, and the beginning of a tendency for older office buildings to be converted into apartment houses, especially in the centre of the city. This may lead to a change, with the market becoming a landlord's rather than a tenant's market.

III FOREIGN INVESTMENT

The acquisition of real estate by foreign nationals is governed by federal state laws. This is also true for the acquisition of certain rights such as usufruct, building rights or long-term leases, depending on the respective state.

In almost every federal state in Austria, foreign nationals must obtain prior approval from the land transfer authority to purchase land. This also applies to companies where a foreign national is a majority shareholder.

Under some land transfer acts, the acquisition of shares or the increase of shareholdings in an Austrian limited liability company or partnership is subject to the prior approval of the land transfer authority if this company or partnership owns real estate located in the relevant states.

Under all land transfer acts, EEA or EU citizens and companies are treated in the same way as Austrian citizens or companies. Swiss natural persons who have their permanent residence in Austria are also treated like Austrian citizens (although this does not apply to Swiss-based companies).

The foreign national must prove an economic, social or political interest with regard to the Austrian state in which he or she wishes to acquire land or the respective right. The most usual reason given is economic interest: the foreign national wishes to invest to create new jobs in Austria.

All federal state laws (with the exception of those of Vienna) provide restrictions on the acquisition of agricultural land and forest areas. Agricultural land is most commonly defined as a plot suitable for agricultural use. Acquisition of title on these properties depends on the approval of the competent land transfer authority irrespective of the nationality of the buyer and, therefore, in addition to the approval needed by foreign nationals. A formal application must be filed with the competent land transfer authority. The land transfer authority will approve the acquisition of agricultural land if it complies with the requirements of the respective federal state law; in most cases, other farmers in the region have priority rights, and the buyer must prove his or her ability to run an agricultural business.

IV STRUCTURING THE INVESTMENT

Commercial real estate projects are structured either as a straightforward asset deal or as a share deal with special purpose vehicles (SPVs). Even in asset deals, however, the buyer is often structured as an SPV to have both exit options.

The asset deal triggers land transfer tax of 3.5 per cent and a fee for registration in the land register of 1.1 per cent of the consideration (including possible value added tax (VAT)). On the other hand, the basis for depreciation is the actual purchase price and therefore higher than in the case of a share deal, and interest for financing is easily deductible at the level of the owner of the land. The asset deal also avoids the risk of latent taxes if at a later stage an exit via an asset deal is contemplated. The share deal avoids any risks to the buyer in respect of the transfer of contracts, especially lease contracts, but has a higher risk in respect of liabilities within the SPV.

Depending on the holding or ownership structure of such SPVs, the most common structures seen in the Austrian market are a limited liability company and a limited partnership.

The suitability of particular structures for real estate investment will largely depend on their tax attractiveness for the intended investors, as well as on the costs and ease of operating the holding structure. The regulatory limits on the types and origin of investments that bind some domestic institutional investors, in particular pension funds, may also bear on the structuring of the investment.

i Limited liability company

Limited liability companies are attractive and easy-to-operate investment structures, especially popular with foreign funds and other investors who are not bound by any special regulatory restrictions determining the desired form of investment. An Austrian limited liability company will be taxed with corporate income tax at a rate of 25 per cent; however, the overall tax burden will largely depend on the holding structure.¹⁰ Moreover, limited liability companies may not be the most attractive or effective structures for some types of investors.

In its basic form, a limited liability company needs to have a management board consisting of at least one management board member.

It is possible for one investor to hold all the shares in a limited liability company; however, the acquisition of 100 per cent of the shares (in one step or in several steps) does trigger land transfer tax at a rate of 3.5 per cent of three times the standard value of the property, and is therefore to be avoided.¹¹

ii Limited partnerships

A limited partnership established under Austrian law is not a legal entity, but it may acquire property, including real estate, in its own name. A limited partnership must have at least one general partner who is liable for the debts of the partnership without any limitation, and at least one limited partner. It is common that a limited liability company becomes a general partner in a limited partnership and is not entitled to the

¹⁰ Upon distribution of profits, a withholding tax from 25 per cent of the profit distributed becomes due, which leads to an overall tax burden of 43.75 per cent; depending on the holding structure, this withholding tax can be reduced to zero.

¹¹ The standard value is an assessed value for tax purposes calculated in accordance with the Valuation Law, which is normally considerably lower than the market value.

profit, but receives only a fixed fee for the management tasks and for assuming the risk as the personally liable partner.

From a corporate income tax perspective, the limited partnership is transparent (i.e., no taxation at partnership level, and tax paid only at shareholder level).

Despite the relatively complicated structure and higher costs, the above investment scheme is very attractive for investors. The costs of the structure are outweighed by the tax benefits, especially in the case of larger investments, and the availability of the scheme to institutions makes it an interesting option for structuring real estate investments.

V REAL ESTATE OWNERSHIP

i Planning

Building, regional planning and zoning regulations are subject to state legislation. The laws of each federal state vary in detail but follow the same basic principles.

The building laws set out basic material and procedural rules for regional development and building constructions. Each municipality enacts a zoning plan and building regulations based on these rules, to govern the development of and set maximum limits for construction in certain areas (such as recreation and industrial areas).

Prior to the construction of a new building, it is necessary to obtain a building permit. The building laws list exhaustively the cases in which a building permit must be obtained. Construction work may not be carried out before the permit has been granted and has become effective and final. Furthermore, a building permit is appurtenant to the property. Therefore, the building permit remains effective for the successive owner of a property, even if it was granted to his or her predecessor. The building permit grants the right to carry out the building project underlying the application, and expires after a certain term, during which the construction has to start, which depends on the applicable regional building law (e.g., a building permit in Vienna is valid for four years according to the Viennese Building Act).

ii Environment

According to the Clean-up of Contaminated Sites Act, a list of suspected contaminated properties has been compiled and is publicly available on the website of the Environment Agency Austria.¹² If a property appears to present a significant environmental threat, it is scheduled in a list of properties that require clean-up measures. Once listed, the competent authority must determine whether anyone can be held liable for the repair of the damage or the payment for the decontamination. Usually the party that caused the contamination is primarily responsible; however, in special cases the owner of the land who has consented to a certain use of the property and received remuneration for this use can also be held liable by the authority. If nobody can be held liable, the federal government must carry out the necessary actions under the Clean-up of Contaminated Sites Act. If a property is not listed in the schedule, this does not necessarily prove that the property is not contaminated.

12 www.umweltbundesamt.at.

iii Tax

Sale proceeds on real estate within the meaning of the VAT Act 1994¹³ are exempt from VAT. Businesses can, however, treat transactions concerning real estate as taxable (opting in). If so, the VAT paid in (at 20 per cent) is deductible for business purchasers, but VAT is also subject to the land transfer tax and the registration fee. It is sensible for a seller to opt in if he or she has invested in the real estate in the past 20 years and has claimed input VAT for these investments, because the input VAT must be returned *pro rata* to the tax authority if the sale is not subject to VAT.

Land transfer tax must be paid on the acquisition of real estate at a rate of 3.5 per cent of the purchase price including VAT (or 2 per cent if purchased by a spouse, first-degree ancestor or first or second-degree descendant). The parties involved in the acquisition are liable as joint and several debtors. Therefore, it is advisable for the purchase agreement to set out which party must pay the tax (usually the buyer).

A registration fee of 1.1 per cent of the purchase price including VAT must be paid by the party who applies to register the transfer of ownership at the time of registration.

With regard to share deals, it is common (especially on acquisitions of large real estate portfolios) to avoid the land transfer tax by acquiring shares in the company holding the real estate through two different companies in different VAT groups (e.g., one buyer and an affiliated company holding a minimum share); however, if these two companies merge, then the land transfer tax becomes due.

iv Finance and security

Basically, two types of mortgages are common in loan agreements: the conventional fixed-amount mortgage and the maximum-amount mortgage.

A fixed-amount mortgage is a pledge of real estate, and is created by a written and notarised mortgage agreement (including possible ancillary claims for costs, interest, etc.) that must be registered in the land register. In addition, this agreement must contain the mortgagee's explicit declaration of agreement to the registration of the mortgage on a certain parcel of land to allow the unconditional registration of the mortgage with the C folio of the land register.

Moreover, under Section 14 of the Land Register Act, the registration of a mortgage is possible for an amount of money up to a certain ceiling (including the interest in the case of an interest-bearing claim). The fixed amount depends on the underlying receivable plus a surcharge, which is fixed by the parties at approximately 20 per cent to 30 per cent of the receivable. These mortgages provide security for any existing claims or those arising in the future from a specific business relationship.

The maximum-amount mortgage is also accessory to the underlying legal relationship but not to a particular claim. Therefore, it is not possible to detect if a claim is subject to the maximum-amount mortgage only by a search in the land register. After repayment of the loan, no more claims can arise, but the maximum-amount mortgage remains valid until the existing legal relationship is liquidated. If the outstanding claims exceed the maximum amount, the pledgor owning the real estate has to pay only the

13 As amended by the Federal Law Gazette 2013/63.

outstanding claims to the limit of the maximum amount to cause the extinction of the mortgage, whereas the debtor has to pay the whole debt.

A registration fee of 1.2 per cent of the secured amount must be paid by the party that applies to register a mortgage.

VI LEASES OF BUSINESS PREMISES

Austrian laws regarding leases are highly restrictive. Lease agreements for residential and business purposes are primarily governed by the Tenancy Act, which aims mainly to protect tenants' interests. The provisions of the Tenancy Act, with a few exceptions, cannot be waived or otherwise modified to the disadvantage of the tenant. The Tenancy Act does not apply to real estate leased in the tourist industry, parking garages, warehouses, employee housing, business premises leases for a definite period not exceeding six months, apartments used for recreation, the lease of flat land without buildings, or houses with only one or two separately leasable objects. If the premises are part of a building newly established without public funds based on a building permit issued after 30 June 1953, only parts of the Tenancy Act will be applicable, such as the provisions on the termination of contracts, whereas the other provisions – especially those on rent control and the limitation on operating costs that can be charged to the tenant – do not apply.

In general, lease contracts that fall under the Tenancy Act (fully or in part) and were entered into for an indefinite period may only be terminated by the landlord for the specific grounds listed in the Tenancy Act (rent protection). As opposed to the laws in many other countries, rent protection also applies to the lease of business premises.

The landlord may only terminate a lease agreement for good cause, such as the tenant's default of payment despite reminder or a substantially detrimental use of the premises by the tenant. Other reasons for termination may only be validly agreed if they are comparable with those provided for by law; otherwise they are void and unenforceable. In contrast, the tenant may terminate the agreement at any time without cause.

Lease contracts on business and residential premises are frequently entered into for a definite term (at least three years are required in the case of residential premises) to avoid the application of termination provisions that clearly favour the tenant. For business premises, there is no limitation on the definite term; however, five years is the minimum in the market, and 10 to 15 years is not unusual.

A written lease agreement is subject to stamp duty at a rate of 1 per cent of all rental payments (including service charges, operating costs and VAT). For indefinite contracts, the stamp duty payable is calculated on the basis of three annual rental payments. For fixed-term contracts, the stamp duty is calculated on the basis of the rental payments for the whole term, up to a maximum of 18 years (or three years for apartments).

Generally, the parties are free to agree upon the amount of rent payable for commercial premises provided that, from the day the lease agreement is executed, the rent is adequate for the relevant category (type, condition, location and maintenance) and size of the property (if the Tenancy Act is fully applicable). Apartments may be subject to a complex system of rent control. Typically, it is agreed in the contract that rent is adjusted from time to time (indexed), usually according to the consumer price index, with the index change taken into consideration in the full amount every year (sometimes

a threshold of 3 per cent to 5 per cent is agreed); however, it is also permissible to agree to a rent review clause to keep the rent in line with the market.

Change of control of a company does not affect its holdings of real estate. The tenant of business premises, however, must notify the landlord of any substantial changes in its ownership structure or if the tenant sells the enterprise conducted in the premises, if the Tenancy Act is fully applicable. Such sale of the enterprise does not amount to good cause for the landlord to terminate the lease, but the lease contract passes over to the buyer and the landlord can (if the Tenancy Act is fully applicable) increase the rent to market level. The right to increase the rent also applies to corporations as tenants upon a substantial change in (economic and legal) control over the tenant, such as where a merger or a change in the tenant's shareholder structure occurs.

A tenant might be granted the right to sublet. If the tenant sublets the whole object of the lease or asks an unreasonable sublease rent (more than 50 per cent above its own rent and investment) without consent, the landlord can terminate the main lease (as a result, the sublease is also cancelled, but the subtenant may request damages from his or her sublessor).

Usually, the landlord takes out adequate insurance for the building, continuously maintains in force such insurance and provides proof thereof upon request, to ensure insurance cover in respect of the following risks: building liability insurance, including a duty to ensure safety for persons and vehicles; and building insurance (e.g., fire, lightning or explosion, flooding, sewage, storm, hail, malicious damage, overvoltage, costs of clean-up, salvage and security). Insurance costs are part of the operating costs that are charged to the tenant.

A landlord must keep the leased premises in good condition, unless otherwise agreed.¹⁴ It is common to exclude the landlord's maintenance obligation, except in relation to structural repairs (see Section VII.iii, *infra*). A tenant cannot waive his or her right to reduce rent payments in advance, to allow for potential inability to use the premises.¹⁵

VII DEVELOPMENTS IN PRACTICE

i Land transfer tax in share deals

With regard to share deals it is common (especially on acquisitions of large real estate portfolios) to avoid the land transfer tax and registration fee by acquiring shares in the company holding the real estate through two different companies (e.g., one buyer and an affiliated company holding a minimum share). It was commonly held that the only requirement was that the two companies were not in the same VAT group (or would not be in the same VAT group if they resided in Austria), thus the second shareholder held a minimum share and acted as trustee for the main shareholder.

However, this well-established practice was questioned in a decision in 2010 by the Independent Finance Tribunal of Innsbruck, which argued that, in special cases, the

14 Section 1096 of the Civil Code.

15 Ibid.

formal existence of two shareholders does not stop the finance authorities assessing the economic background and deciding that tax may be triggered on the basis of all shares being, in fact, unified; this decision was upheld by the Higher Administrative Court in 2011. Although the decision says that this view is limited to very special circumstances (which were given in the case at hand), it remains unclear as to when exactly such special circumstances occur.

Therefore, it is advisable not to have the minority shareholder as trustee for the main shareholder, but to grant the minority shareholder rights of its own, including a profit share.

ii No termination right of landlord in case of insolvency of tenant

Since 1 July 2010, in the first six months after the opening of insolvency proceedings, a landlord is only entitled to terminate a lease contract that is important for the continuation of the business of the tenant for good reasons (unless the termination is necessary to avoid serious personal or economic disadvantages for the landlord); however, the deterioration of the economic situation of the tenant and the non-payment of rents due before opening of insolvency proceedings may not be used as good reason.

Therefore, landlords must decide to terminate a lease contract for non-payment at an earlier stage than they would have done prior to this change.

iii Maintenance costs – Supreme Court ruling

On 11 October 2006, the Supreme Court decided that consumers do not have to bear maintenance costs for lease objects as they had done in past decades under standard clauses in lease contracts.

If the Tenancy Act is fully applicable (this is mainly for buildings built before the Second World War), Section 3 of the Tenancy Act stipulates which maintenance costs must be borne by the landlord, while Section 8 stipulates which maintenance costs must be borne by the tenant. A broad area of other maintenance work, however, is governed neither by Section 3 nor Section 8 (usually referred to as the 'grey area' of maintenance obligations). This is quite important in practical terms, as it includes maintenance of heating systems, boilers and dishwashers. The grey area is governed by Section 1096 of the Civil Code, whereby the landlord must hand over the lease object to the tenant in a proper condition and maintain it as such. For decades, in almost all lease agreements, the landlord insisted that these maintenance obligations be borne by the tenant. The Supreme Court ruled that this practice violated the Consumer Protection Act and is not permissible.

The Supreme Court has pointed out that, for lease agreements to which the Tenancy Act is fully applicable, the landlord need not (initially) maintain parts of the building that are not explicitly mentioned in Section 3 of the Tenancy Act. Interestingly, however, this does not imply that the tenant must bear all maintenance costs (along with those stipulated in Section 8); according to the Supreme Court, neither the landlord nor the tenant initially has to bear maintenance costs in this area. This solution, however, is a double-edged sword from the landlord's point of view: if the lease object becomes unusable, the tenant may decrease the rent payments and, therefore, the landlord has to

decide whether to tolerate decreasing rent payments or to undertake the maintenance work at his or her cost.

A consequence of the judgment is that, for lease agreements to which the Consumer Protection Act applies (cases where the landlord is a businessperson and the tenant a consumer), the tenant's maintenance obligations may not be contractually agreed at all. For lease agreements where the Tenancy Act is only partly applicable, Sections 3 and 8 of the Tenancy Act will not apply; in such cases, the tenant need not even pay costs for maintenance covered by Section 8 of the Tenancy Act.

This regime is the complete opposite of what had been the Austrian standard practice for lease agreements, and some professional landlords have yet to grasp fully the economic impact of the Supreme Court's decision in this respect. Landlords will eventually have to increase the rent they are asking for private housing. In fact, the product they are offering has substantially changed: landlords must now offer the maintenance of this object and of all the installations that have been rented to the tenant along with the lease object.

VIII OUTLOOK AND CONCLUSIONS

The outlook for the real estate sector in 2014 still depends largely on the availability of financing for transactions and development of new projects. Banks are still cautious about financing developments, but other means of financing, such as bonds issued by the developer and secured in the land register, are being used to compensate for this. Tenants are primarily moving to offices that offer better quality and are less spacious; there is not much demand for additional space. Due to the insecure economic environment, the outlook for new developments remains – although slightly recovering – poor.

The outcome of 2013 – that the market further consolidated the recovery from the earlier slowdown and that some interesting transactions took place – allows for cautious optimism. On the other hand, the general investment climate in Europe, and questions relating to the economy of the region as a whole, are also causing some uncertainty in the Austrian market.

Appendix 1

ABOUT THE AUTHORS

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Peter Madl has been a partner with Schönherr since 1992 and is head of the real estate practice group. Besides the Vienna real estate practice, he oversees the property deals in the offices in Bulgaria, Poland and Ukraine. Mr Madl plays a central role in the firm's property-related mandates in Austria and further afield. With numerous transactions in central and eastern Europe under his belt, he is well equipped to advise Austrian and international investors and investment funds on property dealings in the region. Although Mr Madl's work is mainly of a transactional nature (sale and leaseback, acquisition), his activities also include the development of shopping centres and condominiums, and litigation.

Mr Madl, who is a member of the Vienna Bar, graduated from the University of Vienna (*Dr iur*, 1983) and the Vienna University of Economics and Business (*Mag rer soc oec*, 1987). He lectures on real estate law at the University of Vienna and on contract law at the Vienna University of Economics and Business.

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