

Rent by mouse click

Contracts concluded via eMail satisfy the German written form



Since March 2018, the BGH has allowed contracts to be concluded by eMail. / photo: sibashouse stock.adobe.com

Munich (June 15, 2018). Those who are familiar with German rent law know: prima facie, the digital conclusion of a multi-year rental contract seems to be nearly impossible. Because rental agreements must satisfy the statutory written form requirements under German law in order to bind the parties for more than one year. If the written form is not complied, the respective rental agreement can be terminated at any time with due notice. A nightmare for every hotel rental project.... Anna Gassner and Dr. Marina Schaeuble, both Attorneys-at-law (Germany) at the law firm Arnecke Sibeth

Dabelstein in Munich explain how the conclusion of a rental agreement by mouse click can nevertheless work.

In the international hotel industry time is always a pressing issue. In the current market climate, one cannot lose time leasing and letting lucrative hotel properties in A- and B- locations. However, it is difficult to wrap up the rental agreement when the manager with power of representation is based on the other side of the globe at the holding company's headquarters. The call for more digitalization especially for the management of hotel properties is therefore not really surprising.

All the more reason to have a closer look at the decision of the German Federal Court of Justice (BGH) dated March 7, 2018 (XII ZR 129/06). Studying the grounds for the decision carefully, there's no reason to argue anymore against the idea that a (hotel) rental agreement satisfying the statutory written form requirements can be concluded via eMail.

In the court's case a landlord had unilaterally signed a multi-year rental agreement and faxed it to the tenant. The tenant signed the printed fax in return and sent it back to the landlord also via telefax. The two documents with the original signatures were never exchanged between the parties. Nevertheless, the judges from Karlsruhe ruled the rental agreement to be in accordance with the written form.

Sending by eMail scan

The same ideas applied to eMail communication that means: a rental agreement, signed by one party, scanned, sent by eMail to the second party and printed out by him, then signed in the same way and also sent back by e-mail scan, can also keep the written form. The presence of both parties or of their respective representatives at the same time is just as unnecessary as the time-consuming delivery of the original documents back and forth by courier or mailing.

As a result of the decision, the conclusion of the original rental agreement, but also any subsequent supplements to the rent are possible via eMail – faster and cheaper than ever before. On everyday occasions lawyers often have to advise to conclude a supplement in written form even if the hotelier only wants to slightly rebuild or equip his hotel in a different way. From now on the parties can not only negotiate such a supplement from a distance until the draft is finalized right to the last word, but also digitally conclude it; admittedly not totally without pen and paper.

According to the opinion of the court explicitly expressed in its decisions' grounds the conclusion of the contract is possible without the receipt of a rental agreement by the other party that keeps the statutory written form. However, two unilaterally signed corresponding documents each intended for the other must at least exist. German jurisdiction therefore still requires that any essential agreements between the parties – no matter if they are in the original rental agreement, any supplement or in the respective annexes – must always belong to one single document.

Instead of staplers and binders in the sense of a firm, physical connection, the simplest option for a rental agreement – if concluded via eMail – is a mental connection between all the agreements of the parties in



Guest author Anna Gassner von Arnecke Sibeth Dabelstein: Later adaptations are also possible by eMail.

regard to the rent by way of a reference in the content of each document.



Guest author Dr. Marina Schaeuble: The assignment of the pages must be absolutely correct.

Pages to be numbered consecutively

In reality, the parties must therefore pay even more attention than before to the fact that all pages of the documents to be drawn up, including any respective attachments, are to be numbered consecutively, that the description of each attachment in the text of the agreement is the same as the one on the respective attachment and that, for example with the help of the layout or headers and footers, the entire contract can without any doubt be identified as one. Each addendum should also briefly explain the previous contract history in its recitals. Metaphorically speaking all contract documents must allow to be arranged again if the asset manager had the idea to shuffle the individual pages in order to play a game of memory.

A rental agreement concluded in such a way will comply with the statutory written form.

And those, who observe the aforementioned instructions with the help of the right template and minimal training effort for their asset management can simplify their contract management maybe not as easy as with a single mouse click, but nevertheless more time and cost-effectively than ever before – via eMail.

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