

# (R)evolution in Italian Real Estate Retail Market for Major Properties Leases?

A connection between the luxury retail sector and real estate markets has become increasingly evident in recent years.

Italian shopping high-streets have conquered world-wide consumers' confidence,<sup>1</sup> thus leading to an increase in the demand for the lease of commercial properties by fashion brands. In the Montenapoleone premium location fashion district in Milan or in the very

well-known via Condotti in Rome, these brands are ready to pay from 7,000 up to 10,000 Euro per square meter. For a store in Corso Vittorio Emanuele in Milan or at Piazza di Spagna in Rome, they will pay comparable prices of Euro 3,000/5,000 to Euro 7,000.<sup>2</sup>

The juridical instruments used to regulate the utilization of stores in centers of Italian cities are, for the most part, commercial lease agreements. The relevant rules are contained mainly in law n. 392/78 (the "Law") whose features are – and interpretation has always been – protecting the lessee side, likewise a "weaker" party, against the possible "abuse of power" of landlords.

Therefore, as a way of example, the following clauses have been always considered null and void by the Italian case law (even in presence of an express waiver by the lessee):

1. clauses which are aimed at limiting the minimum duration of the lease;
2. clauses which are aimed at granting the lessor a higher rent with respect to that provided by the law;
3. clauses which are aimed at granting the lessor any other advantages in violation with the law.

However, the notion that "lessee side needs to be always protected" does not consider the economic power of the retailers involved. This "precautionary" legislative framework has been recently "upset" by law n. 164 of November 11, 2014. This law introduced – upon condition that the annual rent provided in the lease agreement exceeds Euro 250,000 – the "freedom of contract" principle, with the clear intention to

approve criteria that can keep up with changing times.

It is assumed, in fact, that if the lessee can bear an annual rent exceeding the above amount of Euro 250,000, it is no longer considered in a weak position and thus it can negotiate on equal terms with landlords.

After the reform, hence, the parties to property commercial lease contracts with a yearly rent higher than Euro 250,000, are entitled to agree terms and conditions derogating the provisions of the law, provided that such property leases do not refer to premises declared of historic interest by a decision issued by regions or municipalities (so called "*botteghe storiche*").<sup>3</sup>

As a way of example: parties might agree on the following terms, without risking the relevant clause to be declared void:

1. the lessee can be denied the pre-emption right<sup>4</sup> and/or the goodwill indemnification;<sup>5</sup>
2. the lessee can validly waive in advance the right of renewal of the lease contract;
3. the parties might freely agree the payment of sum, different from rent, as "entry fee;"
4. the parties might freely agree adjustments and step-rents not linked to index ISTAT and cap provided by the law.

Also if we consider how narrow Italian historical central high streets are, the reform seems nevertheless to embrace a relevant percentage of the fashion retail business.



Maria Adele De Luca



Elisa Poggioni

**Maria Adele De Luca** has been partner of FDL Studio legale e tributario since 2013. Her main areas of practice are mergers and acquisitions, corporate law and general commercial law matters, including property law. She represents and advises Italian as well international corporations in Italian and cross-border transactions.

**Elisa Poggioni** joined FDL Studio legale e tributario as an associate in 2016. She practices in corporate law, focusing on commercial agreements and share and purchase agreements.

**FDL Studio legale e tributario**  
Piazza Borromeo, 12  
Milan, Italy 20123

+39.02.721.4921 Phone  
+39.02.805.2565 Fax

fdl-lex.it  
m.deluca@fdl-lex.it  
e.poggioni@fdl-lex.it



It is too early to say if the reform will take root, if the landlords will effectively increase their negotiating power because of this major flexibility in comparison with the past, or instead if the parties would prefer at the end to remain within the “old” law. At least, because of this new legal framework, the legal professionals are currently going through a quite radical change since they will now face proper negotiation sessions for all clauses of the lease agreement for major properties. We have no doubt that soon standard solutions like in the

mergers and acquisitions sector will be developed, within the “shell” elaborated by Italian case law.<sup>P</sup>

- 1 Needless to say that Italian streets offer a selection of clothing, jewelry, watches and beauty boutiques, as well as technology objects, and fabulous restaurants and gourmet shops.
- 2 2015 data provided by Reno S.r.l. - a service provider specialized in retail tenants representation and strategic consultancy - show that locations bordering center in Milan, such as at Via Dante, are about Euro 1,500 to Euro 2,500 Euro per sq. m., at corso Vercelli are about Euro 1,000 to Euro 1,500 per sq. m., at corso Buenos Aires are about Euro 1,000/mq to 2,000 per sq. m.; premium locations in North Italy cities are on average from Euro 1,500 to Euro 3,000 per sq.m., save for top premium location for Verona e Venezia, whose rents are obviously much more expensive, whilst Varese (Euro 1,000 to 2,000 per sq.m.), and Como (Euro 1,500 to 2,500 per sq.m.) are growing faster due to the favorable exchange rate with the Swiss Franc.

- 3 Agreements on major properties lease need to be proved in writing and in any case can not apply to contracts which are already in force at the date of conversion of the law n. 164/2014.
- 4 According to the law, the lessee has a pre-emption right in case the lessor sells the real estate or the lessor terminates the lease after the initial period and rents the real estate to a third party. The rule is not applicable in case the termination of the contract is attributable to the lessee and in case the commercial activity is not open to the public.
- 5 According to the law, the lessee has the right to receive an indemnification equal to 18 months of the last rent paid in case the termination of the contract is attributable to the lessor and the commercial activity is open to the public. The lessee has the right to receive a further indemnification equal to 18 months of the last rent paid, if in the new store the same/similar activity as that of the former lessee is being carried out and such new activity is started within one year from the termination of the former lease agreement.