

## Real Estate

### Removal of restrictions from rules on the lease of non-residential premises.

19 November 2014

Law no. 164 of 11 November 2014, which recently converted the “Sblocca Italia” Decree (Law Decree of 12 September 2014, no. 133), has definitively introduced with regard to the lease of non-residential premises; the one between so-called “**great leases**”, having an **annual rent exceeding Euro 250,000**, and all other leases with lower rent.

Article 18 of Law Decree no. 133/2014 has supplemented article 79 of Law no. 392 of 27 July 1978, by including a new third paragraph which grants parties the right to autonomously “**agree on contractual terms and conditions in derogation to the provisions of this law**” with regard to “great leases” of non-residential premises.

The practical consequences of the afore-mentioned reform are considerable.

In fact, also the lease of non-residential premises is subject to

a mandatory regime, that does not allow for contractual adjustments on issues such as the minimum duration of the contract (except in the case of seasonal or temporary activities) and which establishes the invalidity of all provisions that confer upon the landlord any advantage contrary to the provisions of Law no. 392/1978.

On the contrary, in the case of the so-called “great leases” parties shall enjoy **complete contractual freedom**. For example, it will be possible to agree upon a shorter **contractual term** falling below the minimum requirements (six years for commercial leases and nine years in the case of properties for hotel use); with regard to **rent review**, parties may choose to agree on criteria other than the one based on the ISTAT index; **cases of refusal to renew the lease** may be regulated freely; the tenant’s **pre-emption right** to be exercised in the event of sale of the leased property may be waived contractually;

parties may freely agree upon the end of lease **indemnity** and the **assignment of the lease** in the event of transfer or rental of business.

At the time of enactment, the legislator stated that the liberalization of the “great leases” **does not apply** to contracts that “*are referred to premises deemed to be of **historical interest** as a result of a regional or municipal measure*”, even if they have an annual rent exceeding Euro 250,000.

The liberalization should lead to an enhancement of the non-residential lease market, reducing the contractual rigidity in force to date, which has sometimes been a threat to contractual autonomy for foreign operators interested in investing in Italy.

From the operators’ standpoint, the removal of restrictions and constraints to party autonomy will lead to a need for **greater attention to the contractual negotiation phase**.

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