



ABOGADOS

ARAOZ & RUEDA

THE NEXT DAY LEASES

By Jesús Conde
Partner at the Real Estate Department
Araoz & Rueda

One of the main mysteries of the time after the pandemic (of that long next day which is just starting) is how the business and commercial activity will be resumed. Will the life of offices, premises and buildings be the same as before? And if the likely answer is no, what the leases regulating those business centers will look like?

Something that the real estate world has already started to perceive is the necessary adaptation of the rents. Lessors and lessees test and gauge, blindly, but begin to understand that the complex rule contained in the venerable principle of

“rebus sic stantibus” includes an unavoidable element of common sense: it seems reasonable adjusting lessee’s main obligation to a world where periodic outbreaks could make necessary teleworking from time to time, having less attendance to shows or leisure activities or experiencing the nice confinement of dinners at home.

Accordingly, rents adjustment, either in the short, medium or long term, are likely to happen. And in that new context, the lessors shall intend (quite rightly) not only setting off such possible rent reduction with an extension of the compulsory term, but also holding on to a

reliable lessee who keeps paying the rent (even if reduced), rather than looking for new candidates in the misty outdoors of the open market.

Extending leases in a more than ever unstable environment? Will that be one of the new paradoxes of the real estate new age? Not entirely, because the combination of fragility and search of working projects may lead to a more changing and flexible framework where the parties (even if they really intend to comply with the contractual lease term) may reach more easily, if necessary, agreements for



the early termination of the leases. Either to avoid the lessee ending up involved in insolvency proceedings (which will be time-consuming while probably providing no income for the lessor) or facing an eviction action before the Courts (where, due to the existing jam, the lessor will not be able to receive the due rents).

The above would be applicable to those pre-existing leases. For those leases to be entered into from now on, it would not be strange to see leases with a shorter term and periodic review of the lease term to adjust it to market reality.

Perhaps that lease market will then be more risky but also more open, where the business opportunities (the

so-called “angles”) will bring more activity. However, at the same time, a new approach to rapid changes and moving undertakings will also be necessary. The increase of the cases where variable rent is applicable is likely to happen, or even less guarantees being offered to lessors.

In that case, the adjustment of lease contracts would be a necessary consequence. The agreements may no longer be as monolithic as before, and should begin to include other possibilities, such as early termination options (in favor of both parties) linked to the non-fulfilment of certain turnover ratios or thresholds, or early termination compensations previously agreed and having different amounts depending on the specific moment when

the termination takes place (all those options are already usually included in leases for premises in commercial and outlet centres). Who knows, such leases may even include market rent reviews within periods shorter than it is currently customary, in order to ensure that the rent is not very far away from the market.

The next day leases (and also their users, signatories and drafters) should be more willing to the mutable, to the unexpected, to the innovative. Nothing new, may be in a different dose. Darwin said that those who learned to collaborate and improvise would more effectively prevail. Anyone who has negotiated an agreement or developed a business already knows that well...