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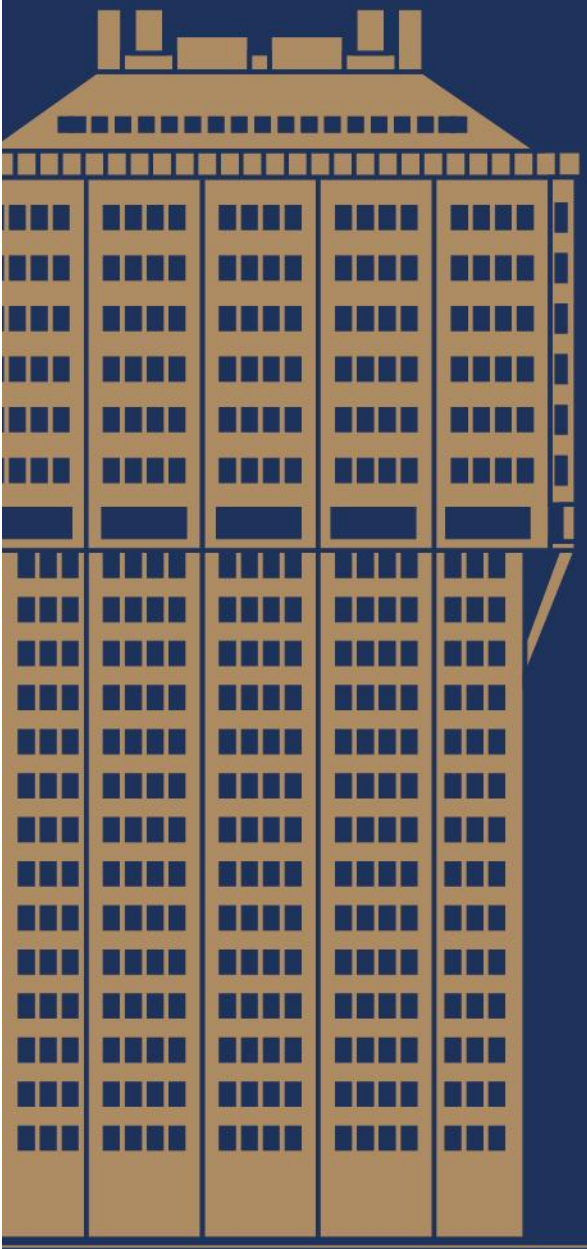
The legal side of real estate

Real Estate News



Quarterly insights

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Legitimate disapplication of the extension of beach concessions as of 30 September 2027 by the granting administrations

All legislative measures that after the Plenary Assembly's decisions Nos. 17 and 18/2021 have further extended the term of effectiveness of state-owned sea concessions for tourism and bathing purposes conflict with Article 12 of 2006/123/EC (so-called Bolkenstein Directive).

In fact, the EU principle applies in this matter, according to which, should there be a limited number of available permits due to the shortage of the natural reserve, member states must apply impartial selection procedures among potential candidates and may neither provide for automatic renewal of permits nor issue permits without expiration.

According to the decision of the Regional Administrative Court of Liguria, Sec. I, no. 869 published on Dec. 14, 2024, therefore, Decree-Law No. 131 of Sept. 16, 2024 (converted, with amendments, by Law No. 166 of Nov. 14, 2024), insofar as (Art. 1), by novating Art. 3, co. 1, Law No. 118/2022, provided for a further extension of the effectiveness of sea state concessions until 30 September 2027, is also legitimately disabled by the granting Administrations, like all other previous extension regulatory measures.

Municipality of Milan: exploratory public notice for the acquisition of letters of interest from private parties including technical and managerial solutions aimed at the construction and management of housing in affordable social housing (ERSC) under the extraordinary plan for accessible housing in Milan

Today the Municipality of Milan published a notice by which it launched an exploratory survey aimed at verifying, through the collection of letters of interest, the willingness of private parties to build and manage on municipally owned areas, housing in Calmierized Social Residential Housing ("ERSC") - as defined in the "Political Guidelines for an Extraordinary Plan for Affordable Housing in Milan"- i.e., in permanent lease at rents equal to or less than Euro 80/sqm per year, and any suitable vacant functionalities, as well as to build housing intended for Public Housing Services - SAP (where foreseen).

In order to ensure the financing of the projects (bankability), the Municipal Administration plans to grant the players the areas / compendiums covered by the notice through the legal institution of surface right, according to the modalities better defined below.

The Municipality retains the right, as a result of the verification of the proposals received, to consider the possible establishment of other rights in rem of enjoyment

or, in any case, the assignment of the areas / compendiums through other concessionary or contractual forms suitable to protect the financial viability and economic sustainability of the projects.

The notice allows the Municipality to collect proposals aimed at better specifying, in subsequent stages, the development of the areas and/or compendiums that are the purpose of the notice, consistent with town planning regulations and the territorial context concerned.

We will see if the market will recognize the feasibility of these measures on areas to be reclaimed, built and leased at 80 euros/sqm.

Below is the link to the City's website to take a look at the notice and attachments: https://lnkd.in/d9zt7EFV

"Major leases": derogatory power of Law no. 392/1978

How to deal with the client's request regarding the inclusion, in a lease agreement, of the withdrawal right in favour of the landlord or the landlord's right to refuse the renewal of the lease on the first expiry date for any reason whatsoever?

Despite the apparently clear legislative provision of Article 79, paragraph three, of Law no. 392/78, which expressly allows for lease agreements to derogate from the aforementioned Law, as long as such derogation is made in the context of "major leases," consolidated practice among the real estate professionals has shown particular caution regarding the use of the derogatory powers that the aforementioned Article 79 grants.

The Supreme Court's decision no. 3399 dated 6 February 2024 has clarified the scope of Article 79 of Law 392/1978, explicitly recognizing, in "major leases," the parties' right to freely negotiate clauses on minimum term, automatic renewal, pre-emption rights, termination for serious reasons, landlord's withdrawal, goodwill indemnity, indexation and/or rent increases.

University Housing with PNRR funds: MUR publishes clarifications on the use of the administrative fast track

With a note of the Extraordinary Commissary for student housing published on the institutional website on 24 November, the MUR expressed its opinion on the use of the so-called fast track administration for the construction of student accommodation with PNRR funds.

Among the most important clarifications included in the note we highlight those related to: (i) the drafting of implementing or detailed plans for projects aimed at the recovery and/or redevelopment of already urbanised areas; (ii) the assessment (if any) of the municipal council in the case of works on areas that have already been fully sealed as part of the issuance of the building permit in derogation; (iii) the

payment of the construction contribution and (iv) the issuance of permits even before the financing eligibility assessment is completed.

These are certainly important guidelines, although we hope that the work we are carrying out with the industry associations to extend the fast track also to projects that are not beneficiaries of the PNRR funds, can become true as soon as possible.

PBSA in Italy: New rules are necessary to grow

In Italy, the big gap between supply and demand entailed the appointment, starting from 7 May 2024, of an extraordinary commissioner with full powers (Dr Manuela Manenti).

Many private operators are working on this asset class, the National Recovery and Resilience Plan (NRRP) has a very ambitious goal, which is the creation of 60,000 new beds by 30 June 2026 and, recently, the Government provided new resources to increase the capacity of calls for tenders under Law 338/2000 (i.e. the first Italian legislation providing public funds to certain specific categories to realize PBSA).

Pending any amendment to the NRRP, an administrative fast track dedicated to this asset class and not only for projects eligible for NRRP co-financing would play a fundamental role. As of today, in case of a project eligible to NRRP, such project could benefit of certain simplified procedures (e.g. for change of use and the derogation of the requirement of parking spaces). An administrative fast track dedicated also to private project not requiring the funds of the NRRP could increase the number of investments granting certainty to foreign capitals of the completion, in a timely fashion, of such projects.

Student accommodation constitutes a social infrastructure of public interest; hence, it is crucial that any such Student accommodation is created for the citizens of the future, so we must hurry!

Our Law Firm, together with the professional associations involved, is already working on this.

New Public Contracts Code: carrying out urbanization works

Angela Ruotolo takes a closer look at the rules of the new Public Contracts Code dedicated to contracts by private parties for the realization of urbanisation works offset during RE ITALY Meeting 2024, organized by Monitor Immobiliare and Monitor Legale last 16th October.

The needs for simplification of a regulation that requires private economic operators to "transform" themselves into real public contracting stations have not been addressed by the reform of public contracts.

Instead, specific rules would be needed to simplify the awarding of this particular type of contract, which is crucial for urban regeneration transactions.

But even the draft of the remedial decree that has just been approved by the Council of Ministers does not include anything new to reconcile the requirements of transparency and competition imposed by EU regulations with those of sustainability of investments in the real estate sector.

Tax

The VAT regime (exclusion/imposition) of sums paid to the contractor for breach of contract between the Tax Agency (reply to question no 223 of 18 November 2024) and the Court of Justice of the EU (judgment of 28 November 2024, Case C-622/23)

In its recent reply to question No. 223 of 18 November, the Tax Agency has affirmed that the sums paid by the principal to the contractor for the unlawful suspension of works ordered by the principal are excluded from VAT if they are only compensatory in nature and not consideration for a service rendered by the contractor.

The case concerned an indemnity due by the principal to the contractor for the suspension of works pursuant to Article 159, paragraph 4, of Presidential Decree No. 207/2010 (implementing regulation of Legislative Decree No. 163/2006 of the former Public Contracts Code).

The provision regulates the compensation for the suspension of works ordered by the principal for a period exceeding the provisions of the aforementioned Art. 159. The indemnity had been quantified and agreed upon by the parties pursuant to Article 160 of Presidential Decree no. 207/2010, which regulates the criteria for quantifying damages for unlawful suspension of works ordered by the principal.

To this end, the parties intended to enter into a settlement agreement (Article 1965 of the Civil Code) also aimed at settling, out of court, the civil litigation initiated by the contractor.

In the settlement agreement, the contractor stated that it accepted the amount by way of indemnification "and that it considered it fully satisfactory for everything claimed in the writ".

In order to exclude VAT, the Tax Agency noted that:

(i) under the Contracts Code, the sums owed by the principal to the contractor constituted only compensation for damages suffered by the contractor for the breach of the principal's contractual obligations;
(ii) no obligation to do, not to do or to permit was created by the settlement agreement in favour of the principal. Thus, there was no exchange between money (compensation paid by the principal) and performance (by the contractor).

On this basis, the Tax Agency finds that these sums do not constitute consideration for VAT purposes and are therefore excluded from taxation (pursuant to Articles 3(1) and 15(1), no.1 of Presidential Decree no. 633/1972).

The Court of Justice ruled on a similar issue in its judgment of 28 November 2024 in Case C-622/23 (Austrian law case). The decision concerns the VAT regime of a sum

paid to the contractor for unilateral termination by the principal of a contract for the construction of a building.

The decision is interesting as it deals with the distinction between consideration (taxable for VAT) and compensation (excluded from VAT).

The case at hand fell within the scope of the former Public Contracts Code (Legislative Decree no. 163/2006 and the relevant regulation set forth by Presidential Decree no. 207/2010), however, the above conclusions also apply with reference to the new Public Contracts Code (Legislative Decree no. 36/2023) - as also confirmed by the Tax Agency: the relevant rules have not been amended (the reference is now Article 121 of Legislative Decree no. 36/2023).

As to the registration tax, the Tax Agency points out the applicability of the 3% tax for the registration of the settlement agreement (Article 29 of Presidential Decree no. 131/1986 and Article 9 of the Tariff Part 1 annexed to the Presidential Decree) in accordance with previous applications.

The Tax Agency has on other occasions dealt with the VAT regime of indemnities in the context of a settlement agreement, reiterating the need for a case-by-case analysis (e.g. answers to question no. 178/2019, no. 145/2021, no. 179/2021, no. 401/2021).

VAT on buildings, lands and buildings under construction: the ruling of the EU Court of Justice (C-594/23)

Yesterday, the Court of Justice of the European Union clarified that the transfer of land on which only the foundations of buildings for residential use have been built cannot be qualified as a transfer of a building for VAT purposes (Article 12(1)(a) of the VAT Directive).

The ruling is very important because it further clarifies the concepts of "building" and " buildable land" in the VAT system, as well as the qualification of buildings "under construction."

This issue is significant because the disposal of such property is subject to different VAT regimes (and registration, mortgage and cadastral taxes to a different extent).

The ruling will also have an impact on Italy's interpretation of the relevant VAT rules, which must be consistent with EU case law and the VAT Directive (an interpretation that has been the focus of recent rulings by the Internal Revenue Agency and the Supreme Court).

The ruling will have to be considered for the VAT regime of disposals of "buildings under construction," regardless of whether they are classified in cadastral category F/3 (Units under construction) or not - the Court of Justice does not give significance

to the formal-cadastral datum, but to the actual use of the building, based on the EU VAT Directive.

VAT and real estate developments: VAT does not apply to sums paid to the Municipality for environmental and land compensation measures related to a town planning and construction project

The Tax Agency, in its answer to interpellation no. 212 of Oct. 30, 2024, stated that sums paid by a company to the Municipality for mitigation measures and environmental and territorial compensation works are excluded from VAT: https://lnkd.in/d4JD7EgV.

In the case being questioned, an agreement had been executed in relation to the development of a photovoltaic park on brownfield sites, pursuant to the Decree of the Ministry of Economic Development of 10 September 2010, which sets out the guidelines for the authorization of plants powered by renewable sources.

The question concerned the qualification of such sums as consideration for obligations of the Municipality (thus subject to VAT) or as a contribution without a counter-performance by the Municipality (thus excluded from VAT).

The Agency, despite the Municipality's proposing its applicability, ruled out the VAT materiality of the sums paid to the Municipality in light of the fact that the commitments made by the Municipality under the agreement did not, under Article 3, paragraph 1, Presidential Decree 633/1972, constitute real obligations to the company for the payment of consideration.

In summary, the Municipality, limited to its own activities, undertook not to enter into any other agreements for photovoltaic parks, to carry out the activities for the approval of the simplified town planning variant, and to use the sums received for works for the benefit of the community.

These commitments, according to the Agency, do not constitute services made by the Municipality to the company, in terms of obligations to do/not to do, in the proper meaning of VAT, in return for the payment of a fee.

The Agency seems to have considered such commitments as arising from institutional duties of the Municipality and specific legal rules, rather than from the Agreement entered into with the company; consequently, the absence of exchange between sums of money (company) and obligations to do/not to do (Municipality) leads to the exclusion of the application of VAT to such sums.

The answer at hand is also important because the Agency's guidance is significant for the VAT treatment of sums paid to municipalities for other compensatory and territorial measures, other than those referred to in the Renewable Energy Decree, although – of course – identifying the VAT treatment of such sums requires case-by-case analysis.

Town planning

Save Home: Council of State rules on the Legitimate State ex art. 9bis Presidential Decree no. 380/2001

The Council of State in ruling No. 9877/2024 examined, in the context of the reconstruction of the Legitimate Status of a property regulated by Article 9-bis of Presidential Decree 380/01, the significance to be given to the last permit concerning the entire complex.

According to the Council of State, proof of legitimacy cannot be provided by the fact that the portion subject to amnesty has been represented in past building practices with regard to the entire property. In fact, the representation of an unauthorized building in the construction documents, dealing with works to be carried out elsewhere, does not ipso facto legitimize the property.

In support of its position, the Council of State reviewed the amendments made to Article 9-bis, noting that:

1. in the version in force ratione temporis, Article 9-bis did not make any reference, for the purpose of determining the lawful status of a property, to the permit relating to the last building work that had resulted in the transformation of the entire property;
2. with the amendment brought in by DL No. 76/2020 (converted into L. No. 120/2020), Article 9-bis established that, for the purposes of identifying the lawful status of a property, the building title relating to the last work should be considered, provided that the latter had covered the entire property and that there was continuity with the title that had provided for the construction of the property or had legitimized its construction;
3. finally, with the amendment brought by DL no. 69/2024 (converted into L. no. 105/2024), the article establishes that the legitimate state of the property is not only "that established by the title that provided for its construction or legitimized its construction" (supplemented with any subsequent titles that enabled partial works), but also the one established by the title that "governed the last building work involving the entire property provided that the competent administration, when issuing the same, has verified the legitimacy of the previous titles."

Therefore, Article 9 bis d.P.R. 380/2001 as last amended partially modifies the pre-existing regulatory framework. In fact, the Administration, when issuing the title, must have verified the legitimacy of the previous titles, in order to be able to base the legitimate reliance on the building regularity of the construction subject to the works carried out over time.

Decree Milleproroghe 2025 - new extension of the terms of building permits and town planning agreements

The Council of Ministers, at its session no. 107 of 9 December 2024, approved the Law Decree "Milleproroghe 2025 ("Urgent provisions on regulatory deadlines").

The Decree - extending by an additional 6 months the terms already provided for in Article 10-septies, paragraph 1, of the Ukraine Decree (Decree-Law No. 21 of 21 March 2022) - extends for a total of 36 months:

the terms of commencement and completion of works of building permits, SCIAs, landscape authorizations and environmental declarations and authorizations however named, issued or formed until 31 December 2024 (according to the Ukraine Decree the term was 30 June 2024);

the term of validity as well as the term of commencement and completion of works provided for in the allotment agreements or similar agreements however named by regional legislation, as well as the terms concerning the related implementation plans and any other preparatory deed to them, formed until 31 December 2024 (the previous term was 30 June 2024).

The text sets out a series of extensions and regulatory amendments aimed at ensuring the continuity of administrative action and introducing organizational measures essential to the efficiency and effectiveness of public administration action.

The Decree Milleproroghe 2025 will come into force the day after its publication in the Official Gazette.

Save Milan: why it is needed

Today, Il Foglio Quotidiano focuses on the so-called "Salva Milano," a law that introduces authentic interpretation provisions on construction and town planning.

The article includes Guido Alberto Inzaghi's position according to which the Save Milan is an essential measure to overcome the doubts of legitimacy that have affected the Milanese construction industry, resulting from an interpretation of the provisions that is contrary to their literal meaning and the will of the legislator.

This law, comments Guido Alberto Inzaghi, will promote: *i*) the unlocking of many construction sites; *ii*) the reuse and regeneration of the existing building stock, in accordance with the important goal of reducing land consumption.

Finally, Mr. Inzaghi, with a detailed analysis of current legislation and case law, explains the reasons why demolition and reconstruction work with different use, shape, height and volume should fall under the category of building renovation.

Rome: regulatory variant to the PRG adopted

After more than 16 years since the last Regulatory Plan was approved, the Capitoline Assembly adopted the resolution updating the Technical Implementation Regulations (NTA) of the PRG.

As mentioned in the summary statement, the main new features include:

(i) the simplification of procedures for the implementation of more than 200 Integrated Regeneration Plans under the PRG and for the formation of Preliminary Programs;
(ii) greater protection of the historic center and its residential areas (with a tightening on residential tourist accommodation in the Historic City, which will be the subject to regulation *ad hoc*);
(iii) the removal of regulations limiting the size of hotels to a maximum of 60 beds;
(iv) the inclusion of an extraordinary fee for all major developments in the historic center;
(v) the establishment of restrictions on the transformation of the Roman countryside;
(vi) the establishment of stricter regulations for the recovery of abandoned buildings, with the power of the Municipality to punish the inaction of defaulting properties;
(vii) the definition of social housing as an allocation of accommodations to lease at agreed rents, also extended to specific categories of residents;
(viii) the inclusion of regulations on the revival of movie theatres, sports facilities and coastline use.

Following the publication of the resolution, expected in about 10 days, the preservation regime will be triggered, which requires the verification of the compliance of any building works with both current and adopted NTAs.

For final approval, however, it will be necessary to wait for counter-deductions to the comments.

The following is a summary statement from Roma Capitale: https://lnkd.in/ddH4zPGH.

Update of the minimum values for monetisation just approved by the Municipality of Milan

With Council Resolution no. 1512 of 6 December 2024, the Municipality of Milan updated the minimum values for monetisation of areas for public equipment and public or general interest.

The values, already identified by Executive Determination no. 10623 of the Implementation Planning Area 2 on 13 November 2024, are increased by 14%.

The increase – referring to the economic utility achieved by the operator due to the non-transfer of standard areas – does not apply to building works:

1. that may be classified, according to DD no. 10623, as works with change of use without increase in SL (for which the amount does not take into account the economic utility arising from monetisation);
2. subject to PDCC and implementation planning (for which the amount is determined following a specific assessment by the municipal offices and the Tax Agency).

You can read the text of the Resolution and its annexes at the following link: https://lnkd.in/dy3dAVGv.

Minimum values for standard monetisation discourage regeneration

The executive determination no. 10623 of the Implementation Planning Area 2 of 13 November approves the criteria for quantifying the minimum value of monetisation of areas for public equipment and public or general interest not transferred to the Municipality of Milan (so-called standard monetisation, which is different from the payment of urbanisation charges, which remain unchanged).
The provision reacts to the action of the criminal courts, rather than the need to revise the monetisation values already periodically updated by the Municipality of Milan.

The decision discourages the setting of the most important building works for the regeneration of Milan.

The minimum values are indeed valid only for some minor works, while for all those subject to an agreed building permit and implementation plan, the cost of monetisation is subject to a procedure that is completely uncertain as to timing and outcome, so that it is no longer possible to establish in advance the amount of money that almost all regeneration projects must pay to the Municipality for the monetisation of standard areas that cannot be found and disposed of.

Milan: every day of deadlock costs, action must be taken as soon as possible to avoid losing competitiveness

Guido Alberto Inzaghi on Reuters once again highlights the need to urgently solve the impasse that Milan is currently experiencing from the point of view of the issuance of authorizations.

This is mainly based on the belief that all actors (public and private) have played by the rules and, therefore, having to wait so long for clarity can lead to losing investments, both planned and in the pipeline.

Regulations and the market often run at different speeds, but in this case the risk of taking action too late and losing competitiveness is really high.

While obviously being respectful of the judicial work, it is therefore necessary to find the right solution, and as a firm along with the industry associations, we are working on this. https://lnkd.in/d4Xx_E3G

Milan Housing Plan: the ingredients to make it work

Guido Alberto Inzaghi in Il Foglio Quotidiano tries to identify the measures needed to make Milan's Housing Plan work.
In particular, the following would be needed: (i) attention to public service allocations; (ii) fast-track building procedures; and (iii) monetization of ERS quotas required by private parties to support the 80 euros/sqm social rent.

Urban Regeneration Draft Law: the unified text lacks clarity and there are overlaps

Guido Alberto Inzaghi examines for Il Sole 24 Ore the provisions included in the unified text of draft laws on urban regeneration adopted by the Environment and Public Works Committee of the Senate of the Republic.

The unified text includes a number of critical elements as it does not simply provide a unified framework of the available tools, supplementing it with detailed rules to facilitate private initiative and giving local authorities the financial support they need to plan regeneration.

Another particularly sensitive issue within the text is the one whereby, according to Article 13, an implementation town plan would be required prior to the formation of building permits for demolition and reconstruction work, with the inevitable consequences in terms of cost and timing.

Conversely, encouragement should be given to the draft law pending in the House of representatives which, on the latter issue, aims to provide an authentic interpretation of the rule, with the goal of allowing it to proceed with a direct building permit and deferring to a reorganization law within six months.

Save Milan: it’s time for action

Milano Finanza, in today's edition, gives room to the so-called Save Milan, a regulation of whose necessity everyone is now aware in order to boost investment in Milan and to avoid similar interpretations by prosecutors in other cities.

Inside the article is reported the thoughts of Guido Alberto Inzaghi, who explains how two fronts remain open: (i) the boundary between the definition of new work and that of building renovation and (ii) the cases in which the issuance of an implementation plan is necessary before the issuance of a building permit.
The different interpretations of municipality, administrative case law and prosecutor's office that currently exist are holding back investment, so now is the time to chart, possibly well and quickly, a path that will provide stability and security.
The draft law is currently being considered by parliamentary committees, but now is the time for action.

Volumetry, armored agreement

On ItaliaOggi our associate Silvia Marcio` analizes the contents of a recent Supreme Court ruling on volume purchase agreements.

In particular, the change in zoning does not affect these agreements even when, as a result of the change in the local zoning instrument, the purchaser can no longer develop the acquired volume.

At the following link the published article: https://lnkd.in/gdySS9PX

Litigation

Cartabia Law Reform and the applicability of eviction proceedings for arrears to the business going concern lease agreement

Article 3, Paragraph 46, of Legislative Decree No. 149 of 2022 (so-called Cartabia Law Reform) broadened, with effect from 28 February 2023, the scope of application of the procedure for validation of eviction and final tenancy permit governed by Article 657 of the Italian Code of Civil Procedure, extending it to the bailment agreement of properties and the business going concern lease, in case of termination of the agreement upon expiration.

Conversely, Article 658 of the Italian Code of Civil Procedure, which governs the notice of eviction for arrears, has not been amended.

Consequently, within the law's absence, there has been a conflict in case law regarding the applicability or non-applicability of the procedure for validation of eviction for arrears in cases of business going concern leases.

However, the conflict has recently been overcome by the Legislative Decree of 31 October 2024, no. 164, the so-called "Cartabia remedy," by which Article 658 of the Italian Code of Criminal Procedure was amended, extending its application to business going concern leases.

The "Cartabia remedy" published in Official Gazette no. 264, 11 November 2024, anticipated by a few days the Supreme Court, which reached the same decision, ruling on a preliminary hearing referral ordered by the Court of Naples.

This is a major measure for investors in shopping centres, who, in order to recover arrears and leased business going concerns, will now be able to benefit from a particularly compact and rapid summary procedure, without having to resort to the tenancy procedure, which is known to involve much longer court times.